



Hearing: Operation Brugge

Before the Hon M F Adams QC, Chief Commissioner

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

On Wednesday, 23 October 2019 at 10am  
(Day 3)

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1 MS DWYER: Chief Commissioner, yesterday, as you know,  
2 Officer BR4 was giving evidence. I recall Officer BR4.  
3  
4 THE CHIEF COMMISSIONER: Very well.  
5  
6 MS DWYER: I understand that Ms Kluss has some evidence  
7 that she wishes to call in further examination.  
8  
9 THE CHIEF COMMISSIONER: Very well.  
10  
11 <OFFICER BR4, on former oath: [10.30am]  
12  
13 THE CHIEF COMMISSIONER: Q. You understand that you are  
14 still bound by the oath you gave yesterday?  
15 A. Yes, I do.  
16  
17 <EXAMINATION BY MS KLUSS:  
18  
19 MS KLUSS: Q. During the course of your examination  
20 yesterday, I showed you a piece of paper with another  
21 police officer's name on it. Could you just have a look at  
22 this piece of paper. Is that the same name?  
23 A. Yes, it is.  
24  
25 MS KLUSS: I tender that document.  
26  
27 THE CHIEF COMMISSIONER: Very well. That will be  
28 a confidential exhibit.  
29  
30 CONFIDENTIAL EXHIBIT #56 PIECE OF PAPER CONTAINING A POLICE  
31 OFFICER'S NAME  
32  
33 MS KLUSS: Q. In your evidence yesterday you referred to  
34 seeing instructions in relation to the conduct of personal  
35 searches?  
36 A. That's correct.  
37  
38 Q. I think you indicated to the Chief Commissioner that  
39 you had accessed that information from the police intranet?  
40 A. That's correct.  
41  
42 Q. You believed it was from the handbook?  
43 A. That's right.  
44  
45 Q. Was that an error?  
46 A. That was a mistake. It was on the intranet, but it's  
47 a person search manual.

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Q. Can I show you a document. Is that the document to which you were referring?

A. Yes, it is.

MS KLUSS: I tender a document being the person search manual, (barcode 8436690-8436701).

Q. Do you accept that that is a 2019 version of the instructions upon which you were relying?

A. Yes, I do.

Q. And so far as the instructions regarding the conduct of personal searches in 2018 are concerned, can you make any comments about that?

A. I believe it was still the same procedures as what is in this updated version.

Q. And you can't say whether it came specifically from the personal search manual or a version of the handbook that was current in 2018?

A. That's correct.

THE CHIEF COMMISSIONER: Ms Kluss, you need to know that that document came into existence as the result of a collaborative exercise with the NSW Police Force which resulted from an analysis by the Commission of various standard operating procedures throughout New South Wales which showed a very marked degree of incoherence.

MS KLUSS: Certainly.

THE CHIEF COMMISSIONER: That research was provided to the NSW Police Force, I can't tell you the precise date but I think in something like June or July of this year. Part of that process was a discussion about the lack of information about strip searching.

I can have this checked, but I am very sure that that manual did not have a previous edition.

MS KLUSS: That is accepted, Commissioner.

THE CHIEF COMMISSIONER: Not only that, the part about strip searching was new and was not in any prior document. Now, I'm telling you this in fairness, because I will have the research done, but I am virtually certain.



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Now, of course, I'm 72, we've been doing a great deal of work, and I might be confused, but this matter was of such importance and has been a source of continuous discussions between the NSW Police Force and the Commission for at least two years. If that is true, your client cannot be telling the truth about that matter.

MS KLUSS: Q. Ma'am, you have heard what his Honour has said in relation to that?

A. Yes.

Q. What is your evidence so far as your understanding of where the information came from for your conduct of searches?

A. My understanding is that that has always been the procedure in relation to being allowed to get someone to squat. Everything that's in that handbook, that's what I believed at the time of Splendour.

THE CHIEF COMMISSIONER: Ms Chapman, would you please undertake to provide a copy of the police handbook as it was in 2018?

MS CHAPMAN: Yes.

THE CHIEF COMMISSIONER: Have you yourself checked the matter to which I have adverted?

MS CHAPMAN: An email was sent this morning, before you, Chief Commissioner, came on to the bench. When I saw what the document was, I said, "That's as I understand it, a new document."

THE CHIEF COMMISSIONER: There is no doubt that iteration came into being because it was sent to us at a time - I think it had been in on the intranet for something like two months or something, and then it was independently sent to me as part of our discussions about that role. That was the document to which I referred in the letter, which you have now seen.

MS CHAPMAN: Yes, I have seen the letter.

THE CHIEF COMMISSIONER: So that's my present understanding of the history. I'm having the matter checked now. Part of my difficulty is, in the course of

1 this inquiry, I've seen a great number of documents, so  
2 I cannot state absolutely. But, thank you, you are going  
3 to attend to that.

4  
5 MS CHAPMAN: Yes, we are.

6  
7 THE CHIEF COMMISSIONER: I would be pleased if you would  
8 do that.

9  
10 Ms Kluss, the problem for your client is this: if  
11 I am right, then certain things follow about your client's  
12 evidence. I don't need to spell them out. They are  
13 obvious.

14  
15 MS KLUSS: My client, your Honour, has given the best of  
16 her recollection as to where she got the information from.

17  
18 THE CHIEF COMMISSIONER: No, that's your submission. You  
19 don't know that.

20  
21 MS KLUSS: I will clarify it.

22  
23 THE CHIEF COMMISSIONER: No. You do not know it, do you?

24  
25 MS KLUSS: I am instructed.

26  
27 THE CHIEF COMMISSIONER: I will not receive statements  
28 about personal opinions from counsel.

29  
30 MS KLUSS: I'm not giving a personal --

31  
32 THE CHIEF COMMISSIONER: The point that I am making is  
33 that - well, let me put this to you, and that is this: if  
34 my recollection about the matter is correct, then it cannot  
35 be correct that this document, or anything like it, was in  
36 existence at the time that the searches took place in 2018  
37 at Splendour in the Grass; correct? That must follow.

38  
39 MS KLUSS: I don't think it does.

40  
41 THE CHIEF COMMISSIONER: What? If there is no handbook  
42 that was extant in 2018 that contained that material, then  
43 it follows that it could not have been consulted by your  
44 client.

45  
46 MS KLUSS: I'm not suggesting it necessarily came in the  
47 form of the handbook, but certainly the witness's evidence

1 is that the way in which she conducted the search was  
2 pursuant to the information that she had been directed and  
3 trained, and it was in accordance with that.  
4  
5 THE CHIEF COMMISSIONER: No, Ms Kluss. That is not her  
6 evidence. Her evidence was that she consulted a document  
7 that contained that material.  
8  
9 Q. Is that not correct?  
10 A. I have since got that document, yes.  
11  
12 THE CHIEF COMMISSIONER: Q. No, no. Was not your  
13 evidence that you recall consulting a document that told  
14 you about strip searching, including the powers to ask  
15 a detained person to squat?  
16 A. My evidence is that however I was trained in the  
17 police force, that is how I have always known. I don't  
18 know whether it was done at the academy in DEFTAC, but that  
19 is how I've been trained to search and that's how I've  
20 always done it.  
21  
22 Q. So you don't know, now, whether or not you actually  
23 saw a document that contained that --  
24 A. I've seen that document now because I've printed it  
25 out, yes.  
26  
27 Q. Yes, but that document came into being in 2019.  
28 A. That's right, yes.  
29  
30 Q. All right. We're not talking about 2019; we're  
31 talking about 2018, when that document was not in  
32 existence.  
33 A. As far as I'm aware, that's always how it has been.  
34  
35 Q. No. Are you saying that you saw a document that  
36 contained that information?  
37 A. No, not necessarily. I don't - no, not necessarily.  
38 But I am saying that that is how I've been trained to  
39 search a person.  
40  
41 THE CHIEF COMMISSIONER: I see. Very well. Any other  
42 questions, Ms Kluss?  
43  
44 MS KLUSS: Yes.  
45  
46 Q. You referred yesterday to having created a table which  
47 indicates those matters in which you were notified on the

1 COPS entries as being the lead officer or the secondary  
2 officer in relation to your activities in Splendour?  
3 A. That's correct.  
4  
5 Q. I show you a document. Is that the document that you  
6 have created?  
7 A. I didn't personally create it, but an intelligence  
8 officer at Taree did.  
9  
10 MS KLUSS: I tender that document.  
11  
12 THE CHIEF COMMISSIONER: I won't receive it in that way.  
13 You may tender it in the course of submissions. Once you  
14 have identified the source, and that source has said how he  
15 or she went about the matter, I will receive it, but  
16 I won't receive it in that hearsay way.  
17  
18 MS KLUSS: Certainly. It is being provided for the  
19 information of the Commission in any event.  
20  
21 THE CHIEF COMMISSIONER: Yes, I know, but it's not worth  
22 very much unless I can assess who did it and how they came  
23 to do it, that's the problem. But I will allow you to do  
24 that in written submissions in due course.  
25  
26 MS KLUSS: Thank you.  
27  
28 Q. With that document - do you still have it in front of  
29 you?  
30 A. No.  
31  
32 MS KLUSS: Would your Honour be assisted by having a copy  
33 of this while I ask the questions?  
34  
35 THE CHIEF COMMISSIONER: I think I can follow. I've seen  
36 a copy of the document.  
37  
38 MS KLUSS: Thank you.  
39  
40 Q. In terms of the three matters that are in the second  
41 yellow box, are you able to indicate, after having  
42 considered the field arrest forms, where the drugs were  
43 located in relation to those three matters?  
44 A. Yes. Two of them were in - secreted in their vagina.  
45  
46 Q. And that wasn't obtained by virtue of searching  
47 a vagina but by way of admissions by the person?

1 A. That's correct.  
2  
3 Q. And them volunteering drugs and retrieving them  
4 themselves?  
5 A. Yes, exactly.  
6  
7 Q. I think out of the 10 drug detections that occurred  
8 between yourself and Officer BR3, there were seven  
9 detections?  
10 A. Sorry, 10 detections.  
11  
12 Q. I'm sorry, 10 detections, and there were seven finds  
13 in relation to drugs?  
14 A. Sorry, there was actually 10 finds, so 10 drug  
15 detections in total.  
16  
17 Q. And of those 10, can you indicate how many of those  
18 where drugs were located either as a result of admission or  
19 search in the underwear or vaginal cavity?  
20 A. Seven.  
21  
22 THE CHIEF COMMISSIONER: There was no search - never  
23 a search in a vaginal cavity.  
24  
25 MS KLUSS: That's not what I asked.  
26  
27 THE CHIEF COMMISSIONER: The question - well, what you  
28 have said --  
29  
30 MS KLUSS: I will rephrase the question.  
31  
32 Q. Of those 10 drug detections, can you indicate where  
33 the drugs were located in those matters?  
34 A. Seven of them were in - either secreted in their  
35 vagina or in their underwear.  
36  
37 Q. And I think you have isolated the various event  
38 numbers that correspond to those findings?  
39 A. That's correct.  
40  
41 Q. And that can be provided to the Commission?  
42 A. Yes.  
43  
44 Q. At a convenient time?  
45 A. Yes.  
46  
47 Q. And you have identified those by event numbers?

1 A. That's correct.  
2  
3 Q. I think your evidence yesterday was that there were  
4 occasions when you assisted other police, other than BR3?  
5 A. That's correct.  
6  
7 Q. And there were other occasions when BR3 would assist  
8 other police and you would not be involved?  
9 A. I believe so.  
10  
11 Q. And the COPS entries --  
12  
13 THE CHIEF COMMISSIONER: Q. Assist them with what role?  
14 In what role, do you know? Assist them to do what? You  
15 said "other police"?  
16 A. Searching.  
17  
18 Q. General searching or strip searching?  
19 A. Both. Just say if someone else, two male police  
20 officers, got a - you know, needed a search done, then, you  
21 know, I might get called in to do search, to assist them,  
22 because obviously they can't do it.  
23  
24 Q. No, we are talking about BR3. You said that he went  
25 off to assist other police officers.  
26 A. I can't be sure about that, but I know that I did.  
27  
28 MS KLUSS: Thank you for clarifying that.  
29  
30 Q. In terms of assisting other police, would you be  
31 responsible for the recording of those events?  
32 A. No.  
33  
34 Q. Would the police that had carriage of those particular  
35 events make their own recordings of the events?  
36 A. Yes.  
37  
38 MS KLUSS: Nothing further, your Honour.  
39  
40 THE CHIEF COMMISSIONER: Q. But in their own recordings  
41 of the events, they would have to record the fact that you  
42 conducted the particular search?  
43 A. They should do.  
44  
45 Q. The COPS report would inevitably call for that  
46 identification, wouldn't it?  
47 A. You would have to put someone's registered number into

1 the COPS system, yes.  
2  
3 THE CHIEF COMMISSIONER: All right. Yes, thank you.  
4 I think you are now - sorry, anything arising?  
5  
6 MS DWYER: Just briefly.  
7  
8 <EXAMINATION BY MS DWYER:  
9  
10 MS DWYER: Q. Senior Constable, the three matters that  
11 were put to you where there were detections because people  
12 had hidden things, either in their underwear or inside  
13 them - is that the case?  
14 A. That's correct.  
15  
16 Q. And in each of those three cases, the drugs were  
17 detected not because of a search but because, after the  
18 persons had spoken to police, they volunteered that that's  
19 where the drugs were and they extracted them themselves?  
20 A. Yes, they did.  
21  
22 MS KLUSS: Could I just correct that. That was two of the  
23 three matters.  
24  
25 MS DWYER: No. I'm going to put something different. I  
26 am reading the facts sheet.  
27  
28 Q. I suggest to you that, in each of those three cases,  
29 the patrons that were spoken to - and I can take you  
30 through each of them if necessary - after being spoken to  
31 by police, voluntarily surrendered the drugs.  
32 A. I believe so, but I would have to refer to - I would  
33 have to refer to the charges.  
34  
35 Q. If I'm correct about what I've put to you, you agree,  
36 don't you, that then drugs aren't found as a result of any  
37 searching by the police; after detection by the dogs,  
38 police speak to the persons and they then volunteer the  
39 drugs?  
40 A. Yes.  
41  
42 Q. You then created, did you, the facts sheet for court  
43 in those cases?  
44 A. Which ones? There were 10, so --  
45  
46 Q. I can't put to you the names. No, in respect to each  
47 of the three persons that you have been referred to where

1 drugs were found secreted either internally or in  
2 underwear?  
3 A. Yes.  
4  
5 Q. Did you also fill out the field arrest form for each  
6 of those persons?  
7 A. I can't be sure.  
8  
9 Q. Do you have a recollection as to when, in terms of the  
10 time of day on 20 July, you filled out, firstly, field  
11 arrest forms?  
12 A. Each time we got a drug detection, that would have  
13 been done at the time.  
14  
15 Q. And what about the facts sheets, then? When were they  
16 created?  
17 A. I would have to refer to them, but it wouldn't be at  
18 Splendour, it would be back at Tweed Heads police station.  
19  
20 Q. Were you responsible for that, with respect to those  
21 three cases?  
22 A. I would have been, yes.  
23  
24 THE CHIEF COMMISSIONER: Q. Back at the station, but on  
25 the same day before you went home?  
26 A. Not necessarily.  
27  
28 Q. If not, then the next day?  
29 A. I would think so, but, like I said, without looking at  
30 the COPS event, I can't be sure exactly when I created the  
31 events.  
32  
33 Q. Right. But we're not talking about the events on  
34 COPS; we're talking about the facts sheet for the court  
35 proceedings?  
36 A. Yes, which is the event, yes - which is in the event.  
37 In the event you right the facts sheet.  
38  
39 Q. Right. So when you did the COPS report, as part of  
40 that event narration --  
41 A. That's right.  
42  
43 Q. -- you would insert or add a facts sheet?  
44 A. That's correct.  
45  
46 Q. Which was intended then that it would be ultimately  
47 printed out and provided to the court?

1 A. That's right.  
2  
3 Q. Is that correct?  
4 A. Correct.  
5  
6 Q. Do you sign that facts sheet?  
7 A. No.  
8  
9 Q. So it's entirely electronic?  
10 A. Yes.  
11  
12 MS DWYER: Q. Do you recall cutting and pasting with  
13 respect to any of those persons who you were preparing  
14 facts sheets for?  
15 A. No, I think this might be where the confusion is. So  
16 when we have a drug detection find at Splendour, we don't  
17 start the event. So it's like a pre-formatted event, that  
18 whoever is booking up the drug exhibit, they have to -  
19 before they can put that into the system, the drug exhibit,  
20 they have to have an event number, like a COPS report  
21 number. So these people, who I don't even know who they  
22 are, they are the people that create the event off our  
23 field arrest forms, and so that there is something on the  
24 system, so that they can book up the drugs.  
25  
26 Q. Have you refreshed your memory --  
27  
28 THE CHIEF COMMISSIONER: Q. Yes, but - right,  
29 I understand that. But they would not be creating the  
30 facts sheet?  
31 A. No, they would not, no.  
32  
33 Q. So they, as it were, start off the event, the  
34 recording of the event, and they only do a minimum, because  
35 all they are really doing is providing a link with the  
36 exhibit; correct?  
37 A. Yes, that's correct, but --  
38  
39 Q. And the details, the substantive details, have to be  
40 put in by the relevant officer?  
41 A. Exactly. Exactly.  
42  
43 Q. And so you would come to the computer, open up that  
44 event, already partly started, and complete the COPS event  
45 as a part of which there would be a facts sheet. Do  
46 I correctly understand the process?  
47 A. That's correct.

1  
2 THE CHIEF COMMISSIONER: All right. Thank you.  
3  
4 MS DWYER: I'm just going to ask out of fairness that the  
5 witness be provided with my instructing solicitor's folder  
6 of documents.  
7  
8 THE CHIEF COMMISSIONER: Yes.  
9  
10 MS DWYER: Q. Could you turn, please, behind tab 20.  
11 You are aware, obviously, Senior Constable, that I'm not  
12 going to say the names of the patrons?  
13 A. Okay.  
14  
15 Q. But you will note there the name of one particular  
16 patron who is referred to under the second yellow box that  
17 you have been taken to - do you see that?  
18 A. Sorry, just - can you just repeat that again? Sorry.  
19  
20 Q. Certainly. Tab 20, are you there?  
21 A. I think I'm at tab 20, yes.  
22  
23 Q. Okay. Do you see the name of a particular patron who  
24 was searched on that day?  
25 A. Can I just say what it's starting with, just to make  
26 sure I'm on the right one.  
27  
28 Q. It's barcode number 8453133. I'm not asking for that  
29 to come up.  
30 A. Okay.  
31  
32 Q. If you then have a look a few pages down - turn one  
33 page over and you will see the field arrest form?  
34 A. Yes.  
35  
36 Q. Do you see a particular weight recorded against there  
37 to the MDMA?  
38 A. Yes.  
39  
40 Q. Do you see then the facts sheet; the weight recorded  
41 in the field arrest form is 1 gram; the weight recorded in  
42 the facts sheet is 3.1 grams?  
43 A. Yes.  
44  
45 Q. That's an error; do you agree?  
46 A. Yes. So --  
47

1 Q. It's an error that disadvantages the patron who has  
2 been charged with the offence; do you agree?  
3 A. This here --  
4  
5 Q. Sorry, could you answer my question: do you agree  
6 that that is an error? You've agreed that that's an error?  
7 Do you agree that it's --  
8  
9 MR COFFEY: I object. On what basis is there  
10 disadvantage?  
11  
12 THE CHIEF COMMISSIONER: It is perfectly obvious that  
13 being charged with a greater quantity is more serious than  
14 a lesser quantity. I think that's the only point that is  
15 being made. It is a commonsense one. But I do think -  
16 well, let's first agree.  
17  
18 Q. First of all, that's inconsistent.  
19 A. Yes. I have an explanation.  
20  
21 Q. Yes, and it is?  
22 A. So we estimate the weight of the drugs, without - and  
23 then when that exhibit gets back to the exhibit officer,  
24 they weigh the drugs on special drug weighing scales to get  
25 the exact weight. I wouldn't have weighed that; I would  
26 have just guesstimated. That's not what would have gone in  
27 the facts sheet. That would have been at the time of the  
28 field arrest, when we put the exhibit in the exhibit bag,  
29 and then someone else deals with the exhibit and they weigh  
30 it and photograph it for us.  
31  
32 MS DWYER: Q. So where, when you are preparing this  
33 facts sheet, are you getting information that it is at 3.18  
34 grams?  
35 A. EFIMS, which is our exhibits recording system.  
36  
37 THE CHIEF COMMISSIONER: Q. So you have to consult that  
38 when you are preparing that facts sheet?  
39 A. For this particular thing, yes. Normally, if I was  
40 doing it at a normal, you know, our normal command, I would  
41 weigh it myself, yes. But because we hand it to --  
42  
43 Q. But I'm just asking about how it gets into your facts  
44 sheet: you would have had to have consulted the  
45 exhibit officer's --  
46 A. Notes.  
47

1 Q. Notes?  
2 A. Yes. Correct.  
3  
4 Q. And they are on the computer, are they?  
5 A. Yes.  
6  
7 MS DWYER: Q. So that was you who was the estimator of  
8 the 1 gram of MDMA; is that right?  
9 A. Yes. That's my writing, yes.  
10  
11 Q. So if the LECC investigators checked, they can look up  
12 the EFIMS and there should be information that it is 3.1 --  
13  
14 THE CHIEF COMMISSIONER: Q. What is EFIMS? The police  
15 are infested with capital lettering. What does EFIMS mean?  
16 A. I can't answer that. I don't know.  
17  
18 THE CHIEF COMMISSIONER: I rest my case.  
19  
20 MR COFFEY: May I assist, if it makes a difference, it is  
21 the exhibits forensic information management system.  
22  
23 THE CHIEF COMMISSIONER: Well done, Mr Coffey.  
24  
25 MS DWYER: Q. Do you have a document behind there which  
26 is 8453142?  
27 A. Yes, I do.  
28  
29 Q. Is that the EFIMS?  
30 A. It appears to be, yes.  
31  
32 MS DWYER: It doesn't have the name of the patron there,  
33 so I'm going to ask that that come on the screen, 8453142.  
34  
35 Q. Do you see the first page of that indicates the number  
36 of grams of that drug and it says "1 gram"?  
37 A. Yes, I do.  
38  
39 Q. So the facts sheet is then in error; correct?  
40 A. No. I would have to go back to the records, but that  
41 3.18 grams, I don't know whether it's off a photograph  
42 I just can't remember whether the exhibits officer has  
43 emailed us - I don't know. But, you know, I wouldn't have  
44 just pulled 3.18 grams out of nowhere.  
45  
46 Q. But the evidence you just gave earlier, officer, was  
47 that you will have taken it from the EFIMS?

1 A. Well, I thought - I believed I did, yes.  
2  
3 THE CHIEF COMMISSIONER: Q. Well, then, so let's just  
4 follow this through. In that respect, you are plainly  
5 mistaken?  
6 A. Yes.  
7  
8 Q. Do you agree?  
9 A. Yes, it appears that I am, yes.  
10  
11 Q. And then you suggested an alternative source of  
12 information. What could that have been?  
13 A. I don't know whether - I'm just trying to think  
14 back --  
15  
16 Q. Maybe you mistakenly looked at the wrong EFIMS?  
17 A. Well, yes, I - I can't recall exactly how I got that  
18 number, but --  
19  
20 Q. I accept that you didn't invent it. It had to come  
21 from somewhere.  
22 A. Yes, yes.  
23  
24 Q. And the question is, then --  
25 A. I can't answer it, I'm sorry.  
26  
27 Q. Going through what you usually do in your head, EFIMS  
28 was the obvious source for that information; correct?  
29 A. Yes.  
30  
31 Q. That's where you would go. So there is no reason why  
32 you would not have gone there, is there?  
33 A. Normally, I would do it myself, I would weigh it and  
34 photograph it myself.  
35  
36 Q. I understand that. But here you had to go to the  
37 EFIMS?  
38 A. Mmm.  
39  
40 Q. So I understand that that's what you would have done,  
41 and that's why - and it is speculation - I speculate that  
42 you went to the wrong EFIMS. Do you think that might be an  
43 explanation?  
44 A. There is a good chance, yes. There is a good chance.  
45  
46 Q. It just seems to be a more likely explanation than any  
47 other; is that right?

1 A. Yes.

2

3 THE CHIEF COMMISSIONER: Yes, very well.

4

5 MS DWYER: Q. Can I take you to one of those other  
6 documents, which is another one of the persons who is  
7 mentioned under the second yellow box referred to. This is  
8 also a person who admitted to police that she was in  
9 possession of an amount of MDMA that was in her vagina.  
10 Could you have a look behind tab 26, please. This doesn't  
11 need to come on to the screen, but just to identify it for  
12 you, the barcode number is 8453199.

13 A. Yes.

14

15 Q. Do you see there that there is a field arrest form,  
16 two MDMA caps, and the weight you estimate is 0.4 grams?

17 A. Yes.

18

19 THE CHIEF COMMISSIONER: Q. That's an estimation, but  
20 where does it come from? 0.4 grams is quite a precise

21 number. I mean, was it just a guess? I mean, how --

22 A. Yes, there were drug scales there, but there was so  
23 much going on there that, you know, maybe that other one  
24 I estimated because the drug scales were being used or  
25 I couldn't find the drug scales, but this, that looks like  
26 I've weighed it. 0.4. I wouldn't estimate that.

27

28 Q. No, it is just too hard.

29 A. Well, I couldn't, yes.

30

31 MS DWYER: Q. Then you will see the facts sheet refers  
32 to the weight, which is behind it. Just for your benefit  
33 not the screen, 8453202. In the facts sheet, the weight  
34 for that drug appears to be 3.18 grams, considerably higher  
35 than 0.4 grams; do you agree?

36 A. Yes.

37

38 Q. Again, that disadvantages the patron in suggesting to  
39 the magistrate that they have a higher quantity of drugs.

40

41 MS KLUSS: I object to this, because it would appear that  
42 the document - it doesn't mean it wasn't altered at some  
43 other stage, and there is no question that that particular  
44 document was the basis of a prosecution - the basis of the  
45 prosecution.

46

47 THE CHIEF COMMISSIONER: It's a facts sheet. Facts sheets

1 are prepared every day for charges.  
2  
3 MS KLUSS: Certainly. And they are altered every day.  
4  
5 THE CHIEF COMMISSIONER: They go before the magistrate and  
6 the assumption is this is the facts sheet that went before  
7 the magistrate.  
8  
9 MS KLUSS: It is an assumption that is not necessarily  
10 valid --  
11  
12 THE CHIEF COMMISSIONER: It doesn't matter.  
13  
14 MS KLUSS: -- that that is the document that went to the  
15 magistrate.  
16  
17 THE CHIEF COMMISSIONER: It doesn't matter, because what  
18 went into the facts sheet was undoubtedly more serious than  
19 what was stated on the COPS report. Whether that  
20 ultimately went to the magistrate is an entirely different  
21 question.  
22  
23 MS KLUSS: Your Honour has picked up the issue in the  
24 question.  
25  
26 MS DWYER: Q. Senior Constable, do you see the date  
27 underneath that, on that facts sheet? It's your name in  
28 terms of the person creating the facts sheet; do you agree?  
29 A. Okay, I'm going to have to explain something else.  
30  
31 Q. Sorry, could you just answer my question in terms of  
32 that facts sheet and then I will come to what you want to  
33 say?  
34 A. Technically, this is not the actual facts sheet. This  
35 is the narrative in an event.  
36  
37 Q. Hang on. Are you on the document, first of all, that  
38 begins 8453200 and goes over to the second page of the  
39 facts sheet, 8453202?  
40 A. Sorry, what was the question - is my name on it?  
41  
42 Q. Have you turned to tab 26?  
43 A. Yes, I'm on tab 26.  
44  
45 Q. There's a patron there with a surname beginning with  
46 the letter "M"?  
47 A. Yes.

1  
2 Q. There is a drug weight of 0.4 grams listed there.  
3 That's just a summary from the investigators. Turn over,  
4 please, to the next page, where there is a field arrest  
5 form. Senior Constable, could you turn over to that  
6 page where there is a field arrest form?  
7 A. Yes.  
8  
9 Q. Do you see there that the weight recorded by yourself  
10 for MDMA 2 caps is 0.4 grams?  
11 A. Yes, I do.  
12  
13 Q. Could you turn over the page and there appears to be  
14 a NSW Police facts sheet for that same person?  
15 A. Yes, I've got that.  
16  
17 Q. Then could you turn over the page, page 2. The second  
18 page of that facts sheet says in the left-hand corner that  
19 the facts were created by yourself; it has your name  
20 printed there?  
21 A. Yes.  
22  
23 Q. Then, on the right-hand corner, the date of 20 July  
24 2018; do you agree with me?  
25 A. Yes, sorry. I was just trying to find that date.  
26  
27 Q. Does that suggest that the facts sheet was created by  
28 yourself on 20 July 2018?  
29 A. Are you referring to 8453203?  
30  
31 Q. 8453202 - the second page of the facts sheet.  
32 A. Yes, I have the date of 20 July, yes.  
33  
34 Q. Does that suggests that the facts sheet - because it  
35 says, "Facts created by", it has your name, date, 20 July  
36 2018, does that suggest that the facts sheet was created by  
37 yourself on that date?  
38 A. Yes.  
39  
40 Q. That's the date of the incident, isn't it?  
41 A. Yes.  
42  
43 Q. In what circumstances did you create that facts sheet  
44 then?  
45  
46 THE CHIEF COMMISSIONER: Q. Yes, how did it come about?  
47 A. Well, I would have sat at the computer and typed it

1 out.

2

3 Q. So you would have sat at the computer somewhere in  
4 Tweed Heads; is that right?

5 A. I believe so.

6

7 Q. Can you take it from me, but please feel free to flick  
8 back there, it's exactly the same situation with respect to  
9 tab 20 for the other patron that I took you to, which says  
10 that page 2 of the fact sheet is the facts created by  
11 yourself on that date.

12 A. Yes.

13

14 Q. So it's likely then that it wasn't created back  
15 somewhere at Taree, it was created at Tweed Heads; correct?

16 A. Yes. That's correct, yes.

17

18 Q. And do you see there that, as you have acknowledged,  
19 the field arrest form had 0.4 grams?

20 A. Mmm-hmm.

21

22 Q. And if you have a look, then, at the EFIMS, which is  
23 a few pages forward.

24

25 THE CHIEF COMMISSIONER: State the number.

26

27 MS DWYER: Q. 8453207.

28 A. Yes.

29

30 Q. And the grams confirm what you have earlier recorded -  
31 0.4 grams - do you see that?

32 A. Yes.

33

34 Q. And in the facts sheet then, if you can go back there,  
35 8453202 --

36 A. Yes.

37

38 Q. -- it says 3.18 grams.

39 A. Including the packaging. So my only thought is  
40 possibly that was weighed without packaging and that was  
41 weighed with packaging.

42

43 THE CHIEF COMMISSIONER: Q. Well, the difficulty is  
44 this: the description on the EFIMS - and I might say my  
45 experience is, over years of looking at these kinds of  
46 problems, that they are weighed with the packaging, and  
47 then they may be weighed without the packaging. But this

1 says "Description: 1 sealed plastic bag, exhibit number  
2 X", and I won't name it, "containing two tabs. Quantity:  
3 0.4 grams". Does that not suggest that the quantity  
4 including the bag is 0.4 grams?  
5

6 Let me put it another way. First of all, I think you  
7 have agreed that at the scene you weighed the drug and you  
8 said 0.4 grams; correct? That's on your sheet?

9 A. Well, this is on my field arrest, yes.

10

11 Q. Yes.

12 A. Yes.

13

14 Q. And you would not have taken the drug out of the bag  
15 to weigh it, would you? That is not the proper procedure;  
16 you leave the drugs in situ?

17 A. Mmm.

18

19 Q. Is that not correct?

20 A. Yes, that's correct.

21

22 Q. So when you put that on the scales, you got 0.4 grams;  
23 agreed? I'm sorry, you're nodding?

24 A. Yes. Sorry, yes, I agree. Yes.

25

26 Q. So on the basis that perhaps you thought the exhibits  
27 officer might have been more precise, you would go to the  
28 EFIMS; correct?

29 A. Yes.

30

31 Q. There, the only measurement contained on that form is  
32 0.4 grams; correct?

33 A. That's correct.

34

35 Q. So there's nothing in the relevant documentation that  
36 suggests 3.18 grams, is there?

37 A. No, there is not.

38

39 Q. So can you try to explain why 3.18 grams got on to the  
40 statement of facts?

41 A. I can't explain that. I don't know. Can I see if I  
42 can --

43

44 Q. You would agree, though, would you not, that it is of  
45 vital importance, when dealing with drug cases, that the  
46 quantity of drug is accurately recorded? Do you agree?  
47 That is of vital importance?

1 A. Yes, definitely.  
2  
3 Q. And do you agree that this is especially so in a  
4 document that goes to a court or is intended to go to  
5 a court? Do you agree?  
6 A. Yes, I agree.  
7  
8 MS DWYER: Q. Senior Constable, I am going to suggest to  
9 you how I think that mistake occurred. Can you have a look  
10 at tab 20, at the field arrest form, document 8453134.  
11 A. Yes.  
12  
13 Q. Do you see the exhibit bag number is ZD000110615?  
14 A. Yes.  
15  
16 Q. Can you please have a look behind tab 26 at the other  
17 patron's facts sheet, with the barcode 8453202?  
18 A. Yes.  
19  
20 Q. Do you see there that in the third paragraph,  
21 beginning, "All requirements of LEPR were adhered to", you  
22 have referred to the exhibit number from the other case.  
23 A. Yes.  
24  
25 Q. With the same drug weight?  
26 A. Yes.  
27  
28 Q. That's how that error has occurred, isn't it? So have  
29 you cut and paste in one matter from the other?  
30 A. No, I wouldn't have cut and paste. I've just - I've  
31 just made a mistake.  
32  
33 Q. But the same mistake is made - that is, that a higher  
34 rate of grams is indicated to the magistrate than is  
35 initially recorded in the field arrest form?  
36 A. Yes, that's correct.  
37  
38 Q. Do you agree that that paperwork is - you have already  
39 said it is of vital importance - that that is sloppy work  
40 from yourself in terms of recording these important  
41 details?  
42 A. I think in the circumstances, you know, when you are  
43 doing all these charges, it is quite easy to get a little  
44 bit muddled up.  
45  
46 Q. Can you see that if it is quite easy to get a little  
47 bit muddled up, there are significant consequences for

1 a patron then going to court to be charged with a serious  
2 criminal offence and then sentenced?  
3 A. There is a possibility, yes, definitely.  
4  
5 Q. Did you turn your mind to that when you were creating  
6 these documents?  
7 A. I didn't mean to make a mistake.  
8  
9 THE CHIEF COMMISSIONER: Q. No, of course you didn't  
10 mean to. No-one's suggesting you deliberately made it.  
11 The point is, though, I think you have already conceded in  
12 relation to your COPS event recording, at least as to one,  
13 and perhaps more, that you did not put in all the  
14 information that ought to have been placed in there?  
15 A. (Witness nods).  
16  
17 Q. And this is another mistake, and what it looks like is  
18 that there is a pattern of, if not carelessness, at least  
19 inattention; do you agree?  
20 A. I think that in the circumstances when someone else is  
21 taking your drugs --  
22  
23 Q. There may be explanations for it --  
24 A. -- and --  
25  
26 Q. There may be explanations for it, but I'm talking  
27 about your conduct.  
28 A. Normally, that's not my procedure, what I would do if  
29 I had a drug detection. That's not normally what I'd do.  
30 It'd be from start to finish. So --  
31  
32 Q. But all it means is you have got to concentrate, when  
33 it's different, doesn't it? Look, human beings make  
34 mistakes all the time. We all do. Even I do, though  
35 rarely. We all make mistakes. The point is, though, you  
36 had certain duties to perform and it was important that  
37 they be performed adequately and accurately.  
38 A. I agree.  
39  
40 Q. And in these cases, under pressure, and it may be that  
41 what needed to happen was the officers perhaps should have  
42 been given more support or more time, there are  
43 explanations for it. But in the result, the paperwork was  
44 not what was appropriate; do you agree with that?  
45 A. I agree.  
46  
47 MS DWYER: Q. Just one final document to put to you,

1 Senior Constable, if you wouldn't mind having a look behind  
2 tab 27. I don't have the facts sheet for this one, but do  
3 you see there the second page under that tab is a field  
4 arrest form?  
5 A. Yes.  
6  
7 Q. It's for drug dog Rufus?  
8 A. Yes.  
9  
10 Q. And the field arrest form refers to LSD?  
11 A. Yes.  
12  
13 MS KLUSS: Could I have the initials of the person so  
14 I can identify the document, please?  
15  
16 MS DWYER: Can I assist Ms Kluss by indicating that in the  
17 document in table form, this is a search that was conducted  
18 by Officer B3, or a search that was recorded at least by  
19 Officer BR3. Second from the bottom is the person's name.  
20  
21 Q. Could you then turn, please - you will see the COPS  
22 entry, which is identified by the barcode 8453212?  
23 A. Yes.  
24  
25 Q. If you have a look at page 2, you will see that it  
26 appears to be - that COPS entry - created by your  
27 colleague, Officer BR3?  
28 A. Yes.  
29  
30 Q. And then in the narrative details, in the second  
31 paragraph from the bottom, there is a particular  
32 exhibit number referred to, exhibit bag number?  
33 A. Yes.  
34  
35 Q. Do you see, Senior Constable, that that is the same  
36 exhibit bag number that I've taken you to from tab 20,  
37 a different patron, and tab 26, a different patron - the  
38 same exhibit bag number referenced again and again, which  
39 is clearly an error, isn't it?  
40 A. It is an error, yes.  
41  
42 Q. And the second error is that there is a reference  
43 there to MDMA, when earlier in the field arrest form it  
44 only refers to LSD?  
45 A. Sorry, where does it say MDMA?  
46  
47 Q. If you turn to the second page of the COPS?

1 A. Yes.  
2  
3 Q. So it refers to MDMA as well as LSD.  
4 A. Which paragraph, sorry, are you looking at? That she  
5 has admitted to being in possession of MDMA?  
6  
7 Q. You see field arrest form, "LSD, six bags", and it  
8 refers above, "Outside gate young person told handler she  
9 had drugs in undies", and then LSD is the only drug  
10 referred to in the field arrest form. Do you see that?  
11 A. Yes.  
12  
13 Q. Over in the COPS entry, page 2, you see, in fact,  
14 reference to the fact that the patron told police she was  
15 in possession of MDMA and told police the drug was secreted  
16 inside her vagina, and then there is further reference to  
17 LSD. So that COPS entry is inconsistent with the field  
18 arrest form, isn't it?  
19 A. So she - no, that's what we found on her. What she  
20 said she had was different - is that what you are saying?  
21 So what she --  
22  
23 Q. The field arrest form refers only to LSD.  
24 A. That's right.  
25  
26 Q. The COPS entry refers to LSD and MDMA.  
27 A. Does it say we found MDMA or that she has said she had  
28 MDMA?  
29  
30 Q. Your COPS entry - the COPS entry, I should say,  
31 created by your colleague, says that she admitted to police  
32 that she was in possession of MDMA secreted in her vagina,  
33 which is inconsistent with the field arrest form which says  
34 she told the handler she had drugs in her undies and that  
35 it was LSD.  
36 A. Yes, so she might have told us something that wasn't  
37 true.  
38  
39 Q. If she told you something different, wouldn't that be  
40 recorded in the field arrest form? Because that's the  
41 document that is contemporaneous, isn't it?  
42 A. Well, in the field arrest form, it says that she  
43 told - that she had drugs in her undies, yes.  
44  
45 Q. That's the field arrest form.  
46 A. Yes.  
47

1 Q. I suggest to you that it's different in these ways:  
2 first, the field arrest form says that there are drugs in  
3 the undies, not secreted in the vagina; and, secondly, the  
4 field arrest form, the contemporaneous document, refers to  
5 LSD, not LSD and MDMA. The COPS event suggests something  
6 more grave in two regards: firstly, LSD and MDMA; and,  
7 secondly, MDMA secreted inside the vagina. If that  
8 information was given, wouldn't it be recorded in the  
9 arrest form according to proper procedure?

10 A. Do we have the facts sheet for this?

11  
12 Q. I don't have the facts sheet for this. But the facts  
13 sheet wouldn't be created contemporaneously. The only  
14 document created contemporaneously would be the field  
15 arrest form; is that right?

16 A. That's right, yes.

17  
18 Q. So it's the field arrest form created  
19 contemporaneously that should include all the significant  
20 details that are then going to be used to record up the  
21 COPS event, some five hours later, and the facts sheet that  
22 would then be produced as a result of the COPS event; do  
23 you agree?

24 A. Yes, I agree, yes. I'm just struggling to understand,  
25 you know, the question, really, because to me I'm reading  
26 this and she has said she had MDMA.

27  
28 Q. But you are getting that from a COPS entry, aren't  
29 you?

30 A. Yes.

31  
32 Q. You don't get that from the field arrest form that was  
33 taken at the time. So --

34  
35 THE CHIEF COMMISSIONER: Q. So why are those facts not  
36 in the field arrest form?

37 A. I guess I've just said that she had drugs in her  
38 undies, yes.

39  
40 Q. We know what you have said.

41 A. Yes.

42  
43 Q. The question is why isn't the detail that is in the  
44 COPS report in the arrest form?

45 A. I don't --

46  
47 Q. Why are they inconsistent?

1 A. I don't think they are inconsistent. I just don't  
2 think I've said exactly what she said in the field arrest  
3 form. I think that --  
4  
5 Q. No, the crucial matter is what was found, is it not?  
6 A. What was found was LSD. What she told us she had was  
7 MDMA.  
8  
9 THE CHIEF COMMISSIONER: I think it speaks for itself.  
10  
11 MS DWYER: Q. There is just one more on that document.  
12 If you see at page 2, I referred you earlier to the drug  
13 exhibit bag. The drug is booked up as an exhibit numbered  
14 XD000110615; do you see that?  
15 A. Which tab are we on, sorry?  
16  
17 Q. We are on tab 26.  
18 A. 26.  
19  
20 Q. Page 2 of the COPS event. The number 8453213 is at  
21 the top right-hand corner. Do you see this COPS entry is  
22 created by your colleague, BR3, but if you turn over the  
23 page, your name is there as the police in charge? Do you  
24 see that?  
25 A. Yes. No, this was created not by - by someone else  
26 that I don't know.  
27  
28 Q. If you see at page 2, you will see "Date /time  
29 created", "Created by", and then the name BR3, who is an  
30 officer who has given evidence in this court - sorry,  
31 tab 27. I beg your pardon. My mistake.  
32 A. Yes, sorry.  
33  
34 Q. The fourth page in, second page of the COPS entry?  
35 A. Second page of the COPS entry, yes, I'm on it.  
36  
37 Q. Do you see there that is created by your colleague,  
38 BR3?  
39 A. No, that event is not created by my colleague. On the  
40 previous page, the event is created by a different police  
41 officer.  
42  
43 Q. Well, why is that event created by that person? You  
44 turn over the page - referring to the same thing and it  
45 says it's created by Officer BR3.  
46 A. Yes, like I explained before, with the drug  
47 detections, if we get a drug detection, we get the details,

1 we send the drugs off with the field arrest, and another  
2 officer, who is - I don't even know where they are, whether  
3 they are in - someone where a computer is, they take the  
4 drugs and they create the event and they start the event.  
5 We don't start the event when there was a drug detection.  
6  
7 Q. Okay. So the second page where it says, "Date, time  
8 created by Officer BR3", has he added to that?  
9 A. He must have updated it, yes.  
10  
11 Q. On 27 July?  
12 A. Yes.  
13  
14 Q. Do you see there, second from the bottom of the page,  
15 the drug is booked up as an exhibit number ending in 615?  
16 A. Yes.  
17  
18 Q. And that is the same exhibit number from your job  
19 behind tab 20?  
20 A. Yes.  
21  
22 Q. And your job behind tab 26?  
23 A. Yes.  
24  
25 Q. Do you have an explanation for why that exhibit number  
26 would be the same in all three jobs?  
27 A. No. I can't. I can't explain that.  
28  
29 Q. That's a serious problem, isn't it, that the same  
30 exhibit bag number appears in three different jobs?  
31 A. Yes, it is a mistake. Mmm.  
32  
33 Q. It is a mistake that can have serious consequences for  
34 somebody who is going to court to face criminal charges; do  
35 you agree?  
36 A. Yes.  
37  
38 THE CHIEF COMMISSIONER: Q. Well, amongst other things,  
39 for the person who gets to court, a vital question might be  
40 whether, indeed, the drug was of a particular type and,  
41 therefore, it would be necessary to look at the analysis  
42 from the laboratory; correct?  
43 A. Yes, correct.  
44  
45 Q. And if the wrong exhibit number is given, it follows  
46 that the wrong analysis follows; correct?  
47 A. That's right, yes.

1  
2 Q. And it may be that someone who maintains, for example,  
3 it looked like MDMA but it was actually harmless, might not  
4 be able to maintain that because the analyst would say,  
5 "No, I found MDMA"; do you see?  
6 A. Yes, I agree, yes.  
7  
8 Q. So these are quite fundamental matters that directly  
9 involve the administration of justice, even though we are  
10 talking about potentially small quantities. Do you agree?  
11 A. I agree.  
12  
13 Q. And a conviction for a drug could follow someone  
14 around for the rest of their life with terrible  
15 consequences?  
16 A. Yes.  
17  
18 Q. The law is designed to do that, indeed, to deter  
19 people; do you agree?  
20 A. I agree.  
21  
22 MS DWYER: Q. The final question, Senior Constable:  
23 when you are writing up your facts for the court, do you  
24 rely on the COPS entry?  
25 A. Yes, and my memory of the incident.  
26  
27 Q. Your memory of an incident in circumstances where you  
28 are searching, potentially, at least tens of people on one  
29 day and searching more over the course of a weekend and  
30 sometimes writing up your facts events at a day later than  
31 the day of the search is not going to be of great use, is  
32 it?  
33 A. Yes, I think it would be, yes.  
34  
35 Q. But you agree with me, don't you, that the  
36 contemporaneous record taken of each search is of the  
37 greatest use in providing accurate information to a court  
38 at a later date?  
39 A. Yes, it would be, yes.  
40  
41 MS DWYER: Thank you. Nothing further.  
42  
43 MS KLUSS: There are just a couple of matters arising out  
44 of the last group of questions, if I might.  
45  
46 THE CHIEF COMMISSIONER: Yes, certainly.  
47

1 <EXAMINATION BY MS KLUSS

2

3 MS KLUSS: Q. In relation to the assignment of an  
4 exhibit number to the drugs were you responsible for that  
5 particular task?

6 A. No, I was not.

7

8 Q. Indeed, is it the situation that you provided the drug  
9 to another officer that is not identified on the field  
10 arrest form and that activity was completed by that person?

11 A. That's correct.

12

13 Q. I think you differentiated what happened at this  
14 particular festival from your normal course of conduct in  
15 drug detection; is that correct?

16 A. That's correct.

17

18 Q. And when you are normally involved in this, the  
19 assignment of the exhibit number would be your  
20 responsibility?

21 A. That's right.

22

23 Q. But in each of these occasions, this was not your  
24 responsibility, it was passed to another officer?

25 A. That's correct.

26

27 Q. In terms of the questions that were just asked by the  
28 counsel assisting, in terms of your recollection of the  
29 events when you were recording them on the COPS entry, was  
30 that done in a period of what time from the event as it had  
31 occurred - within a day, within two days, within three  
32 days?

33 A. Within two days.

34

35 Q. At that particular point in time, had you also made  
36 some records in your notebook about each of the people?

37 A. Yes.

38

39 THE CHIEF COMMISSIONER: Q. But those records, as  
40 I understand it - just correct me if I'm wrong - were  
41 identification details; you didn't set out the  
42 circumstances of the search and so on; is that right? Your  
43 entries, the ones that we have at least, show only  
44 identification details?

45 A. I think there was a couple that - yes.

46

47 Q. Some of them mentioned the name of a dog but that's an

1 identification detail?  
2 A. Yes. I'd have to have a look at it, yeah.  
3  
4 MS KLUSS: Q. To be fair, I think some of them also  
5 include some details of the actual circumstances and the  
6 conversations that you had with the persons?  
7 A. Yes, I do believe so, yes.  
8  
9 Q. And were they shorthand notes to remind you of various  
10 aspects of each of the persons?  
11 A. Yes.  
12  
13 Q. And I think you have previously indicated that you  
14 were aware that Officer BR3 had, on his telephone, taken  
15 some photographs of drivers' licences which also had  
16 photographs of the persons that were involved?  
17 A. Yes.  
18  
19 Q. And were those documents all used within those hours,  
20 dare I say, days, to refresh your memory as to the actual  
21 events when you were typing up the actual event entries?  
22 A. Yes, they were.  
23  
24 Q. And as to the circumstances of the event entries, did  
25 they come from those documents and your personal  
26 recollection at that time?  
27 A. Yes.  
28  
29 Q. In terms of your documentation of any drug or weight,  
30 was that linked to the information that had been created by  
31 others in the EFIMS system?  
32 A. Yes.  
33  
34 Q. And so far as those details were concerned, you were  
35 reliant upon the various documents that had been produced  
36 by other people?  
37 A. Yes.  
38  
39 THE CHIEF COMMISSIONER: Yes, but then you have to  
40 transpose the information accurately, don't you think?  
41  
42 MS KLUSS: Certainly. I'm not suggesting otherwise.  
43  
44 Q. In terms of the inconsistencies that have been  
45 identified by counsel assisting, can you account for those  
46 inconsistencies?  
47 A. No, I can't.

1  
2 Q. Is it the situation that you may also have considered  
3 photographs that were taken by the EFIMS officer?  
4 A. Yes.  
5  
6 Q. And those photographs are not considered in any of the  
7 documents that you have been provided?  
8 A. No.  
9  
10 THE CHIEF COMMISSIONER: Q. What would be the utility of  
11 that in the context of accurately transposing the EFIMS  
12 information into the facts?  
13  
14 MS KLUSS: If I might just ask that question.  
15  
16 Q. In terms of the photographs, what do the photographs  
17 of the drugs generally depict?  
18 A. The drug and the drug weight.  
19  
20 Q. And when you say "the drug weight", does that come  
21 from a photograph of the drug on the scales?  
22 A. Yes.  
23  
24 Q. If there was any issue in relation to any of the drugs  
25 or the quantity of drugs that went into a facts sheet, what  
26 would be the normal course of events that would follow  
27 regarding that, if somebody indicated they disputed it?  
28 A. If they were disputing it, then I guess it would go to  
29 hearing at court.  
30  
31 Q. And in the course of preparing a matter for hearing,  
32 is it the position that the drug would be forwarded to the  
33 department of analytical laboratories for testing?  
34 A. Yes, it - yes.  
35  
36 Q. And for weight?  
37 A. Yes.  
38  
39 THE CHIEF COMMISSIONER: Q. And to do that, you would  
40 have to have the correct exhibit number, would you not?  
41 A. Yes.  
42  
43 MS KLUSS: Q. But it is not the position that the EFIMS  
44 information would have been the only information that  
45 a prosecution would be based upon?  
46 A. That's correct.  
47

1 Q. Ma'am, in terms of the various event numbers that you  
2 have been taken to, I think you indicated that were you not  
3 the initial author of some of those documents?  
4 A. Yes.  
5  
6 Q. Is it possible to delineate where the particular  
7 information that you added to those entries starts and when  
8 it finishes?  
9 A. Sorry, I don't understand that question.  
10  
11 Q. By looking at any particular COPS event, other than by  
12 the lines that are clarified by a particular topic, are you  
13 able to indicate what material you have added to the COPS  
14 entry, as opposed to other police?  
15 A. No, I don't believe so.  
16  
17 Q. And is it the position that indeed, in relation to the  
18 matters that my friend has just taken you to, you were not  
19 the sole author of any of those COPS entries?  
20 A. That's correct.  
21  
22 Q. Ma'am, in relation to the transposition of the wrong  
23 exhibit number in relation to any particular field arrest  
24 information, have you, in any way, intentionally  
25 misinformed a court?  
26 A. Definitely not.  
27  
28 MS KLUSS: Nothing further.  
29  
30 THE CHIEF COMMISSIONER: Yes, thank you. I think your  
31 evidence is finished now.  
32  
33 THE WITNESS: Thank you.  
34  
35 MS KLUSS: Your Honour, might I raise a question with  
36 regard to the questions that related to the detection of  
37 drugs in relation to other matters that has been raised by  
38 counsel assisting in the last couple of minutes?  
39  
40 THE CHIEF COMMISSIONER: Yes.  
41  
42 MS KLUSS: Just generally.  
43  
44 THE CHIEF COMMISSIONER: Thank you, you may stand down.  
45  
46 THE WITNESS: Thank you.  
47

1 <THE WITNESS WITHDREW

2

3 MS KLUSS: The question and the field of the reference of  
4 this particular inquiry was to strip searches. The  
5 information that was provided by way of the tabular record  
6 was to give the court the complete picture of the various  
7 events in which my client was involved. In my respectful  
8 submission, the detection of other drugs and, indeed, other  
9 matters pertaining to prosecutions which are not the  
10 subject of the matters pertaining to the complainant in  
11 these proceedings, in my respectful submission, have  
12 limited relevance, if any relevance at all, other than  
13 questions of general credibility.

14

15 THE CHIEF COMMISSIONER: The general scope and purpose of  
16 the public examinations, which was opened on by Dr Dwyer,  
17 and which I to some degree expanded on later in that  
18 hearing, and which I specifically stated yesterday, was  
19 this: first of all, there was the matter that concerned  
20 the particular search of the 16-year-old girl.

21

22 Then there this: there was conduct of the NSW Police  
23 Force in connection with the application of the laws  
24 relating to searches, including, in particular, strip  
25 searches, that is or could be unlawful or unreasonable.  
26 That includes general searches. It does include particular  
27 attention to strip searches, but it is not exclusively  
28 related to strip searches and is otherwise in general  
29 terms.

30

31 MS KLUSS: The general terms, in my respectful submission,  
32 would not encapsulate the matters that have been provided  
33 and cross-examined upon, particularly where it would appear  
34 that at least some of those events have resulted as  
35 a result of admissions made by people and not questions of  
36 searches. In my respectful submission, those particular  
37 questions and answers do not fit within the scope and  
38 purpose of this inquiry.

39

40 THE CHIEF COMMISSIONER: No, the general procedures  
41 dealing with exhibits which are produced where there is  
42 a threat of a search, to my mind, is an application of the  
43 laws relating to searches, and all those cases where there  
44 was a drug dog indication and a police officer takes  
45 someone away, plainly contain, either explicitly or  
46 implicitly, a threat of a search, and are, accordingly,  
47 well within the general scope and purpose of the hearing.

1  
2 MS KLUSS: In terms of that, the question of threat of  
3 a search, in my respectful submission, was not in the way  
4 in which the matter was opened. But I accept the position  
5 that your Honour has indicated and I wish to say nothing  
6 further about it.  
7  
8 THE CHIEF COMMISSIONER: Very well. That brings us to the  
9 next point, which is that I understand discussions have  
10 taken place with a view to providing to the Commission  
11 a photograph of your client.  
12  
13 MS KLUSS: A discussion has occurred.  
14  
15 THE CHIEF COMMISSIONER: Yes. I think you wish to  
16 express certain objections to that course.  
17  
18 MS KLUSS: The question that was posed to me was whether  
19 my client chose to voluntarily provide a photograph of  
20 herself, which she declined. However --  
21  
22 THE CHIEF COMMISSIONER: I'm sorry, that might have been  
23 a misunderstanding. The photograph would be taken by the  
24 investigative staff of this Commission.  
25  
26 MS KLUSS: In any event, she declines that, but of course  
27 would comply with any orders that would be made against  
28 her.  
29  
30 THE CHIEF COMMISSIONER: Do you want to be heard against  
31 the making of any such order?  
32  
33 MS KLUSS: I would prefer to see the order or the terms of  
34 the order so that that might be properly addressed in terms  
35 of submissions.  
36  
37 THE CHIEF COMMISSIONER: Very well. The order that  
38 I propose to make is that at a time to be agreed, at some  
39 time convenient to your client but, shall we say, in the  
40 next seven days - perhaps, indeed, because she is here in  
41 Sydney, today would be a good idea - that she is to present  
42 herself to the Commission for the purpose of enabling  
43 a photograph to be taken by an investigator.  
44  
45 MS KLUSS: Might I inquire whether the document that is  
46 produced in relation to that particular direction would  
47 also be the subject of the declarations that your Honour

1 has already provided?  
2  
3 THE CHIEF COMMISSIONER: Yes, it would be confidential.  
4 I cannot envisage a situation in which it would be made  
5 public.  
6  
7 MS KLUSS: And is it the position that my client --  
8  
9 THE CHIEF COMMISSIONER: If I did envisage such  
10 a circumstance, you would certainly be given prior notice.  
11  
12 MS KLUSS: Is it envisaged that this Commission will  
13 permit my client to be acquainted with the use to be made  
14 of that photograph and the circumstances in which it is to  
15 be provided to any other person?  
16  
17 THE CHIEF COMMISSIONER: In fairness, I think in due  
18 course, yes.  
19  
20 MS KLUSS: May it please the court.  
21  
22 THE CHIEF COMMISSIONER: Do you wish to say anything more  
23 about it?  
24  
25 MS KLUSS: I would like to consider the power of the  
26 Commission in relation to that. Whilst I do --  
27  
28 THE CHIEF COMMISSIONER: I do have one question apropos  
29 that. I'm assuming, but am I right, that your client was  
30 in uniform at the time of the search?  
31  
32 Perhaps you might be good enough, were you in uniform?  
33  
34 THE WITNESS: Yes, I was.  
35  
36 THE CHIEF COMMISSIONER: I take it that your uniform,  
37 however, has not accompanied you to Sydney.  
38  
39 THE WITNESS: That's correct.  
40  
41 THE CHIEF COMMISSIONER: The photograph would have to be  
42 in uniform, so we might have to make some other  
43 arrangement. It may be that it could be taken by a senior  
44 officer, the crime manager or something like that, rather  
45 than at the inconvenience of your client coming back to  
46 Sydney with her uniform.  
47

1 MS KLUSS: I'm quite sure that my client will facilitate  
2 the request of the Commission, but I would like to consider  
3 the power of the Commission in relation to that, in terms  
4 of obtaining instructions and, indeed, the general powers,  
5 which I expect will be in the affirmative, but certainly  
6 I would like to consider that position.  
7

8 THE CHIEF COMMISSIONER: Yes, very well. Thank you,  
9 Ms Kluss.

10  
11 MS KLUSS: Might I be excused temporarily?  
12

13 THE CHIEF COMMISSIONER: By all means.  
14

15 Can we move on?  
16

17 MS DWYER: Your Honour, I note the time. The next witness  
18 will be some considerable period of time and we have also  
19 been given some documentation this morning which is  
20 relevant to him. Would it be convenient to take the  
21 morning tea now?  
22

23 THE CHIEF COMMISSIONER: Very well. 20 minutes.  
24

25 MS DWYER: Thank you.  
26

27 SHORT ADJOURNMENT  
28

29 THE CHIEF COMMISSIONER: Before we start, in fairness to  
30 the last witness, and because, in particular, the media may  
31 not be aware of this matter, the witness she gave evidence  
32 about the documents that she consulted prior to taking up  
33 duties at the Splendour in the Grass festival, and  
34 particular reference was made to the police handbook.  
35

36 The fact is that the police handbook does not contain  
37 details about how strip searches are to be conducted, but  
38 it is fair to say that it has long been the practice of the  
39 NSW Police Force, when conducting a strip search, to  
40 require persons to squat so that an examination can be made  
41 of what I would generally call their anal and genital  
42 areas.  
43

44 The question whether this is lawful is a matter of  
45 present consideration and will be considered in the course  
46 of this investigation. But to be fair to that officer, you  
47 could not expect a junior officer to make a policy decision

1 that squatting was not appropriate generally.

2  
3 Whether it was appropriate in this particular case is  
4 an altogether different question, but, in fairness to her,  
5 squatting is frequently required by police conducting strip  
6 searching.

7  
8 Strip searching has not been the subject of specific  
9 decisions of the courts and is a matter on which this  
10 Commission will make a determination or recommendation in  
11 due course, assisted by, as I expect, submissions to be  
12 made by the Commissioner of Police. But squatting is not  
13 the only problematic area in strip searching that requires  
14 greater clarification and, as I have said, a corporate  
15 position, especially so far as the questions of consent and  
16 the use of force are concerned.

17  
18 As I say, in fairness to that witness, in requiring a  
19 squat - whether was justified in the particular  
20 circumstances is a different question - and in stating that  
21 this was part of police practice, she was correct. Even if  
22 the Commission ultimately finds that it ought not to be  
23 a part of ordinary practice, she is not to be criticised  
24 for that.

25  
26 You will convey that, no doubt, to your client?

27  
28 MS KLUSS: Most certainly, Commissioner.

29  
30 THE CHIEF COMMISSIONER: All right. However, that still  
31 leaves open the matter of her evidence about having  
32 consulted or read documents about the matter.

33  
34 MS KLUSS: Can I indicate that - as well as no doubt what  
35 the Commissioner's representatives will be doing - my  
36 client and various senior police will be reviewing  
37 time-stamped documents to see if they can locate any  
38 particular directions that have been in writing.

39  
40 THE CHIEF COMMISSIONER: Of course. Any assistance is  
41 welcome. Thank you, Ms Kluss.

42  
43 MS KLUSS: Before you continue, Commissioner, just in  
44 relation to the direction that your Honour made, without  
45 wishing to take up too much of the Commission's time now,  
46 I would seek that any such direction conform with the  
47 formalities of the Act and that that direction be in

1 writing.

2

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My concern is that pursuant to the various provisions that relate to the production of documents, it would appear from the terms of the legislation that that specifically refers to material which is in existence, as opposed to the position that your Honour is suggesting as to the creation of a document.

For that purpose, I would seek a formal direction, so that the question of the powers of the Commission to, in fact, direct my client to that course be provided so that appropriate instructions, possibly from senior counsel, can be obtained.

THE CHIEF COMMISSIONER: The order I have made is sufficiently clear for the purpose of obtaining legal advice, I think, Ms Kluss.

MS KLUSS: Could I ask under what section your Honour is making the order, whether it be section 54 --

THE CHIEF COMMISSIONER: No, no, just under the powers of compulsion contained in the Act.

MS KLUSS: With the greatest of respect --

THE CHIEF COMMISSIONER: I am not going to engage in a legal debate. I have made an order. I have asserted that it is within the jurisdiction of the Commission under the Law Enforcement Conduct Commission Act. If your client wishes to make submissions that it is not, then your client may do so.

MS KLUSS: I appreciate that your Honour provided a time frame. Would your Honour wish it to be done in the context of this public hearing or would your Honour prefer that it be done in a different form?

THE CHIEF COMMISSIONER: Written submissions will be adequate. I should have thought, on such a question, which is not complicated, 14 days would be adequate.

MS KLUSS: With the greatest of respect, the powers that I have looked at in terms of this Commission do not seek to go to the extent of the creation of a document as opposed to the request of the Commission for the provision of --

1  
2 THE CHIEF COMMISSIONER: Ms Kluss, please, I want to get  
3 on with the evidence. I understand your submission. If  
4 you wish to make a formal submission on the matter, you may  
5 put it in writing, or if it is done on behalf of your  
6 client, in writing, in 14 days.  
7  
8 MS KLUSS: Thank you, your Honour. So within 14 days and  
9 your Honour will consider it from then on?  
10  
11 THE CHIEF COMMISSIONER: Yes.  
12  
13 MS KLUSS: Thank you.  
14  
15 MS DWYER: Your Honour, I call Officer BR5.  
16  
17 <OFFICER BR5, sworn: [12.15pm]  
18  
19 THE CHIEF COMMISSIONER: You may be seated, thank you,  
20 officer.  
21  
22 THE WITNESS: Thank you, Commissioner.  
23  
24 THE CHIEF COMMISSIONER: Before we start, you are  
25 represented by --  
26  
27 MR COFFEY: Mr Coffey, your Honour.  
28  
29 THE CHIEF COMMISSIONER: That's right, now, Mr Coffey.  
30  
31 You have had a chance to have a conference with  
32 Mr Coffey, have you?  
33  
34 THE WITNESS: That's correct, Commissioner.  
35  
36 THE CHIEF COMMISSIONER: He has no doubt told you your  
37 legal obligations, but I need to cover those matters myself  
38 with you.  
39  
40 THE WITNESS: Thank you, Commissioner.  
41  
42 THE CHIEF COMMISSIONER: Firstly, you must understand  
43 every question must be answered, unless I tell you it  
44 doesn't have to be. If you are asked to produce  
45 everything, everything that you are asked to produce you  
46 must produce, unless I tell you you don't have to. That's  
47 the starting point.

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THE WITNESS: I understand.

THE CHIEF COMMISSIONER: You may take an objection to answering any question or producing anything. If you do take that objection, you must, nevertheless, answer or produce what you have been asked to produce, but the effect of your objection is that it cannot be used in any proceedings against you, except disciplinary proceedings under the Police Act.

THE WITNESS: I understand, Commissioner.

THE CHIEF COMMISSIONER: And for perjury, if you lie to the Commission, or contempt of the Commission, if you disobey an order of the Commission.

Now, I can make a declaration which will avoid the necessity for you objecting to each question or objecting to each request, and I take it you would like me to make such a declaration?

THE WITNESS: Yes, please, Commissioner.

THE CHIEF COMMISSIONER: I make a declaration pursuant to section 75 of the Act 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, Dr Dwyer.

MR COFFEY: Could I raise one point? I am sorry.

THE CHIEF COMMISSIONER: Yes, Mr Coffey.

MR COFFEY: This morning learned counsel assisting indicated that we had provided a number of documents to assist in time efficiency, and also we provided a video to one of the investigators. I'd ask that your Honour accept that those were handed over today on objection, for protection --

THE CHIEF COMMISSIONER: I see. Yes, I will receive them on that basis. I might say, it may be that some particular parts of the briefing notes will be the subject of questioning - it's a matter for counsel assisting - but I do not propose to play the recording of the briefing. To



1 my mind, that is confidential police business. We need to  
2 examine it, of course, but I don't think it's something  
3 that ought to go into the public arena.  
4  
5 MR COFFEY: Yes, Commissioner.  
6  
7 THE CHIEF COMMISSIONER: I take it you would agree with  
8 that, Ms Chapman?  
9  
10 MS CHAPMAN: Yes, Commissioner.  
11  
12 THE CHIEF COMMISSIONER: And the other documents which are  
13 the briefing notes will be confidential exhibits, as all  
14 the exhibits are, unless I specifically say that they may  
15 be made public exhibits.  
16  
17 MS CHAPMAN: Yes, Commissioner.  
18  
19 THE CHIEF COMMISSIONER: All right. Thank you, Ms Dwyer.  
20  
21 <EXAMINATION BY MS DWYER:  
22  
23 MS DWYER: Q. Sir, in front of you do you have  
24 a schedule of code names for Operation Brugge? If not  
25 I will just hand you a one-page document.  
26 A. Okay, let's see. I have that, Dr Dwyer.  
27  
28 Q. Do you see there, Detective Sergeant, that you have  
29 been given a code name or a pseudonym as BR5?  
30 A. I do.  
31  
32 Q. And there are various other policing colleagues who  
33 have been given other pseudonyms that I will refer to. You  
34 will see the young person also, who has been searched, that  
35 is the subject of these proceedings, has been given the  
36 code name BRC?  
37 A. I can see that name.  
38  
39 Q. Can I start by asking you some of your background,  
40 Detective Sergeant. In 2018 you were the forward commander  
41 for the drug detection dog operation at Splendour in the  
42 Grass; correct?  
43 A. That's correct.  
44  
45 THE CHIEF COMMISSIONER: Q. Does that mean in substance  
46 that you were the commander of the officers in that squad  
47 at the festival?

1 A. That's correct, Chief Commissioner.  
2  
3 MS DWYER: Q. Was that the first time that you had  
4 performed that role?  
5 A. At Splendour in the Grass, yes.  
6  
7 Q. You joined the police force in 1994; is that right?  
8 A. Correct.  
9  
10 Q. And you were promoted to the rank of detective  
11 sergeant in August 2008?  
12 A. Correct.  
13  
14 Q. You were transferred into the Tweed-Byron police  
15 district early 2018?  
16 A. January 21.  
17  
18 Q. And that is how it comes about that you were the  
19 forward commander for the first year for Splendour in the  
20 Grass in July 2018?  
21 A. Correct.  
22  
23 Q. You have answered a section 54 notice for the purposes  
24 of assisting this Commission; is that right?  
25 A. Correct.  
26  
27 Q. Have you read the information in that notice recently?  
28 A. Yes.  
29  
30 Q. And is it true and correct to the best of your  
31 knowledge?  
32 A. There are some amendments that I've spoken to  
33 Mr Coffey about that I would like to make.  
34  
35 Q. Do you have a copy of that there with you?  
36 A. I do, Dr Dwyer, yes.  
37  
38 Q. Might you turn to that, please, so you can assist us  
39 with any amendments that are necessary.  
40  
41 MS DWYER: This is at exhibit 18, Commissioner.  
42  
43 THE CHIEF COMMISSIONER: Q. By the way, Detective  
44 Sergeant, you may be asked questions of detail. You will  
45 have to make a judgment call about whether those are  
46 matters which perhaps ought not to be in the public arena.  
47 I doubt that you will be asked questions of that kind. You

1 are the specialist here, not us, so would you bear in mind  
2 that when you are giving your evidence, it may be that some  
3 matter, which you otherwise would like to, or need to, in  
4 order to respond to the question, provide, it may be not  
5 appropriate that you provide it in the public arena. Do  
6 you follow what I mean?  
7

8 A. Make a claim of privilege, Commissioner?  
9

10 Q. Yes, look, however you indicate. I think the best  
11 thing is - the best way for you to do it is to indicate  
12 that you prefer not to give that answer in public, and we  
13 can have a private examination at a later time or we will  
14 get it from you in writing. We will deal with how that  
15 information gets to the Commission. But it's too late once  
16 you - do you follow what I mean?

17 A. I understand, thank you.  
18

19 THE CHIEF COMMISSIONER: You are happy with that  
20 direction?  
21

22 MS CHAPMAN: Yes, thank you.  
23

24 MS DWYER: Q. Detective Sergeant, you were pointing out  
25 in your section 54 notice whether there were any amendments  
26 you would like?

27 A. Correct, Dr Dwyer. On page 3 of 8, question 2,  
28 paragraph 3. The paragraph commencing "In 2018".  
29

30 Q. Yes.

31 A. The sentence reads.  
32

33 ... the youth liaison officer from  
34 Tweed-Byron PD was present in addition to  
35 other police officers who were specialist  
36 youth officers.  
37

38 That's an error on my part. The youth liaison officer was  
39 not present at Splendour in the Grass in 2018.  
40

41 Q. I take it that at the time that you completed your  
42 section 54 notice you genuinely believed that they were  
43 present at 2018?

44 A. Correct.  
45

46 Q. And you then subsequently checked the records to  
47 determine if that was the case?

1 A. Correct.  
2  
3 Q. Does it follow, then, that there were no specialist  
4 youth officers present in 2018 at Splendour in the Grass?  
5 A. No. There was no YLO. They're two different  
6 positions.  
7  
8 Q. So you have clarified that there was no youth liaison  
9 officer?  
10 A. Correct.  
11  
12 Q. Were there other specialist youth officers?  
13 A. Yes.  
14  
15 Q. So that sentence should read:  
16  
17 In 2018 the youth liaison officer from  
18 Tweed-Byron PD was not present. There were  
19 other police officers who are specialist  
20 youth officers.  
21  
22 A. Correct.  
23  
24 THE CHIEF COMMISSIONER: Q. While we are dealing with  
25 that - I know there are other matters, but if we can just  
26 try and deal with things in a logical pattern --  
27 A. Yes, Commissioner.  
28  
29 Q. -- I understand that there was a YLO present in 2019?  
30 A. Correct.  
31  
32 Q. And also specialist youth police?  
33 A. Correct.  
34  
35 Q. I think they were from the PCYC, were they, or were  
36 there others as well?  
37 A. Others as well, Commissioner.  
38  
39 Q. I wonder if you could briefly outline for us the  
40 functions - I mean, obviously in different contexts, their  
41 work is of a different kind, but at the festival in  
42 2019 what was - let me just go back a step. You were not  
43 responsible for assigning those officers, as I understand  
44 it, but as it happened those officers had been assigned in  
45 2019 but not 2018; is that correct?  
46 A. Correct. So I believe you may hear evidence from our  
47 youth liaison officer, who I referred to there, [NAME

1 SUPPRESSED]. He has a designated -  
2  
3 THE CHIEF COMMISSIONER: Q. No, please. That name is  
4 not to be published.  
5 A. Sorry.  
6  
7 Q. I think he's on the list.  
8 A. Okay, so the officer referred to as BR6. Did you wish  
9 me to refer to them as --  
10  
11 MR COFFEY: I just wanted to indicate that that might be  
12 my omission, not to have informed this witness not to use  
13 any police officer's names. I should have told him that,  
14 sorry.  
15  
16 THE WITNESS: Sorry, Commissioner.  
17  
18 THE CHIEF COMMISSIONER: I will state it in public. The  
19 Commission, when it considers whether it should have public  
20 or private hearings, has to balance the rights to privacy  
21 of officers as distinct from the public need.  
22  
23 It's not always easy to quite calculate that balance.  
24 The compromise is that we have a public hearing and, to the  
25 extent that we can do so, we require no police officer to  
26 be identified. Of course, if someone's a superintendent or  
27 a commander, you only have to name their rank and they are  
28 automatically identified, but again, the orders are that  
29 with regard to any police officer, who happens to be named  
30 or identified in some way, that no identifying material is  
31 to be published about that officer.  
32  
33 That's the compromise, because I know individual  
34 police, especially if they live in small communities, have  
35 kids going to the local school and so on. So --  
36  
37 THE WITNESS: I understand, thank you, Commissioner.  
38  
39 THE CHIEF COMMISSIONER: Q. That's the rule, if you can  
40 understand it, and why we have that rule. You understand?  
41 A. I understand, thank you.  
42  
43 Q. So we will expect to hear from the YLO what the job is.  
44 You, I take it, whilst knowing that those officers were  
45 there, did not directly liaise; they weren't part of your  
46 responsibility, in 2019?  
47 A. They were.

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Q. They were? How did you see your responsibilities with respect to them?

A. In relation to 2019, Commissioner?

Q. Yes.

A. So - well, similar, really, in 2018. The overarching responsibility for the drug detection dog operation was mine, and I reported then through to the operation commander, the overarching operation commander.

I take full responsibility for everything in relation to the drug detection dog operation, and that involved having a youth liaison officer present in 2019. I concede that I did not have them present in 2018, and as part of our debrief process after 2018, I then identified that they were an important function, because he has unique skills in that field, and that is his day-to-day job as a YLO, youth liaison officer, obviously dealing with the youth, whether in primary schools or high schools.

The particular officer, BR6, has, as I said, skill sets, knowledge and experience in that field. He undertakes training, both internal and external, and he runs programs in our police district.

In relation to the specialist youth officers, they are police that perform other functions. They may be detectives in my unit, which I do have; they may be general duties officers; they could be highway patrol officers. They undertake a separate course as part of their internal training that involves the juvenile justice agency and they then look at ways, diversionary programs, court alternatives, et cetera, like that. So they have a skill set as well dealing with youth, but I wouldn't say to the level that a youth liaison officer has.

Q. Can I just give you an example that might well occur. You have a young person who is searched, or about to be searched, and says, "I've got some MDMA" - so let's use that as an example.

A. I understand.

Q. Let's assume it's a small quantity, maybe two or three tablets, something like that, so they are obviously not distributing them; right?

A. Yes. I understand.



1  
2 Q. Now, the question would come about whether they ought  
3 to be charged or not charged, because for youth, you always  
4 try to divert, if you can, if it is appropriate.  
5 A. Correct.  
6  
7 Q. So when the searching police, if I can use that  
8 general term --  
9 A. Yes.  
10  
11 Q. -- identify such a person, they locate the drugs,  
12 obviously it has to become an exhibit and so on, then the  
13 question comes about, should they issue what usually would  
14 be a field CAN.  
15  
16 Before that is done, would they or should they consult  
17 with the YLO, or one of those experienced youth specialist  
18 officers, before issuing such a charge to decide what the  
19 appropriate disposition should be?  
20 A. That is correct. You cannot take formal process  
21 against a youth under the age of 18 - obviously over the  
22 age of 10 - without having prior authority from an SYO and,  
23 sorry, Commissioner, the YLO, based on his training, is  
24 a mandatory SYO anyway.  
25  
26 So if, for instance, I wanted to charge a youth with  
27 break, enter and steal, I cannot send that charge to  
28 a supervisor that can verify formal process; it must go to  
29 someone that is trained as an SYO to accept that charge.  
30 There is a final mechanism in place with the NSW Police  
31 Force to check that. They may review the offence and say,  
32 "No, I do not believe that that should be a charge; it  
33 should go for a youth caution." We will then refer it for  
34 a youth justice conference or a warning.  
35  
36 Q. So at what point does that - shall we call it  
37 a consultation, just to try to use a neutral term?  
38 A. Correct.  
39  
40 Q. At what point does that consultation occur - before  
41 the field CAN is issued or after but before it's ultimately  
42 processed? Do you see what I mean?  
43 A. Before. So --  
44  
45 Q. So it should happen before any formal process is  
46 undertaken?  
47 A. Correct. If you then make a decision - based on the

1 scenario you gave me for a juvenile, a person under the age  
2 of 18 with two or three MDMA caps, if then it becomes  
3 a point, we then need to decide which formal process we're  
4 going to take. An SYO, in 2018, had to be consulted, and  
5 then in 2019, BR6 was actually present and we then had -  
6 and I was present for a number of those. We then had  
7 a consultation. We either did the process then and there  
8 in the field or we referred it perhaps for a week later, if  
9 they were local, and we undertook that process.

10

11 Q. So it follows from what you have said, I think, that  
12 the searching officers have to be aware - I mean, it may be  
13 they should be aware anyway, because this is a normal  
14 police process --

15 A. Correct.

16

17 Q. -- but they should be made aware who the officers are  
18 and how they contact them in the event that they have  
19 uncovered some kid that is carrying some drugs; correct?

20 A. Correct, Commissioner.

21

22 Q. And that is done at the briefing stage?

23 A. Correct. So in 2018, I concede, I had a number of  
24 SYOs connected to the operation, but I concede I didn't  
25 have the YLO, and I apologise for all the acronyms. And we  
26 all know, as operational police, you can't take - as you  
27 alluded to, you can't take process against a juvenile  
28 without following due process. These processes weren't  
29 unique to Splendour.

30

31 Q. No, they are general throughout the administration of  
32 the police, and I think it's fair to say the Police  
33 Commissioner also - the present Police Commissioner, at  
34 least, I'm not commenting on previous ones - has  
35 a particular interest in trying to deal with the problem of  
36 juvenile crime.

37 A. Correct.

38

39 Q. So perhaps I could then come back to 2018.

40 A. Yes.

41

42 THE CHIEF COMMISSIONER: I realise I'm rather cutting you  
43 off, Dr Dwyer, but I would like to follow this line.

44

45 Q. Coming back to 2019, there were SYOs there?

46 A. Correct.

47

1 Q. Do I understand you to be saying that where drugs are  
2 found on a juvenile, before proceeding any further, the  
3 officer who would have been responsible for proceeding  
4 further should have consulted an SYO?  
5 A. Correct.  
6  
7 Q. And that is just a general rule, whether it was  
8 specifically mentioned or not specifically mentioned?  
9 A. Well, it was mentioned, but it is a specific rule.  
10  
11 Q. But your recollection is that in 2018 - I think we  
12 have your briefing notes - you would have raised it in the  
13 briefing before you commenced operations?  
14 A. Correct. And I know for a fact, Commissioner, that  
15 even just with Tweed-Byron staff, I had approximately  
16 11 people that were SYOs, in July 2018.  
17  
18 Q. And they are on duty - I mean, obviously in shifts -  
19 at the festival?  
20 A. Correct.  
21  
22 Q. In 2019, the difference in this respect was that you  
23 decided you should also have a YLO?  
24 A. Correct.  
25  
26 Q. Can you tell me is there formal documentation? It is  
27 simply because I haven't seen it. One way or another the  
28 police is awash with documentation. Is there formal  
29 documentation that sets out the procedure that you have  
30 just mentioned, so far as you are aware?  
31 A. In relation to how we deal with youth?  
32  
33 Q. Yes.  
34 A. Yes.  
35  
36 Q. And where would we find that?  
37 A. The Young Offenders Act, Commissioner.  
38  
39 Q. So we would find it in the statute. But is it also  
40 the subject of particular police directions or a manual  
41 or --  
42 A. There is plenty of documentation on the way we deal  
43 with youth and the diversionaries that we have to take.  
44  
45 Q. I wonder if you would be good enough - we won't ask  
46 you in the witness box - if you wouldn't mind informing  
47 Mr Coffey. And Mr Coffey, if you wouldn't mind collecting

1 that material for us, that would be helpful.  
2  
3 MR COFFEY: Of course.  
4  
5 THE CHIEF COMMISSIONER: It may be between you and  
6 Ms Chapman, you could cover that ground.  
7  
8 MR COFFEY: Yes.  
9  
10 THE CHIEF COMMISSIONER: Thank you very much.  
11  
12 MS DWYER: Q. Just on that topic, Detective Sergeant,  
13 you referred to 11 SSOs in 2018 and the role that they  
14 might play. Am I right about that?  
15 A. Sorry, Dr Dwyer, could you repeat that?  
16  
17 Q. You referred earlier in evidence to there being  
18 11 specialist youth officers in to 18; is that right?  
19 A. That was from Tweed-Byron. And I apologise, I don't  
20 have the skill set for other officers that were sent to me  
21 on behalf of north region, but based on the number, the  
22 34-odd officers I was sent, I would imagine there would be  
23 a percentage of those also trained as SYOs.  
24  
25 Q. And did they have a role in 2018 in determining or  
26 assisting when a child between the ages of 10 and 18 was -  
27 whether they should be searched?  
28 A. No.  
29  
30 THE CHIEF COMMISSIONER: Q. So it's after the search;  
31 it's before charge, if it is a case where drugs have been  
32 discovered?  
33 A. That's correct, Commissioner.  
34  
35 MS DWYER: Q. But they were not there to assist police  
36 in understanding the LEPR guidelines with respect to the  
37 search of children under the age of 18?  
38 A. No.  
39  
40 Q. Was there anything else in your section 54 response  
41 that you needed to draw our attention to?  
42 A. Thank you. On page 7 of 8, question 10, paragraph 1:  
43  
44 In support to my answer to this question  
45 I refer to my answer to question (X) above.  
46  
47 That should be the number 1.

1  
2 Q. Thank you. Anything further?  
3 A. No, Dr Dwyer.  
4  
5 THE CHIEF COMMISSIONER: Q. Can I just come back to this  
6 issue. It's obvious then, just plainly obvious, that when  
7 you have someone who might fall within that age - it's  
8 really important you ask people what their age is; do you  
9 agree?  
10 A. Correct.  
11  
12 Q. And sometimes it's extremely difficult --  
13 A. It is.  
14  
15 Q. -- to know how old they are?  
16 A. It is, Commissioner.  
17  
18 Q. So, if possible, you check the age they give against  
19 any documentation such as a licence that they may be  
20 carrying?  
21 A. Correct.  
22  
23 Q. And I correct in saying that that would just be common  
24 practice, when you are going to search someone, especially  
25 someone who looks somewhat young and you don't know how  
26 young, that you check their age and don't take a punt about  
27 their age?  
28 A. As operational police I would have an expectation,  
29 that's right. Your questioning - it makes, obviously, life  
30 a lot easier if they have got some formal identification.  
31 Sadly, we do come across people with forged documentation.  
32  
33 Q. Of course.  
34 A. So then it comes to your experience and then your  
35 questioning, whether you question, you know, what month  
36 they were born, what star sign they had, yes.  
37  
38 Q. The risk is not so much if they assert they are older  
39 than they actually are; the risk is - and it is unlikely  
40 they would assert that they were younger than they actually  
41 are. But the point is you just have to make the inquiry,  
42 don't you?  
43 A. You do, Commissioner, and based on where we have our  
44 searching operations, they have gone through ticketing -  
45 what we'd call ticketing - through an area where the  
46 wristbands are. So it's a process. And I'm not sure if it  
47 has been explained how, at Splendour, they either have

1 a hard copy or the ticket or in these days they have it on  
2 their phones, on smart devices, and then it is scanned.  
3 Then there is the designated or the appropriate wristband.  
4 Once they get to a certain point in the festival, you have  
5 to have a wristband. Even when we are in plain clothes we  
6 have to have a wristband to indicate, you know, that we  
7 are --

8  
9 Q. Appropriate entry?

10 A. Appropriately, apart from, you know, I wear my  
11 identification.

12  
13 In relation to the youth, they are given also  
14 a secondary wristband to identify them as a person under  
15 18. Again, whilst I say that, Commissioner, that is also  
16 not a foolproof system.

17  
18 Q. No, because kids lie about their age because they  
19 actually want to go and buy a drink.

20 A. That's correct.

21  
22 Q. That's human beings being what they are.

23 A. It has happened for a long time.

24  
25 Q. And, regrettably, police are, to some degree, in an  
26 area where you have just got to exercise commonsense  
27 judgment?

28 A. Correct.

29  
30 Q. But the starting point would always be, if you have  
31 a youngish-looking person, to ask their age at least?

32 A. Correct.

33  
34 Q. When the age is known, it occurs to me - as you know,  
35 LEPR has special provisions relating to the searching of  
36 children?

37 A. Correct.

38  
39 Q. Well, let's say young people, because they are not all  
40 children, in ordinary language - so searching young people.  
41 That is an additional reason why it's important to know the  
42 age, or attempt to discover the age, because you have to  
43 know what their rights are and what your powers are in  
44 relation to them?

45 A. Correct.

46  
47 Q. It occurs to me that one of the things in making an

1 event - because every search has to be the subject of an  
2 event entry, a COPS entry --  
3 A. Correct.  
4  
5 Q. -- is that it is of vital importance that the age be  
6 specified in the COPS entry; correct?  
7 A. Yes, but I would say there are provisions now; with  
8 a search no find, there are no obligations for the person  
9 to supply their details. So, therefore, we have  
10 a provision now that we have a CNI number, a computer index  
11 number, on the police system, for "Unknown male", "Unknown  
12 female".  
13  
14 Q. This is to safeguard their privacy if there is a no  
15 find?  
16 A. Correct.  
17  
18 Q. However, the practical problem that occurs to me is  
19 this: when you are exercising a power, before you search -  
20 so you don't know whether you are going to find anything or  
21 not - you still have to ascertain their age because you  
22 have to know what provisions of LEPRa are going to apply to  
23 your exercise of that power?  
24 A. Yes, I acknowledge - I agree with you.  
25  
26 Q. But what you are saying, I think, is that you  
27 understand that, under this new system of  
28 non-identification, even the question of age is not  
29 referred to; do you see? I understand you to be  
30 saying that. Is that right?  
31 A. That's correct, but --  
32  
33 Q. Because it seems to me that, of course, you could  
34 leave out every other item, name, address, you could leave  
35 out all of those identifying features, and you could say,  
36 "Searched a 16-year-old".  
37 A. I would have an expectation that we wouldn't use an  
38 "Unknown" identity for a youth.  
39  
40 Q. Let's come back, then, to the appropriate procedure,  
41 as I understand you: that either the YLO or a specialist  
42 youth - what do you call them?  
43 A. Specialist youth officer, SYO.  
44  
45 Q. An SYO, is brought in to do what they do --  
46 A. Yes.  
47

1 Q. -- before charge. Would the SYO be expected to make  
2 a record of their intervention, their outcome, their  
3 discussion or whatever it was, that went on?  
4 A. It has - there's a field in the computer entry or the  
5 COPS system, as the determination. But, to be honest,  
6 Commissioner, the charge of a juvenile would be the final  
7 step, and we would be - yes, it'd be a fairly major course  
8 of action to take to charge a juvenile at our festival.  
9  
10 Q. If the quantities were major, so that they were  
11 a supplier, that might up the ante considerably?  
12 A. Correct.  
13  
14 Q. But small quantities for personal use, by and large,  
15 you try to keep them out of the court system; is that fair  
16 enough?  
17 A. Correct. And I know for a fact and with BR6 that we  
18 dealt with even normally in due course, say, a caution. If  
19 we had a shop lifter and we were going to deliver  
20 a caution, and I'm not an SYO, but if I had a matter and  
21 I detected someone stealing from Coles, I complete all my  
22 documentation, I then speak with the SYO about booking in a  
23 caution for seven, 14 days, et cetera, in consultation with  
24 the parents, and they are brought in and dealt with by the  
25 SYO and then that's documented. If I was to charge that  
26 person, there would still have to be then - an SYO or the  
27 YLO has to document reasonings for their decision.  
28  
29 Q. To justify it, in other words?  
30 A. To justify it, because we need to take the less  
31 restrictive form of sanction against juveniles.  
32  
33 Q. I'm just concerned with what is the nature of the  
34 appropriate record. Of course, there has to be a COPS  
35 record made, a so-called COPS event?  
36 A. Correct.  
37  
38 Q. The intervention of the SYO or the response of the  
39 SYO, is that made by the officer who is doing the COPS  
40 report or does the SYO have a separate --  
41 A. No.  
42  
43 Q. -- recording? So it's not the responsibility of the  
44 SYO to make that entry; the understanding, the arrangement,  
45 is that the fact that the SYO was brought in and what  
46 occurred as a result of that should be in the event?  
47 A. Correct. And if I could explain a little bit better

1 in relation to, say, the scenario then at Splendour, we  
2 didn't delay the issue of cautions.

3  
4 So if I had the juvenile with two MDMA pills and we  
5 believed it's a small quantity for personal use and it fell  
6 within the possession offence under the Drug Misuse and  
7 Trafficking Act, we would have then obviously a support  
8 person to come in to act in their interests, and I would  
9 bring - and this is what we did do in 2019. BR6 was then  
10 present and he delivered the caution then and there.

11  
12 He didn't do the documentation, but myself or the  
13 other officer, whoever was in charge of the investigation,  
14 the case, would document the fact and he would have to put  
15 in - there are certain fields then and he has to put the  
16 registered number or employee number of BR6 or whoever it  
17 was that delivered the caution, where the caution was  
18 deliver, when, and by whom, and who was present. So there  
19 is actually, then, you know, a live record of what was done  
20 and why.

21  
22 THE CHIEF COMMISSIONER: Thank you.

23  
24 MS DWYER: Q. Could I just follow the thread of  
25 that line of questioning for a moment. I think you  
26 clarified this also at page 7 of your notice to produce -  
27 question 10, number 7. You had been asked earlier about  
28 what instructions were given to police as to the making of  
29 a record of the conduct of strip searches and the  
30 information that needed to be required. In the course of  
31 answering that question, you say 7(d):

32  
33 Where no drug was located, the person being  
34 searched was not obliged to supply their  
35 personal information.

36  
37 That's consistent with the evidence you have given today.  
38 Are you referring there to 2018 or is that an arrangement  
39 that was introduced since?

40 A. No, no, no, in 2018 and through to now.

41  
42 Q. And then it goes on to say:

43  
44 Information recorded in the COPS event for  
45 the person search was recorded as "Unknown  
46 person".

1 Same for 2018 as for now?  
2 A. Correct.  
3  
4 Q. And nothing that distinguished there between children  
5 or adults; is that right?  
6 A. No, the only thing that distinguished was their  
7 gender.  
8  
9 Q. I think you said in answer to one of the Chief  
10 Commissioner's questions you would have an expectation that  
11 a juvenile's record would be kept, though?  
12 A. Correct.  
13  
14 Q. By name or just by indicating that they were a child?  
15 A. No, by name. I would have an expectation that no  
16 youth is recorded as an unknown person. If we believed  
17 they were under the age of 18, we would - and I know  
18 there's no obligation for them to supply their details, but  
19 I would hope that we would know who that person is to  
20 verify; particularly at the festival, it's a licensed  
21 premises, and I wouldn't want a youth, if we believed that  
22 they were 16, 17, walking around --  
23  
24 Q. Without you knowing what their identity was?  
25 A. Correct.  
26  
27 Q. Why is that? Aren't they entitled, just as an adult,  
28 not to have their details recorded if there is a nil find?  
29 A. No. Adults, yes. I'm referring to a youth.  
30  
31 THE CHIEF COMMISSIONER: Q. Yes, right. But Dr Dwyer is  
32 saying why would you not do the same with youth? Why  
33 differentiate?  
34 A. Because I think we have an obligation to protect their  
35 safety. They are in a festival. They are obviously  
36 surrounded by alcohol - adults consuming alcohol. I mean,  
37 obviously --  
38  
39 Q. Let's just leave out the festival and talk generally.  
40 The rule that you are talking about is a general rule,  
41 I take it; it is not a rule made up for the festival?  
42 A. No.  
43  
44 Q. But it does lead to the question of why would you  
45 think it necessary to - where there is nothing shown, why  
46 would you think it necessary to keep the details of  
47 a juvenile as distinct from an adult?

1 A. What I just mean by probably explaining myself,  
2 Commissioner, is that I would have an expectation that if  
3 you believed someone was on that fringe of 17 - 16, 17,  
4 that we would have an expectation to confirm that. I'm not  
5 saying that I just want to know about all the details,  
6 I just think that we probably need to - and as the Chief  
7 Commissioner alluded to before, it is difficult to judge  
8 ages. Some people that are in their early 20s look under  
9 18.

10  
11 Q. And vice versa?

12 A. And vice versa, 14, 15-year-old, and particularly some  
13 ladies, look over 18. I would hate to think that we  
14 haven't afforded them their rights properly and adequately  
15 by misjudging their age. I just think if it is clear that  
16 they are over 18, we - I'll not say push the point, but  
17 I think we need to take the extra steps to try to  
18 ascertain, and I'm not saying that we want them recorded;  
19 I just think that we should know, because we have  
20 a particular - an extra duty to our youth.

21  
22 Q. The only matter that I would think would tend in the  
23 opposite direction - I have no view about this, in fact,  
24 what you are telling me is, frankly, new information; I was  
25 not aware of it, which is one of the reasons these  
26 examinations are worthwhile - is that we are talking about  
27 no drugs. So we're talking about a kid who happens to have  
28 been searched, true, there has almost certainly been a drug  
29 dog indication, but they happen to have been searched and  
30 they have no drugs on them. So they haven't committed any  
31 offence.

32 A. No.

33  
34 Q. Why do the police have any further interest in that  
35 person? Do you see that's what I find a bit difficult to  
36 understand?

37 A. I can see where you are coming from, Commissioner.

38  
39 Q. At all events, you don't make the rule?

40 A. No.

41  
42 MS DWYER: Q. Why not just refer to them as "Unknown  
43 young person aged X", rather than record their details?

44 A. Yes, and I can see where your question is, Dr Dwyer.  
45 I suppose I could answer it this way, then: it helps,  
46 obviously, build for later justifications, in that - and  
47 I understand it's intrusive, having their details recorded

1 for the first time, obviously, it does --  
2  
3 THE CHIEF COMMISSIONER: Q. However, look, Detective  
4 Sergeant, it's not up to you - you didn't create the  
5 policy?  
6 A. No.  
7  
8 Q. It's not up to you to try and justify it. You think  
9 there are reasons but, if I may say so in fairness to you,  
10 when you are confronted with them, it is a bit difficult to  
11 articulate them in a way that makes good sense?  
12 A. I just think by having their details - and obviously  
13 we have databases that we can access and, yes, by doing  
14 that and not just relying on the indication from the drug  
15 dog, but to form that state of mind of the officer, that  
16 having their details then assists us in making our  
17 justifications, their intel, their past interactions with  
18 the person, whether, you know, they may have a warning  
19 there to do with they suffer from a mental illness or an  
20 intellectual impairment - that then helps. That might not  
21 routinely be present to us or known to us. That can  
22 trigger certain things, too. So, yes, I totally see where  
23 you are coming from, that they haven't committed an  
24 offence, as the Commissioner alluded to, and it is  
25 recording their details --  
26  
27 Q. So speaking very broadly, there are pluses and minuses  
28 about doing it?  
29 A. I can see both sides, Commissioner.  
30  
31 Q. And there is a policy decision that has to be made,  
32 and you are not responsible for making that decision?  
33 A. No.  
34  
35 MS DWYER: Q. When you are referring to recording the  
36 details, do you mean in the COPS entry?  
37 A. Correct.  
38  
39 Q. Would it be the case that prior to searching any  
40 individual, a police officer might look in the COPS entry  
41 as part of determining their justification for a search?  
42 A. Look in the COPS entry?  
43  
44 Q. Yes. Check a COPS entry, check somebody's previous  
45 COPS entries?  
46 A. Check - let's say, check their history.  
47

1 Q. Yes.  
2 A. I make it clear in my briefings, and being obviously  
3 the location of where the festival is, in Byron Bay, not  
4 only do we rely on New South Wales databases, that we  
5 utilise the equipment available to us to search national  
6 databases. There are obviously a lot of patrons,  
7 festival-goers, who come from interstate, and some of them  
8 come internationally. Obviously we don't have access to  
9 those databases, but it's incumbent on the staff and  
10 us to --

11  
12 THE CHIEF COMMISSIONER: Q. From which it follows, then,  
13 that you must obtain the identification details before you  
14 conduct the search?

15 A. Yes. That's correct. And again, by having them, it  
16 aids that. As the Commissioner has said, there are pluses  
17 and minuses, they may not want to, but - and it's not that  
18 we use that to get the justification it does have - while  
19 that does assist, it can also open a number of other  
20 avenues, for instance, you know, with medical reasons and  
21 different other things.

22  
23 MS DWYER: Q. You understand that a drug dog indicates  
24 and then somebody is taken out the back and there is  
25 a determination as to whether to search. The drug dog  
26 itself is not enough, is it?

27 A. No.

28  
29 Q. And you understand, of course, that in many  
30 circumstances, a drug dog indicates and no drugs are later  
31 found?

32 A. I accept that.

33  
34 Q. And you would accept that in many of those  
35 circumstances, no drugs are found because no drugs are on  
36 the individual?

37 A. Correct.

38  
39 Q. Before determining whether there is a further  
40 justification to search, might a police officer check the  
41 COPS entries?

42 A. Yes, they would check databases available to them.

43  
44 THE CHIEF COMMISSIONER: Q. Well, if someone has, for  
45 example, a record of drug use or drug possession, that  
46 might strengthen a reasonable suspicion that on this  
47 occasion they are in possession of drugs. It might not

1 necessarily be enough, it rather depends, but it would be  
2 part of that information that you would need to assess?  
3 A. Correct. You would use that information,  
4 Commissioner, on the back of, obviously, the indication by  
5 the drug dog, and then what the handler has spoken to you  
6 about, obviously, your observations. You then, obviously,  
7 use the databases that are available to you and then your  
8 questioning, obviously, of the individual, whether an adult  
9 or things, to go to your state of mind to then determine  
10 your next level, your justification, whether you conduct  
11 a general search or the strip search of an individual.  
12

13 Q. I think it's fair to say, isn't it, speaking broadly,  
14 that for any search you have to have reasonable suspicion?  
15 A. Correct.  
16

17 Q. But to move from a general search to a strip search,  
18 your reasonable suspicion must be stronger, in one way or  
19 another, than that which would justify a general search?  
20

21 A. I would - look, yes, I would agree with you.  
22

23 Q. It's all a question of commonsense and practical  
24 degree - what is really necessary or desirable in this  
25 particular case?  
26

27 A. Correct. We need to - if we determine or we believe  
28 that, obviously, we are justified to search a person, we do  
29 the less - the least invasive search.  
30

31 Q. So you don't automatically go to a strip search?  
32

33 A. No.  
34

35 MS DWYER: Q. You would accept, wouldn't you, that when  
36 any patron - or when many patrons are confronted with a dog  
37 that appears to indicate next to them, they might look  
38 nervous, even if they don't have drugs on them?  
39

40 A. It depends on the individual, Dr Dwyer.  
41

42 Q. Sure. But you would accept, wouldn't you - I know you  
43 are police officer and you are familiar with officers, but  
44 a drug dog indicating in amongst a crowd of people and two  
45 people then approaching you in addition to a dog handler,  
46 because they want to lead you out the back, that can be an  
47 intimidating thing, can't it?  
48

49 A. Well, I can concede that, yes. It is easy for me as  
50 a police officer. Yes, it could be, based on the  
51 individual. We get a lot of people, as soon as they see  
52 the labradors, they try and pat them, and different things.  
53

1 I suppose they probably don't know exactly what should just  
2 happen. Particularly, as you can appreciate, with the  
3 festivals, there is large volumes of people coming on. But  
4 being led away then and spoken to could be quite  
5 confronting.

6

7 THE CHIEF COMMISSIONER: Q. Especially for a young  
8 person?

9 A. Yes.

10

11 Q. I mean, they might have had a lot of experience with  
12 police, so it's not confronting and is perfectly normal.

13 A. Correct, Commissioner.

14

15 Q. But by and large, one would have at least the  
16 expectation that someone might well be nervous and worried  
17 and upset and unsure --

18 A. Yes.

19

20 Q. -- in that situation?

21 A. I totally agree.

22

23 MS DWYER: Q. They might be searched and nil find, but  
24 a COPS entry for a young person might be kept with their  
25 details, which might read, in those circumstances, "Drug  
26 dog indicated. Looked nervous. Searched. Nil find."  
27 That might be checked then again on another occasion and  
28 used as a justification for a further search; is that  
29 right?

30 A. Yes, but I wouldn't just rely on that, Dr Dwyer, as my  
31 justification. I would probably then obviously speak to  
32 the person, and if you got the availability, you might even  
33 speak to the individual officer. And I'm not saying that  
34 would happen, because it may have happened at a festival in  
35 Sydney and I can't just get on a phone and ring the  
36 officer. You would use that in your state of mind as to  
37 reasonings and then I would hope, though, it's --

38

39 THE CHIEF COMMISSIONER: Q. You would get more?

40 A. Yes, I would get more and it would be better  
41 documented, not just to say, you know, there was nil find.

42

43 Q. That bare bones really doesn't give you much  
44 information, does it?

45 A. No.

46

47 MS DWYER: Q. But it might be part of a package of

1 information that is used to justify a subsequent search on  
2 another date; is that right?

3 A. Quite possibly but, again, it comes down to the  
4 individual officer to make that justification.

5  
6 Q. Sure, but can you see the problem there with recording  
7 the name of children, and not adults, in those  
8 circumstances, if it's part of a package that is used to  
9 justify another search, in circumstances where there was  
10 a nil find?

11 A. And I might have taken myself out of context there  
12 when I say just recording them - about having the child's  
13 name recorded as "unknown". What I was saying is there's  
14 no obligation for anybody to supply their details. I'm  
15 saying what my evidence - and if I didn't articulate it  
16 correctly - would be, if I believed - or I would have an  
17 expectation, if the officer is dealing with someone they  
18 strongly believe is a juvenile, that they would try to take  
19 steps to verify their suspicion. I wouldn't like to see  
20 a young person go into the festival as an unknown person if  
21 we strongly believed them to be a youth.

22  
23 And beyond the role of our drug detection operation,  
24 our overarching whole mission is the safety of every  
25 patron - not just the youth but the adults, everybody, the  
26 employees, every single person in there. It is a whole  
27 harm minimisation strategy. I would just hate to think  
28 that these kids are in there alone and then they are  
29 exposed to different things. And that's what would be my  
30 expectation, that we just push that little bit further, not  
31 "just push", just ask the questions and just explain to  
32 them. That's why we then - and as we have strengthened  
33 into 2019 with the youth command and the PCYC being  
34 present, and they may be confronted, that we then just call  
35 some other specialist police in that speak to youth day in,  
36 day out just to ask them little extra questions - not that  
37 they are in trouble, but just to make sure then we put some  
38 other things in place, and it might be the case that we  
39 contact one of their friends or find out, "If you are at  
40 a campsite, can we get someone else to accompany you in?"  
41 It is not that I want to have their details to use against  
42 them later, it is purely as a strategy to support them  
43 whilst they are in that festival.

44  
45 THE CHIEF COMMISSIONER: Q. Can I ask this: it would  
46 not surprise you, I think, if a young person were searched,  
47 strip searched, that they, guilty or not, carrying

1 something or not, could find that an extremely invasive,  
2 embarrassing and confronting, distressing situation?

3 A. Couldn't agree more, Commissioner.  
4

5 Q. And if someone in that position were crying, for  
6 example, at the end of the search, I, as a layperson, would  
7 immediately say, "Look, we had to do the search because it  
8 was our duty, and I'm sorry that you are upset about it.  
9 Can we contact a friend or can we contact someone?", or at  
10 least pass them on to an SYO to have a debrief, make sure  
11 their welfare is taken care of. Do you agree?

12 A. I agree, and part of, obviously, our obligations - and  
13 it is legislated with LEPR - obviously, you explain the  
14 search. You wouldn't just take a young person in there and  
15 just conduct a strip search. Again, if you make that  
16 decision to go from a general search to a strip search -  
17 again, I'm not saying that people go in there and get  
18 completely stripped of their clothing. That is to the  
19 extreme. A strip search may simply be the lifting up of  
20 a top to expose the outer layer, or on a female to expose  
21 maybe the breast area, not removing the bra or anything;  
22 same with a gentleman removing his top or pulling --  
23

24 Q. Well, strip search covers a multitude, a whole degree?

25 A. It does. That's what I wanted to explain. That would  
26 be the extreme situation, by having a youth like that and  
27 crying. You would hope - yes, and obviously it would be  
28 distressing, 100 per cent.  
29

30 Q. But a total strip search would be - it strikes me as  
31 an extreme step?

32 A. It does, and all actions obviously - it would be,  
33 though, and I can't speak for the officers involved in  
34 that, it would be that they believed it to be necessary to  
35 conduct that.  
36

37 Q. They would certainly have to.

38 A. Correct.  
39

40 Q. You would expect that.

41 A. Yes. All the use of powers, obviously, have to be  
42 used.  
43

44 THE CHIEF COMMISSIONER: Is that a convenient time,  
45 Dr Dwyer?  
46

47 MS DWYER: Certainly.

1  
2 THE WITNESS: Sorry, Chief Commissioner.  
3  
4 THE CHIEF COMMISSIONER: No, no, it is important.  
5  
6 MR EURELL: Chief Commissioner, can I just raise the issue  
7 that my learned friend Ms Kluss raised about the tender of  
8 that table. We have the person who put the information  
9 together for the Commission. I thought I might get your  
10 views, Chief Commissioner, as to how a statement might be  
11 facilitated, whether it should be taken by the Commissioner  
12 or whether or not counsel assisting --  
13  
14 THE CHIEF COMMISSIONER: Frankly, I don't want to over-egg  
15 this pudding. If the person who did it simply identifies  
16 themselves and tells us what they did to derive it, that  
17 would be adequate.  
18  
19 MR EURELL: Perhaps if I provide the details to Ms Chapman  
20 for the Commissioner of Police, then?  
21  
22 THE CHIEF COMMISSIONER: By all means, give her your work.  
23  
24 MR EURELL: I can't take credit for it, but I have the  
25 name, in any event.  
26  
27 THE CHIEF COMMISSIONER: Very well, thank you for that.  
28 It is just as a matter of formality, one needs to have  
29 a degree of verification, that's all.  
30  
31 MR EURELL: Yes.  
32  
33 THE CHIEF COMMISSIONER: All right. We will adjourn for  
34 lunch. 1.45.  
35  
36 LUNCHEON ADJOURNMENT  
37  
38 MS DWYER: Q. Detective Sergeant, you told us that 2018  
39 was the first time that you performed the role as forward  
40 commander for drug detection dog operations at Splendour in  
41 the Grass.  
42 A. That's correct.  
43  
44 Q. Had you performed any similar role at any other music  
45 festivals?  
46 A. Yes.  
47

1 Q. Which were they?  
2 A. In my former command I was at the Hume, formerly known  
3 as Goulburn local area command, and they had an operation  
4 down there.  
5  
6 Q. Just one; is that --  
7 A. Yes.  
8  
9 Q. Had you done that on one other occasion for a music  
10 festival?  
11 A. Yes, I worked at that for several years.  
12  
13 Q. As the forward commander or in another role?  
14 A. No, just in another role. There was an inspector,  
15 obviously similar to this, that had the commanding role,  
16 and I performed that role, mainly with the drug dog --  
17  
18 Q. So was this the first time, in 2018, that you had been  
19 the forward commander for drug detection dog operations at  
20 any music festival?  
21 A. Music festivals, yes.  
22  
23 Q. You had been a forward commander of drug dog  
24 operations at other events; is that right?  
25 A. Yes. Again, back in my former command down in the  
26 Hume, again Goulburn local area command, I was in charge of  
27 an operation known as Jax, and it was with regard to  
28 visitors attending Goulburn Correctional Centre and we  
29 worked side by side with Corrective Services NSW to target  
30 the introduction of contraband into Goulburn Correctional  
31 Centre.  
32  
33 Q. You, on the morning of 20 July 2018, held a briefing  
34 for the officers that had been brought in to assist with  
35 the music festival; correct?  
36 A. Correct.  
37  
38 Q. And a number of officers were brought in from outside  
39 the local area command from around New South Wales?  
40 A. Correct. Sorry, Dr Dwyer, could I just clarify that:  
41 from north region, with regard to the drug dog.  
42  
43 Q. I see. So did you help the operational commander to  
44 determine how many officers would be needed for the drug  
45 dog operation?  
46 A. In relation to staffing requests, as what they are  
47 known as, it's common practice that either the forward

1 commander or my commissioned officer, the crime manager,  
2 would then put a report, a request for assistance, through  
3 to north region, to the operations unit there, seeking  
4 a number of staff, based on the fact would be - we would  
5 base our request on prior festivals, debriefing, et cetera,  
6 what we believed we would need as adequate staffing versus  
7 what we can provide locally. As you can imagine, an event  
8 like Splendour, which attracted, in 2018, approximately  
9 35,000 - 34,000, 35,000 people, this year was just over  
10 40,000-odd leading towards 50,000, being more or less like  
11 a little mini city, we cannot conduct an adequate  
12 investigation purely on the resources of Tweed-Byron  
13 command. So we need assistance.  
14

15 Q. And for the drug detection dog operation, you needed  
16 assistance from outside the local area command; is that  
17 correct?

18 A. Correct.  
19

20 Q. You prepared some drug dog operation orders?

21 A. I did.  
22

23 Q. They appear at exhibit 5 of the brief before the  
24 Chief Commissioner. Do you have a copy of them in the  
25 witness box?

26 A. No, I don't.  
27

28 Q. I can take you to aspects of them, but I take it you  
29 have familiarised yourself with them before giving evidence  
30 today?

31 A. I have.  
32

33 Q. Were those operational orders provided to the officers  
34 who were coming to assist with detection, with searches?

35 A. The operational orders weren't emailed out, if that's  
36 what you are asking.  
37

38 Q. Yes. So officers who were going to be involved in  
39 searching of patrons after a drug dog operation had read  
40 the operational orders?

41 A. What I did, part of my briefing, the briefing was  
42 conducted prior to each day's deployment in regard to the  
43 region staffing. We did that briefing at Tweed Heads  
44 police station. All staff were requested to stay locally.  
45 Their shift commenced at Tweed Heads police station. After  
46 they acquired their appointments for the day, they then  
47 come upstairs on to level 2, regarding our big briefing

1 room, which has all the modern-day facilities, obviously,  
2 similar to this room, through a computer, the briefing was  
3 televised for all and sundry to see.  
4

5 Q. Was it your expectation that they had read the drug  
6 dog operational orders before they got there?

7 A. No, because they weren't sent out, per se, on email.  
8

9 Q. I see. So they were prepared by yourself in 2018 and  
10 checked by [NAME SUPPRESSED]?

11 A. Correct.  
12

13 Q. Were they just for senior officers such as yourself as  
14 opposed to the searching officers?

15 A. No, no, everyone was - but if I could just explain.  
16 They weren't sent out to the staff members, per se on  
17 email. The joining instructions were, that BR1completed.  
18

19 In relation to the drug dog orders, no, they weren't  
20 sent out, and that is a deliberate action by myself,  
21 because they are a confidential document. If I email them  
22 out to 60-odd people, I then lose track of, just in the  
23 event they are printed and left laying around, or they are  
24 then on-sent. So what happens is it's a briefing. I do  
25 a rolldial to make sure everyone involved in the operation  
26 is present, they hear my opening address, and then  
27 I electronically go through page by page of the orders  
28 whilst speaking from my own recollection and notes myself.  
29

30 Q. As you electronically go through page by page, does  
31 each page come up on a screen or is it really just to  
32 prompt you to convey the information?

33 A. No, no, no, there's a large projector and there's  
34 a number of other screens around the room.  
35

36 Q. So that is in relation to the drug dog operational  
37 orders. You referred to the joining instructions for  
38 Splendour in the Grass 2018. That is exhibit 49 in the  
39 Commissioner's inquiry. You say they were emailed out to  
40 police beforehand; is that right?

41 A. Everyone involved in the operation received a copy of  
42 the joining instructions.  
43

44 Q. Am I correct - and please correct me if I'm wrong or  
45 if you need to see them - that they don't contain specific  
46 instructions in relation to LEPR guidelines, do they?  
47

A. That's correct.

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Q. In addition to that document, there was also a briefing note for 2018, that is one page, which is exhibit 45 in these proceedings. Was that provided to general duties staff who were involved in the searching?

A. I'm not familiar with what document you are referring to.

MS DWYER: Might that come on the screen. I note that it names two officers, but I just reiterate the non-publication order over those names. That's 8451342.

MR COFFEY: Chief Commissioner, may I also raise, there have been some other names referred to that are not mentioned under pseudonyms at the moment, that you might extend that non-publication order to, one of them being the crime manager that signed those orders.

THE CHIEF COMMISSIONER: Very well. No police officer is to be named unless I specifically authorise it.

MS DWYER: Q. I think that might be on your screen now; is that right?

A. No, I have a blank screen.

Q. It is coming shortly, 8451342.

A. Okay. That's a document I prepared.

Q. So you recognise it when you have a look at it there?

A. Yes.

Q. What was done with that document?

A. That was a ready reckoner for myself and I provided that to each of the team leaders. There were six teams involved in the drug detection operation. I gave a package to each of the team leaders, which included a copy of the orders. This document, as well as a pack which involves bags, detection forms, the field arrest/detection form, things like sun cream, Aeroguard, pens, textas, anything that I believed they would require, whilst a more thorough kit was at both stations.

Q. Just in relation to the six teams, you have provided the Chief Commissioner with a copy of what those team names were, who the team leaders were and a list of the persons or police officers within those teams; correct?

A. Yes, I believe so.

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Q. Can I come back to the briefing notes, then. Apart from the briefing notes, the joining instructions and the drug dog operational orders which went on the screen, were there any other documents that were relevant to the briefing in 2018?

A. No.

Q. Before the break you were answering some questions about circumstances in which people have their details recorded - just to remind you, it's at your section 54 response, question 10(7) - and you made a note of saying that a person searched was not obligated to supply their personal information; information could be recorded on the COPS event for the person searched as an "Unknown person".

A. Correct.

Q. You will agree with me, won't you, that nowhere in the briefing notes or in the joining instructions or in the operational orders is that information provided - that is, the instruction is not given to police officers that they need not record the details of someone if there is a nil find?

A. In relation to that, I would have - it would have been a verbal --

Q. Do you actually recall now that it was a verbal in 2018?

A. In 2018, yes, because I have to physically - well, not physically, I have to document the specific CNI number. It's like a seven or eight-digit number and it is unique. You have to use that so people then aren't creating additional unknown persons. As I said, there are only two numbers used, and the only separation is their gender. One is for male, one is for female, and it allows us then to capture data. So then the system is not influx-ed then with a number of unknown males, females, et cetera.

Q. So do you say that you would have given those instructions in 2018 because you are aware that there are some COPS events where a search is recorded against an unknown person?

A. Yes.

Q. In those circumstances, when would you expect the police officer to tell the person, post search, that they do not need to have their details recorded?



1 A. Well, it might not even be post search, because  
2 obviously, you may not even get to that fact about having  
3 their identity pre search, because they may - they're under  
4 no obligation to supply their details.

5  
6 Q. Are you of the expectation that the police officers  
7 involved in the drug dog operation in 2018 knew that they  
8 were not required to obtain identification details from  
9 patrons pre search?

10 A. Yes.

11  
12 Q. So was it your expectation that they would not obtain  
13 those details pre search?

14 A. Not that they wouldn't obtain them.

15  
16 Q. But that it would be up to them?

17 A. It would be up to them. I would have an expectation  
18 that they would do everything possible, without being too  
19 assertive, to acquire their details, again, because it  
20 assists in their state of mind going towards their  
21 justification to search.

22  
23 Q. What about a citizen's right to know that they don't  
24 have to provide police with their details unless drugs are  
25 found? Was that information that you ever told your police  
26 officers that they should convey?

27 A. No.

28  
29 Q. Do you think it's information that they should convey?

30 A. Quite possibly. But, again, as I mentioned pre-lunch,  
31 I think it's quite imperative to find out someone's  
32 identity, because, yes, while there is what you would say  
33 is an invasion on their privacy having their details, it  
34 also goes towards aiding us, as police officers, to find  
35 out a little bit more about that person. Yes, and it might  
36 be used towards assisting with justification, but also, it  
37 could go on the other side of the spectrum, too, and aid  
38 their ongoing safety and wellbeing as well, because we  
39 could find things out based on our database, that they  
40 could have been victims or witnesses of matters. For  
41 instance, they could have been a victim in a motor vehicle  
42 accident and suffered a significant brain injury that's not  
43 quite apparent. We then would take that into  
44 consideration.

45  
46 THE CHIEF COMMISSIONER: Q. However, some persons, of  
47 course, are aware of their rights and do refuse to identify

1 themselves?  
2 A. Correct, Commissioner.  
3  
4 Q. And a refusal to identify yourself could never be an  
5 indication that would give rise to a reasonable suspicion?  
6 A. No.  
7  
8 Q. Because you are just exercising your rights?  
9 A. Correct. There could be no inference drawn to that --  
10  
11 Q. Quite.  
12 A. -- if they choose not to supply their details.  
13  
14 Q. The fact is, I should think, 90 per cent, perhaps even  
15 more, do when they are asked?  
16 A. Correct. And we find that in the case, that most  
17 commonly --  
18  
19 Q. Although they probably think they have to, but we  
20 don't have to go there.  
21 A. No.  
22  
23 Q. The point is they are asked and they give it.  
24 A. Correct.  
25  
26 MS DWYER: Q. The drug dog operational orders at  
27 page 4 - this is for 2018 - note that, in 2018:  
28  
29 The focus of the operation is to promote  
30 harm minimisation through early detection  
31 and to detect illicit drug activity. This  
32 will be achieved by targeting drug  
33 suppliers and users through the use of drug  
34 detection dogs at points of entry and other  
35 key locations.  
36  
37 Is it the case that you didn't distinguish between users or  
38 suppliers in terms of suggesting to your drug dog officers  
39 who they should target?  
40 A. Well, yes, you can't really distinguish, to be honest.  
41 It could be a young person, it could be a 65-year-old  
42 person bringing them in to make money.  
43  
44 Q. It's impossible, by the use of a drug dog, to  
45 distinguish between persons who are supplying and persons  
46 who are using, isn't it?  
47 A. Correct. The dog is going to provide an indication.

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Q. The dog is indiscriminate in that regard?

A. Correct.

Q. You knew that it was an all-ages gig, the Splendour in the Grass festival?

A. Correct.

Q. And you were aware, weren't you, that then there would be a significant number of children between the ages of 10 to 18 where there might be a drug dog operation - sorry, where there might be a drug dog indication?

A. In hindsight, yes, and as you rightly point out, yes, I was aware it was an under-18 - well, it was an all-ages event. However, I do acknowledge also that that was the first time I've ever been to Splendour in the Grass.

THE CHIEF COMMISSIONER: Q. I hope I'm not being unfair here. Is it fair to say that it didn't occur to you in 2018, at least - we will discuss 2019 separately - that you needed to pay any particular or separate attention to what might happen if young persons were identified and might need to be searched? You did not, yourself, focus on that issue?

A. Correct, Commissioner. In hindsight - and I acknowledge that, and that's why we took a number of positive steps --

Q. But hindsight would tell you that you have a lot of young people attending, young people are risk-takers.

A. Mmm-hmm.

Q. Many of them will have taken drugs and might be taking drugs into the Splendour in the Grass. You would indeed be expecting that to happen. There's going to be an indication, and if the other requirements of LEPR are satisfied, there are going to be searches of young people, and therefore certain things need to be put in place. Those things follow from the thought, "We're going to have to deal with young people, so what do we need to put in place?" But am I right in saying you did not focus on that in terms of the 2018 preparation for Splendour in the Grass?

A. Correct, Commissioner.

MS DWYER: Q. In terms of 2018, what was your understanding of what LEPR required in terms of the search

1 of persons between the ages of 10 to 18? The strip search  
2 of persons between the --  
3 A. The strip search?

4  
5 Q. Yes.

6 A. That in relation to LEPR, section 33(3), that  
7 a support person, whether a parent/guardian or someone  
8 representing the child's interests - I have referred to  
9 child as obviously that's the demographic you are  
10 suggesting.

11  
12 THE CHIEF COMMISSIONER: Q. Young person.

13 A. Young person. That they would have someone present  
14 during the conducting of a strip search to any degree.

15  
16 MS DWYER: Q. Was it your belief in 2018 that a young  
17 person could waive their right to have a support person or  
18 parent or guardian present for a strip search?

19 A. No.

20  
21 Q. And yet there were no arrangements in place for  
22 a support person to be available for young people if  
23 a parent or guardian was not the choice?

24 A. That's correct.

25  
26 THE CHIEF COMMISSIONER: Q. Or not available?

27 A. That's correct.

28  
29 MS DWYER: Q. And why was that?

30 A. Well, I hadn't - as I have just acknowledged with the  
31 Commissioner, I didn't have the foresight that we would  
32 encounter those checks.

33  
34 THE CHIEF COMMISSIONER: Q. To cut to the chase, you  
35 didn't think of it?

36 A. No. And at the same time, we have to take it on -  
37 each individual circumstance, on its merit. A child, let's  
38 say that, yes, we're going to encounter some children, the  
39 obligation is up to them to have someone present, whether -  
40 and it's in my experience, if you detect a child, the last  
41 person they are going to want present for a search is their  
42 parents, because they probably talked their parents into  
43 letting them go in the first place, and the last person  
44 they want to hear from is me to say, "Can you come to Byron  
45 Bay? We want to search your child." So --

46  
47 THE CHIEF COMMISSIONER: Q. Yes, but that makes it even

1 more imperative that you have some independent people  
2 available to supply that requirement where a parent or  
3 guardian is not available?  
4 A. And I acknowledge that, and that's why we took some  
5 positive steps into 2018. I acknowledge that that was  
6 a deficiency.  
7  
8 Q. Sorry, you took some positive steps in 2019?  
9 A. Correct. Sorry, Commissioner, yes. We took some --  
10  
11 Q. We will come to 2019 but can we just deal with 2018  
12 first.  
13 A. Yes.  
14  
15 MS DWYER: Q. I will come to 2019 shortly. But I just  
16 want to test what you knew then compared to what you know  
17 now, because no doubt, Detective Sergeant, you have done  
18 some preparatory work before coming to the Commission today  
19 to refresh your memory about LEPRAs?  
20 A. Correct.  
21  
22 Q. I just wondered, if you can cast your mind back to  
23 what you knew in 2018, could you please have a look at your  
24 section 54 response. Page 3, question 2, number (1).  
25 A. Yes.  
26  
27 Q.  
28 I did not, in 2018, nor in 2019, consider  
29 that LEPRAs imposes a requirement that  
30 parents, support persons or other persons  
31 are required to be contacted prior to  
32 a search. This is at odds with the fact  
33 that:  
34 (a) the young person has not necessarily  
35 committed an offence. There is only the  
36 required grounds for the purposes of the  
37 search; and  
38 (b) this would appear to be contrary to  
39 section 33(3), which provides a young  
40 person to refuse to have a parent or  
41 guardian present during the strip search.  
42  
43 You seem to be saying there, at the time you finished your  
44 section 54 notice, that in 2018 and indeed 2019, you  
45 thought that a child could waive their right to a parent,  
46 guardian or support person?  
47 A. No, they can't waive their right.

1  
2 THE CHIEF COMMISSIONER: Q. No, no, but we are going  
3 back to what you believed in 2018.  
4  
5 MR COFFEY: I object to that question, I'm sorry. That's  
6 not what the answer says and it needs to be put --  
7  
8 THE CHIEF COMMISSIONER: I think it has been fairly  
9 rephrased as to its substance, but the detective sergeant  
10 can answer the question. It is not an obscure one.  
11  
12 MR COFFEY: Yes, Commissioner.  
13  
14 MS DWYER: Q. Did you know what I meant or do you want  
15 me to rephrase it?  
16 A. No, if I can explain my response to paragraph 1,  
17 I refer to contact. I'm not making any reference to being  
18 present. There is no obligation on the police to contact  
19 a parent or guardian prior to a search. There is an  
20 obligation that the police must have a parent, guardian or  
21 person present prior to a search.  
22  
23 Q. How can they be present unless they are contacted by  
24 police?  
25 A. It is up to the child, whether they want them  
26 contacted.  
27  
28 THE CHIEF COMMISSIONER: Q. Right. So you might ask the  
29 child, "You are entitled to have a parent or guardian or  
30 some other responsible adult present at this search"?  
31 A. Correct.  
32  
33 Q. And you would have to say to the child, I think, "You  
34 don't need to have a parent or guardian, but the law  
35 requires an independent person to be present" --  
36 A. Correct.  
37  
38 Q. -- "so would you like to contact your parents?" You'd  
39 give them the chance to do that. You would have to do that  
40 much.  
41 A. Correct.  
42  
43 Q. Because although they might not like the parent to be  
44 present, they might prefer a parent to a total stranger?  
45 A. 100 per cent, Commissioner.  
46  
47 Q. But there are practical problems when you are at

1 Splendour in the Grass and you have a kid who has come from  
2 Sydney?  
3 A. Correct.  
4  
5 Q. And you can't hold them or detain them until a parent  
6 gets there from Sydney. In this respect the Act is a bit  
7 unsatisfactory because it doesn't give clear outlines, but  
8 for myself, I would think it a reasonable compromise would  
9 be that you'd have an independent person there. But the  
10 child is not going to be able to know who is an independent  
11 person or - you might ask them, you know, "Have you got an  
12 older brother or an uncle?" You might go there, but in the  
13 end, you might have to say, "Well, look, we have some" --  
14 A. Correct.  
15  
16 Q. -- "SES officers. They are not police. They have  
17 agreed that they will stand in and make sure they will look  
18 after your rights. I have to tell you you don't have  
19 a choice about this. We are legally obliged to search you  
20 because of what the law provides and we are legally obliged  
21 to have this independent person there to look after your  
22 rights, so that is what has to happen." So you would  
23 explain that?  
24 A. The first port of call is their parent/guardian, and  
25 the decision is up to the individual.  
26  
27 Q. No, no, absolutely, and you need to explain that?  
28 A. Correct.  
29  
30 Q. But if they say, "I don't want my parent or guardian",  
31 then you have to have an independent person there?  
32 A. We then - you would then inquire, as you rightly point  
33 out, "Do you have a brother or sister, an aunty or an uncle  
34 present", or --  
35  
36 Q. Obviously someone whom they know is better than  
37 someone they don't know.  
38 A. Yes.  
39  
40 Q. But they might not want to have anyone they know  
41 there.  
42 A. Correct.  
43  
44 Q. But in the end, you can't conduct the search without  
45 an independent person present.  
46 A. Unless, obviously, there's situations that arise, due  
47 to the seriousness and the urgency, to conduct a search.

1  
2 Q. Okay. Well, here we are. Let's look at - I find it  
3 difficult to think of urgency. What is the kind of urgency  
4 that you might have?  
5 A. So urgent circumstances that I would conduct a search  
6 or a strip search on a youth, or someone there, would be on  
7 two grounds: whether there is evidence going to be  
8 destroyed or concealed, or --  
9  
10 Q. Well, now, let's have a look back. You are in the  
11 tent with them, right? They are not going to be  
12 concealing, are they?  
13 A. Sadly, Commissioner, I've seen some pretty odd things  
14 going on.  
15  
16 Q. It may already have been concealed. We're not talking  
17 about concealed drugs already that you are going to have to  
18 search for. Otherwise, the protection would be worthless,  
19 because --  
20 A. I've seen some items, and it's happened in front of my  
21 eyes, that people have concealed and done things to their  
22 body to put drugs inside them right in front of me.  
23  
24 Q. But you can stop it, can't you?  
25 A. You do your best to stop it. You are not always  
26 successful.  
27  
28 Q. No, but that is always a risk?  
29 A. Yes.  
30  
31 Q. But that would be a risk for everyone you search. If  
32 that were a risk for everyone you search, that would mean  
33 you would never need to get an independent person?  
34 A. No, well, look --  
35  
36 Q. So there has to be something in the circumstances,  
37 does there not --  
38 A. Correct.  
39  
40 Q. -- that suggests that might be likely?  
41 A. Again, each circumstance is you have to take on their  
42 merits.  
43  
44 Q. That's perfectly true. All right, so you have talked  
45 about the risk of concealment. I mean, they take it out of  
46 their pocket and pop it in their mouth.  
47 A. Well, that's quite possible and that has happened.

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Q. Of course it is. And then you might draw certain conclusions about what they put in their mouth. That, of course, wouldn't still stop you from getting an independent person and having a complete search?

A. No. But that would - obviously, yes, you would be well within your rights, probably, to get another person in the room to, obviously, reduce the risk of that happening.

Q. No, quite. So --

A. And then what - and, sorry, my second point would be, other than, obviously, the concealment of evidence or destruction of evidence, would be coming over the top of that, and being of paramount importance, is the safety and the wellbeing of the person, would be my overarching reason.

Q. Yes, sure. But you have to have some reason, other than the mere fact that you have a reasonable suspicion that they are in possession of drugs --

A. Yes.

Q. -- for taking that extra opinion?

A. Correct.

Q. In most of these cases, almost all of these cases, you are not going to have that information, or, let me put it another way, it's very likely that it won't be urgent and they are not going to be able to hide the drugs because you are present with them in the tent.

A. Again, it's difficult to --

Q. Well, of course one is only talking about likelihood.

A. Yes.

MR COFFEY: May I object, Commissioner --

THE CHIEF COMMISSIØNER: Q. But the point is that the likelihood - sorry?

MR COFFEY: May I object to the question, Commissioner, I'm sorry. With the greatest of respect, this officer is attempting to answer some of your questions and, as I understand, this officer is going to give you some evidence about the reasons, specific reasons about why urgency or seriousness arises, and this officer needs to be able to give that evidence.

1  
2 THE CHIEF COMMISSIONER: I thought we had passed that.  
3  
4 Q. I think you have spoken about the seriousness. You  
5 have said what you wanted to say about seriousness?  
6 A. Correct.  
7  
8 Q. Let's go to urgency. They are in the tent. What is  
9 urgent?  
10 A. Well, what I just alluded to, Commissioner, the two  
11 reasons.  
12  
13 Q. Right. But that's hiding or concealing?  
14 A. That's the urgency.  
15  
16 Q. Right. So other than hiding or concealing, obviously  
17 the circumstances themselves are not urgent?  
18 A. That is my - that's what I base my reasoning on, being  
19 urgent. The urgency of the circumstances to conduct  
20 a strip search, without having a parent, guardian or  
21 support person present, are based on the fact that there is  
22 evidence, to wit, if we are searching for drugs, going to  
23 be destroyed or concealed further, as you rightly point  
24 out, or even digested right in front of you. Overarching  
25 that, the paramount importance rests with the safety of the  
26 individual, and they are my grounds for urgency.  
27  
28 Q. Quite. And therefore you must have something -  
29 correct me if I am mistaken here: in addition to your  
30 reasonable suspicion that they are in possession of drugs;  
31 there must be something more that suggests destruction of  
32 the drug?  
33 A. Correct.  
34  
35 Q. So it follows from that that in many cases - we are  
36 talking ahead of time, so we don't know, but in many  
37 cases - that's all you will have; you will only have  
38 a reasonable suspicion of the possession of drugs and you  
39 will not have urgent or serious circumstances?  
40 A. Well, it's based on the individual - if I can answer  
41 it this way, Chief Commissioner: flowing on from if a drug  
42 dog was used - and I'll acknowledge that in the majority of  
43 cases to do with this particular operation, yes, the  
44 initial contact, could I say, with the patrons is by virtue  
45 of a drug dog, whilst we still have a number of covert  
46 police positioned in around the festival making  
47 observations that then broadcast those or communicate them

1 on to the line to watch X, Y and Z coming forward. That  
2 then starts to form a state of mind to the individual  
3 officers leading to justification. And the initial  
4 indication, they are then spoken to, and it is your  
5 observations of the individual person, their body language  
6 is doing certain things or they are doing certain things  
7 with their arms, and then again, if we manage to acquire  
8 their personal information and we put it into our database,  
9 and it comes up with they are known for concealing drugs,  
10 et cetera, et cetera, they were found at another festival  
11 in Sydney or in the state, rah, rah, it starts to assist us  
12 with our justification and then our reasonable suspicion  
13 that they may be in possession of drugs and these are  
14 particular concealment methods.

15

16 Q. Quite. And then you have to determine whether the  
17 circumstances are so urgent and so serious that the  
18 requirement of a parent, guardian or other person doesn't  
19 apply, don't you?

20 A. Correct.

21

22 Q. Because you cannot move merely from the fact that  
23 someone is reasonably suspected of possessing a drug to  
24 saying, therefore, the circumstances are urgent and serious  
25 and warrant departing from that requirement.

26 A. Yes.

27

28 Q. Do you agree?

29 A. I agree.

30

31 Q. So looking ahead, you would foresee there are cases,  
32 or may well be cases, that would justify a departure from  
33 the rule, not waiting for someone?

34 A. Correct.

35

36 Q. But there will be also cases where you will have to  
37 have someone there?

38 A. Correct.

39

40 Q. Then what you have to do is to say, "Okay, in some of  
41 these cases, a parent and guardian is not available or not  
42 acceptable to the individual"?

43 A. Correct.

44

45 Q. And then you have to deal with the possibility that  
46 you are going to require another person independent of  
47 police?

1 A. Correct. And then that --  
2  
3 Q. And then what follows is, because obviously the person  
4 being searched is not going to have access to such  
5 a person, the searching officer needs to have a contact or  
6 some way of communicating that there is a need to bring in  
7 an independent person?  
8 A. Yes.  
9  
10 Q. And all that means is that - so there are two  
11 requirements, then, that forward thinking requires.  
12 Firstly, we have to have some people there or immediately  
13 available, because we don't want people hanging around for  
14 hours while someone drives down from Tweed or up from Byron  
15 Bay; we need to have someone --  
16 A. Readily available.  
17  
18 Q. -- on site, that amounts to?  
19 A. Correct.  
20  
21 Q. And they have to be suitable people?  
22 A. Correct.  
23  
24 Q. In 2018, as I understand you, you didn't do that  
25 because you hadn't thought of this problem in 2018?  
26 A. Correct.  
27  
28 Q. In 2019, I may be wrong, but I gathered from your  
29 answer you were also not aware of the need or the potential  
30 need for an independent person to be present at a search of  
31 a juvenile?  
32 A. No, that's not quite correct, Chief Commissioner.  
33  
34 Q. All right. Let me just refresh your memory. Have  
35 a look at your answer --  
36 A. I know the answer. I'm referring to contact. What  
37 I'm saying is I believe there are two different wordings.  
38 One is contact, one is present. I'm saying that there is  
39 no requirement for me to contact a parent or guardian prior  
40 to searching the person. There is a requirement by me, and  
41 a legislative requirement on me to have someone present.  
42 I think whether I'm looking at it in semantics --  
43  
44 Q. That was your understanding as to the requirement?  
45 A. That's my understanding of the legislation, that  
46 there's no obligation on me to contact parent A on their  
47 behalf, because, as you can imagine, the last person they

1 want contacted is their parent or guardian.  
2  
3 Q. No, you would only do it after you asked them,  
4 obviously?  
5 A. My understanding of the legislation, and to this day  
6 as I sit here, is there must be a representative present,  
7 physically present, prior to a search being undertaken of  
8 a young person.  
9  
10 Q. But you would have to ask the young person, "Would you  
11 like to contact your parent and ask your father or mum to  
12 be here"? Wouldn't you have to ask that?  
13 A. Correct.  
14  
15 Q. They don't know their rights?  
16 A. Correct.  
17  
18 Q. So you'd have to say "You are entitled to have your  
19 mum or dad here or someone else who is looking after you if  
20 you wish to"?  
21 A. Correct.  
22  
23 Q. "Do you want to contact such a person?" "Yes." You  
24 might give them a mobile phone or work out some way of  
25 contacting; correct?  
26 A. Correct.  
27  
28 Q. They might say, "No, I don't want them here". Then  
29 you've got to say "Well, someone has to be here anyway" --  
30 A. They can't, yes.  
31  
32 Q. -- "because I can't conduct the search without that.  
33 I've got to conduct the search. Therefore, I have to have  
34 this person here"?  
35 A. Correct.  
36  
37 Q. And they might say, "I don't want anyone". You say,  
38 "Look, I'm sorry, mate, that's what the law requires"?  
39 A. They cannot waive their right to have someone present.  
40  
41 Q. Precisely, and that means you have to arrange to have  
42 someone available in that situation.  
43 A. Correct, if they go down option 3, as you rightly  
44 pointed out.  
45  
46 Q. Quite. But you are looking ahead and you have to  
47 think some might want to go down option 3?

1 A. Correct, and --  
2  
3 Q. Which means you have to have someone available, and  
4 I understood you to say that in 2019 you did arrange for  
5 people to be available?  
6 A. Correct.  
7  
8 Q. Who were they?  
9 A. They were - so as I've indicated earlier, our youth  
10 liaison officer was rostered and present throughout the --  
11  
12 Q. But he couldn't be; he was not independent?  
13 A. No, no, but he has a contact and there was a member of  
14 the Byron Bay youth centre, Nicqui Yazdi. She was  
15 available and present. And she took a fairly active role,  
16 dealing with the youth, not just for strip searching, for  
17 some of the questioning or being present to aid us.  
18  
19 Q. So she was there to look after the welfare of the  
20 young people?  
21 A. Yes, Nicqui's there in the festival, per se, anyway.  
22 And then she was very beneficial to us and we would look  
23 at, obviously, trying to develop that relationship moving  
24 forward at any future festivals. And not only that, our  
25 commander, [NAME SUPPRESSED], then had a contingent from  
26 the youth command, his prior command. So we had members of  
27 not only the youth command, PCYC, sworn and unsworn staff,  
28 present and near our search facility.  
29  
30 Q. So are you saying, though, that what you expected to  
31 happen would be that the searching officer, having got the  
32 information that the person being searched doesn't want  
33 anyone, doesn't want the parent there, that they would  
34 contact either Nicqui Yazdi or the YLO for either Nicqui to  
35 come and help, or herself to contact someone who could come  
36 and help, and the YLO to contact someone, not a police  
37 officer, to come and help; is that what you understood the  
38 arrangement?  
39 A. That's correct. That's correct, and I made it  
40 abundantly clear, Chief Commissioner, in my briefing, that  
41 prior to the search of any juvenile, in particular strip  
42 search of any juvenile, that myself was to be contacted  
43 prior to that actually being undertaken. So it was just an  
44 overarching --  
45  
46 Q. So you would make sure that those requirements were  
47 satisfied?

1 A. Correct. Correct.  
2  
3 Q. I would just like to ask you this, then: I understand  
4 about what you say about Nicqui Yazdi, but did you arrange  
5 with the YLO as to who might be available and appropriate  
6 for this purpose?  
7 A. No, it was part of our overarching operational orders  
8 that the youth command were present, and we knew that they  
9 were there for the duration or the hours that I was there  
10 as drug dog --  
11  
12 Q. I understand, but were they assigned a particular duty  
13 to ensure that some non-police person was on call and  
14 available, if necessary, for the purpose of attending  
15 a search?  
16 A. Yes.  
17  
18 Q. So they were specifically tasked, amongst other  
19 things, with that responsibility?  
20 A. Correct.  
21  
22 Q. So is it fair to say that you delegated that duty to  
23 those officers, and so far as you're concerned, they would  
24 have had people there?  
25 A. Correct.  
26  
27 Q. And you were overseeing it anyway to make sure that  
28 the boxes were ticked?  
29 A. Correct.  
30  
31 MS DWYER: I note that the name Nicqui Yazdi has been used  
32 and there is a non-publication order, but I am instructed  
33 that Ms Yazdi does not mind if her name is published.  
34  
35 THE CHIEF COMMISSIONER: All right. I lift the  
36 non-publication in relation to that her. Do you have some  
37 more questions, Ms Dwyer?  
38  
39 MS DWYER: Excuse me, your Honour.  
40  
41 Q. There was one matter in relation to section 33(3).  
42 You will recall that a strip search, if it is conducted on  
43 a child between the ages of 10 to 18, must be conducted in  
44 the presence of a parent/guardian or a support person if  
45 they're not acceptable. The person who is the support  
46 person must be someone capable of representing the  
47 interests of the child, of the person searched?

1 A. Correct.  
2  
3 Q. What do you take to be interests of the child?  
4 A. Well, their wellbeing, their basic rights as a human  
5 being, and whether that is to support them emotionally,  
6 physically, and to aid them - and then so we can reinforce,  
7 because obviously without questioning an individual about  
8 why they are being searched, you need to relay the reasons  
9 for being searched and if they are not understanding, you  
10 can use the support person to explain their basic legal  
11 rights.  
12  
13 Q. And it is your belief that Nicqui Yazdi has a full  
14 understanding that that is her role in protecting the  
15 interests of the child?  
16 A. Correct.  
17  
18 THE CHIEF COMMISSIONER: Q. Was there any documentation  
19 prepared by the YLO or someone in youth command providing  
20 guidance to the independent persons as to what they should  
21 do or what they could expect?  
22 A. No.  
23  
24 Q. Let me tell you something that as a layperson I would  
25 think of. If a police officer came up to me and said,  
26 "Would you be present while this person was strip  
27 searched", I would say, "Who are you strip searching?"  
28 "Well, we are strip searching a 16-year-old young man."  
29 I would say, "There is no way I want to go anywhere near  
30 that."  
31 A. Yes.  
32  
33 Q. And most lay people would have that feeling, aside  
34 from there is a general feeling, "I don't want to get  
35 involved". And to my mind - and this may be extremely  
36 unfair - if someone was eager to do that, they might not be  
37 the right person to have?  
38 A. No, well, then you would start to question and --  
39  
40 Q. Exactly. So selection of the right person is not  
41 easy?  
42 A. Very, very important. It's not easy and very  
43 important, and --  
44  
45 Q. So it wouldn't be a matter of, say, ringing up the  
46 local SES commander and saying, "Have you got a couple of  
47 blokes who are available, or women available, to be present

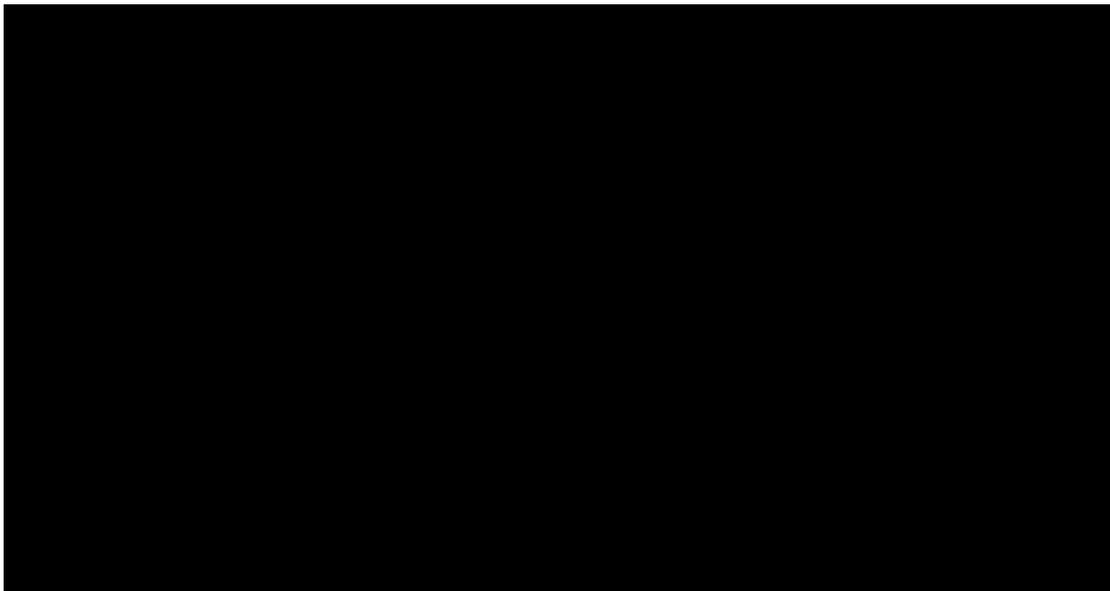
1 at strip searches"; the youth command would have to have  
2 a conversation - make sure they're the right kind of  
3 people?  
4 A. Correct.  
5  
6 Q. Now, of course, the vast majority of them are  
7 perfectly decent and probably have kids of their own and --  
8 A. Which makes it even more difficult.  
9  
10 Q. Right. But it is entirely - they would be - you could  
11 trust that they were there for the right motives and would  
12 do the right thing?  
13 A. Correct.  
14  
15 Q. Nevertheless, you can't just take it for granted and  
16 you can't make the assumption; you have to make some  
17 preliminary discussions at least to seize them up and make  
18 sure you are happy that they are going to be having this  
19 role?  
20 A. Correct.  
21  
22 Q. And after all, they are not going to be there alone;  
23 they are going to be there with another officer as well?  
24 A. Correct. At least one, at lease one officer. But,  
25 as - only as many as necessary.  
26  
27 Q. Well, of course. Now, I want to come - I am  
28 interested in your view on that and I will come to it in a  
29 moment. So I'm just thinking in terms of the planning,  
30 obviously as the commander, you can't do every job, you  
31 have to have people who are going to do those jobs?  
32 A. Mmm.  
33  
34 Q. You would leave it, I take it, to the youth command to  
35 select people who are going to be available and make sure  
36 they are available against the need that they have to come  
37 and - with a search, and you would trust them to do  
38 whatever is necessary to select appropriate people?  
39 A. Correct.  
40  
41 Q. I mean, there are - is it Red Frogs?  
42 A. Red Frogs.  
43  
44 Q. They already have a reputation of taking care of young  
45 people, of their welfare. So if they were Red Frogs, you  
46 would probably start out with an assumption they are an  
47 appropriate person. Not necessarily, but that might be

1 your starting point. Then you would have a talk with the  
2 particular individual, make sure you were happy with them;  
3 correct?  
4 A. Yes, you would probably use, yes, them, probably  
5 towards - I wouldn't say a last resort, because as you  
6 rightly point out, some people don't want to get involved.  
7 What they are about to witness, obviously, is --  
8  
9 Q. Embarrassing?  
10 A. Yes, embarrassing, an invasion on the privacy, again,  
11 you rightly point out. They may have kids of their own.  
12 And quite possibly they are then going to be a witness to  
13 the commission of a criminal offence, and then again they  
14 don't really want to - you know, you don't know their  
15 background, per se. They may have been searched as  
16 a juvenile; they might have been in a domestic relationship  
17 involving drug abuse, and it might then hit a trigger.  
18 They - you know.  
19  
20 Q. No, of course. So not everyone's suitable?  
21 A. No.  
22  
23 Q. You have to do some things to ensure you get suitable  
24 people?  
25 A. Correct.  
26  
27 Q. And your view as the commander was that's the  
28 responsibility of youth command with your YLO; correct?  
29 A. Very much so.  
30  
31 Q. But so far as you are aware, there is no documentation  
32 around that kind of preparation; there might be, but you  
33 don't know?  
34 A. No, so --  
35  
36 Q. Am I right?  
37 A. Well, yes, but I would like to just add then, though,  
38 particularly with our unsworn staff connected and employed  
39 by the Police Service, obviously, working with children  
40 checks. In Queensland they have the Blue Card --  
41  
42 Q. Sure.  
43 A. So there would be things there, and I would have an  
44 expectation there are checking mechanisms in place.  
45  
46 Q. So would you at least start there just to make sure?  
47 A. Correct.

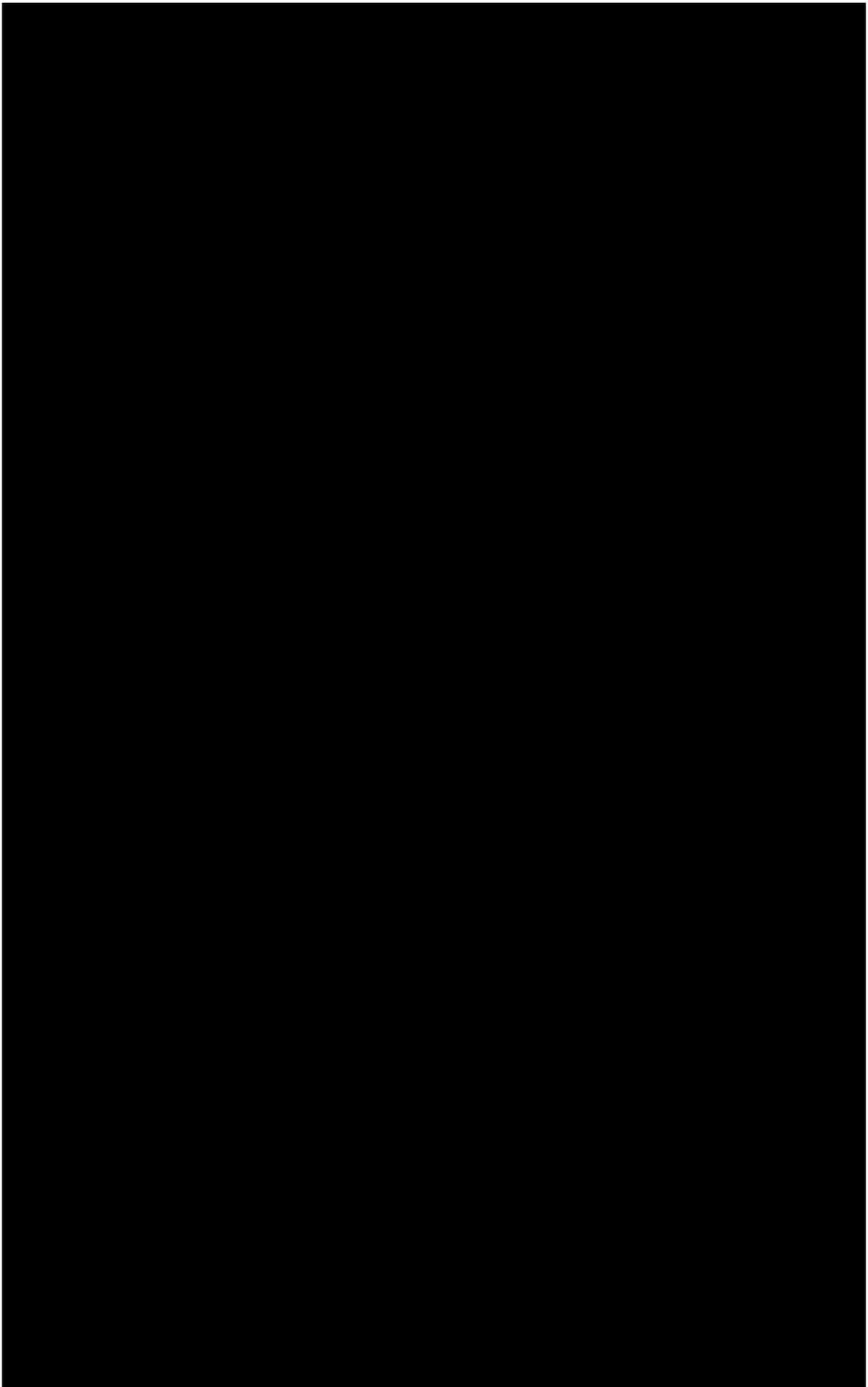
1  
2 Q. Can I just come back to how many people should be  
3 present at a search?  
4 A. Only as many as necessary.  
5  
6 Q. That's the test. The question then is, as always,  
7 what is necessary?  
8 A. And again, Commissioner, it's a good question, that  
9 I would answer it in this way: that based on the  
10 individual circumstances, you have to treat all  
11 circumstances on their own merits. The presence of, as you  
12 can imagine then, the juvenile, let's just say  
13 a 16-year-old boy, he then has his support person in the  
14 room, which could be his older brother, he is already going  
15 to be embarrassed there to show parts of his body to his  
16 older brother. He then has one or two male police officers  
17 there, so it's - unless it is really necessary, I would say  
18 as minimal people in there as - really that's --  
19  
20 Q. This is what occurs to me, again, as an outsider. If  
21 there is an independent person there, you have  
22 a corroborating witness, either for the police officer or  
23 for the young person. And they have no axe to grind. So  
24 there you have a safeguard built in, as it were, for what  
25 occurred?  
26 A. I could probably elaborate on my answer, sorry,  
27 Commissioner, that in 2019 and moving forward, we actually  
28 have the minimum of two, because the search is recorded on  
29 body-worn video. So if you could picture the scenario that  
30 the searching officer is in front, the individual is facing  
31 forward towards the searching officer. I am the  
32 corroborating officer towards the rear on a 45-degree  
33 angle, activating a body-worn video, capturing the use of  
34 the legislative powers whilst not filming the private area  
35 or the genitalia area of the individual, protecting - and  
36 I understand you're still filming certain aspects, but  
37 minimising the recording of that. And that is, obviously,  
38 to protect the dignity and the privacy of the individual,  
39 whilst also --  
40  
41 Q. Protecting the police officer?  
42 A. -- protecting the police against counter allegations  
43 that certain things were done during the use of that  
44 particular search power.  
45  
46 Q. Quite. Well, body-worn video I think most rational  
47 police see as a big step forward in terms of their personal

1 reputations and personal safety.  
2 A. I think it is an excellent initiative.  
3  
4 Q. So in 2019, did you have body-worn videos available to  
5 searching police?  
6 A. Yes.  
7  
8 Q. And they were required to use them when conducting  
9 a search?  
10 A. Correct.  
11  
12 Q. In fact, I think I'm right in saying, unless there is  
13 a very good reason for not using them, they are to be used  
14 for all exercise of powers under LEPR?  
15 A. Not even just strip searches.  
16  
17 Q. No, quite. All exercise of LEPR powers?  
18 A. Correct, and we did have, if I could elaborate --  
19  
20 Q. And probably all interactions with the public to save  
21 yourself from any unwanted or unjustified criticisms?  
22 A. Correct. And I just could just - further to that, we  
23 did have the use of body-worn videos in 2018 to a certain  
24 degree. Staff - leading into LEPR, because it was in a  
25 trial period, and the NSW Police Force acknowledged that we  
26 were coming up to a major festival, so we had our local  
27 staff in Tweed-Byron PD trained and, unfortunately, they  
28 were the only staff at the time --  
29  
30 Q. That had the body-worn video?  
31 A. Correct.

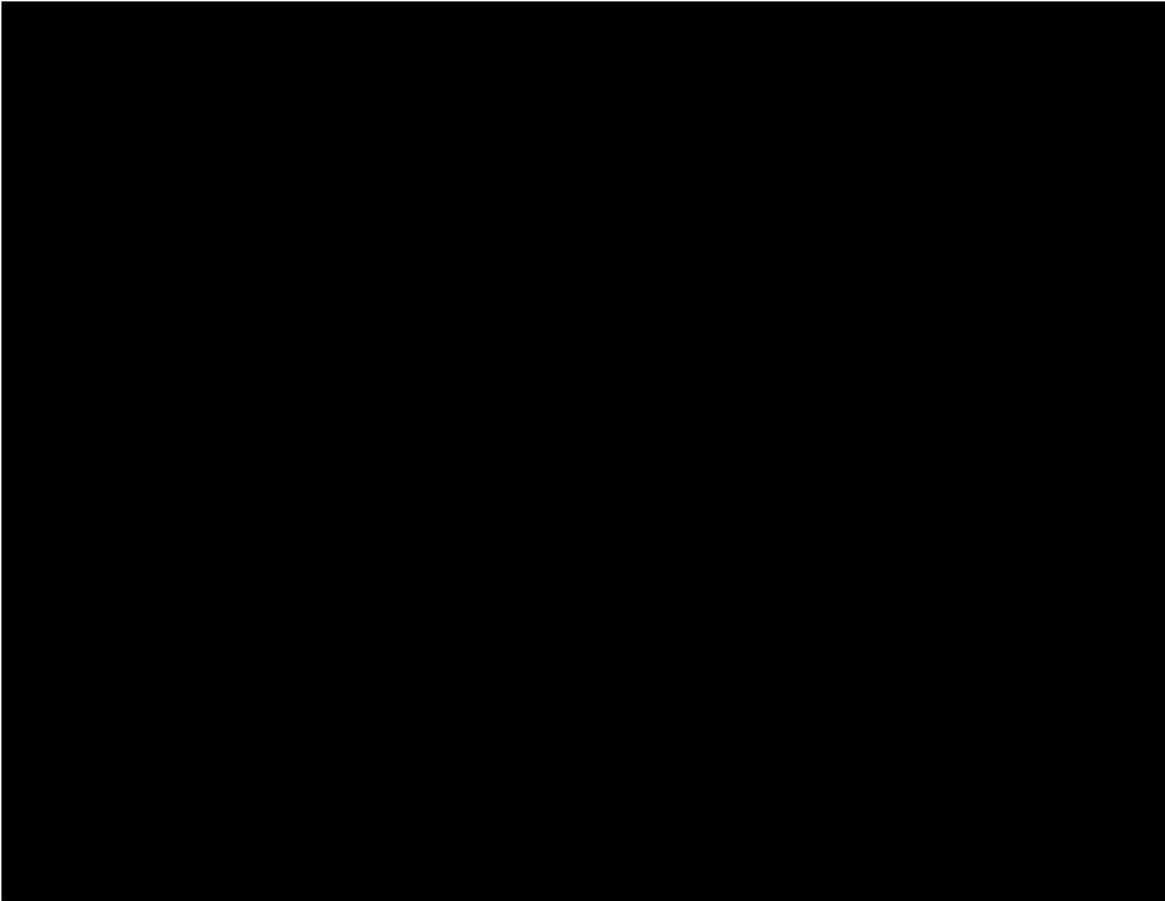
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MS DWYER: Q. Detective Sergeant, you understand the importance of recording in COPS entries the justification for a search; correct?

A. Very much so.

Q. And that includes justification under section 21 - that is, what your suspicions are and reasonable grounds?

A. Correct.

Q. And your justifications for a strip search, if you are going that one step further?

A. Correct.

Q. And if it is a child, the particular justifications in that case are important; correct?

A. Very much so.

Q. And then if you determine that the circumstances are so exceptional that (3)(a) of 33(3) is triggered, and delaying the search will result in the concealment or destruction of evidence and an immediate search is required, you would have to record that in a COPS entry,

1 wouldn't you?  
2 A. Very much so. And I would have an expectation,  
3 Dr Dwyer, as to the form that we did. Sorry to harbour on  
4 the fact of 2019, but if you look at the form I used in  
5 2018, part of my debrief process with the senior management  
6 team is we improved the form, saw there was - and  
7 I acknowledge that probably we needed to record the type of  
8 search, whether it's general or strips, and then we  
9 elaborated and gave a larger area to record their  
10 justification on paper. And then, because, as you can  
11 imagine, some of these individual officers do a number of  
12 searches throughout the day, it is just another  
13 aide-memoire for them to remember, "Search of individual  
14 A", when they are doing recording. But they can always  
15 write on the back, and the Commissioner has access to my  
16 briefing in 2019 when I make - reinforce the point, "Notes,  
17 notes, notes. You can never take enough notes", and to  
18 document the justification.

19  
20 Q. I'm going to take you back to 2018. You have provided  
21 us with two documents, an arrest form, which is exhibit 47,  
22 and a field arrest form, which is exhibit 50. Are either  
23 of those relevant to the circumstances where there is a nil  
24 find?

25 A. No.

26  
27 Q. In circumstances of a nil find, what contemporaneous  
28 note do you expect to be taken?

29 A. Notebooks.

30  
31 Q. Notebooks?

32 A. Correct.

33

34 Q. You are aware, aren't you, in these circumstances,  
35 that with the 16-year-old the subject of the inquiry, there  
36 was no notation in either of the officers' notebooks about  
37 that?

38 A. Sorry, can I just elaborate on that, too, Dr Dwyer,  
39 sorry, and moving forward - and it wasn't available to  
40 every officer in 2018, but not only your notebook, but  
41 body-worn. And again, in my briefing I say, "Don't just  
42 rely on the body-worn. Technology can do wonderful things  
43 and not be available and then you have lost it. So make  
44 sure you make sufficient notes." But every officer, and  
45 myself, everyone included, is issued with a notebook and  
46 that's what you use to record certain details - date, time,  
47 place, what happened, their reasonings, record their

1 clothing, demeanour, et cetera, et cetera  
2  
3 Q. In 2018 when body-worn cameras were not available for all the  
4 officers, you had an expectation that police would be  
5 recording in their notebooks contemporaneous notes about  
6 who was searched, whether they were a young person, the  
7 justification for the general search, the justification  
8 for the strip search, if no adult or support person is  
9 present, the justification for that search?  
10 A. Correct.  
11  
12 Q. And the importance of recording it in your notebook is  
13 that it might be hours before you're actually typing up the  
14 COPS entry; correct?  
15 A. Yes, and it is just a record, though, forever.  
16  
17 Q. Sure. And if you are searching multiple people, you  
18 are not going to remember, five hours down the track, the  
19 specifics - or you may not.  
20  
21 THE CHIEF COMMISSIONER: Q. Whether you are or not,  
22 there is a risk that you will not recollect all the details  
23 or that you will confuse the details from one case with  
24 another - those are all well-known risks?  
25 A. Yes.  
26  
27 Q. So the answer is you take an immediate contemporaneous  
28 note?  
29 A. Correct.  
30  
31 Q. It is simple, really, isn't it?  
32 A. Correct.  
33  
34 MS DWYER: Q. Did you remind officers of that obligation  
35 as part of the briefing in 2018?  
36 A. Yes, about making notes, correct.  
37  
38 Q. Making contemporaneous notes?  
39 A. Correct.  
40  
41 Q. And that was your expectation, that they would do  
42 that, then; correct?  
43 A. Correct.  
44  
45 Q. You have read, haven't you, the COPS entry in relation  
46 to BRC? BRC is the young person that we are referring to.  
47 Have you read that COPS entry?

1 A. Yes, I have.

2

3 Q. And it's at exhibit 4, if you need to see a copy  
4 again. You're aware, aren't you, that there is zero  
5 notebook entry from any police officer that we can locate  
6 in relation to the strip search of BRC?

7 A. I'm not aware there's no notebook entry.

8

9 Q. Are you aware of a notebook entry in relation to BRC's  
10 strip search?

11 A. No.

12

13 THE CHIEF COMMISSIONER: I think each stated they did not  
14 make a notebook entry.

15

16 MS DWYER: That's correct.

17

18 Q. And if you can take it from me, Detective Sergeant,  
19 we have their notebooks, or we have copies of them, for  
20 20 July and there is no entry in relation to the strip  
21 search of BRC.

22

23 MS KLUSS: I think this is somewhat misleading, because  
24 BR4 was not sure that she was the searcher. The only, as  
25 I understand it, nexus between the complainant and these  
26 proceedings and my client is the COPS event entry, and the  
27 questions of counsel assisting are built upon that  
28 assumption, which --

29

30 THE CHIEF COMMISSIONER: No, they are not. No, they are  
31 built upon more than that, and Dr Dwyer's question is  
32 perfectly justified.

33

34 MS DWYER: Q. Detective Sergeant, do you recall the  
35 question?

36 A. No, could you repeat it, please?

37

38 THE CHIEF COMMISSIONER: Q. It doesn't really matter.  
39 For the sake of the question, I want you to assume that no  
40 notebook entries were made as to this search by either of  
41 the officers who conducted the search or were involved in  
42 the search. Naturally, a male officer wasn't actually in  
43 the tent.

44

45 MR COFFEY: I object to that question, too, on this basis:  
46 that as long as the question is put to this officer that  
47 the officers that have given evidence, BR3 and BR4. Are

1 the only officers. There are other officers available, on  
2 the evidence before this Commission, that may or may not  
3 have done that search as well.

4  
5 THE CHIEF COMMISSIONER: I don't think so. Thank you.  
6 Yes, go on.

7  
8 MS DWYER: Q. Detective Sergeant, if you accept that  
9 there is no notebook entry from either of the officers who  
10 are relevant to the search of BRC, bearing in mind it's  
11 a 16-year-old who was strip searched in the absence of  
12 a parent, guardian or support person, you would be  
13 appalled, wouldn't you, as a senior officer, that there is  
14 no notebook entry?

15 A. I think "appalled" is a fairly strong word. My  
16 reading of the COPS entry - and I have read it,  
17 I acknowledge I have read it --

18  
19 Q. I want to take you back to my question, I'm sorry,  
20 Detective Sergeant. I'm asking you about the absence of  
21 a notebook entry.

22 A. That's what I'm trying to answer, that there is no  
23 reference in the COPS entry - because you asked me had  
24 I read it and do I acknowledge there was no notebook  
25 entry - the COPS entry doesn't reflect that, "Oh, and we  
26 didn't make a notebook entry", and from my review of the  
27 COPS entry, there is no case file, because there are - on  
28 occasions, that if someone makes a COPS entry - sorry,  
29 a notebook entry, they do have the capabilities of scanning  
30 it and uploading it as a case file for later use.

31  
32 In relation to your second question, would I be  
33 appalled, again, I think that's a fairly strong word.  
34 I think there is an expectation and a requirement, as  
35 operational police officers, that if we are going to enact  
36 a power or do something, that we make a notation, and  
37 again, I say in the modern day, yes, we do have body-worns,  
38 but don't rely purely on body-worns.

39  
40 THE CHIEF COMMISSIONER: Q. But the officers here didn't  
41 have --

42 A. Correct, Chief Commissioner.

43  
44 Q. Let us put it like this: the expectation of an  
45 officer performing their duty appropriately in the context  
46 of searching a young person following a drug dog indication  
47 would be that they would make a notebook entry of what

1 happened?  
2 A. Correct.  
3  
4 Q. And a failure to do that is significant; it's not  
5 trivial or unimportant?  
6 A. No, and I think it's significant, I would agree with  
7 that, but I wouldn't say I was appalled.  
8  
9 Q. All right. Well, that would rather depend on the  
10 reasons?  
11 A. Yes. And the reason the notebook becomes important is  
12 not only that - to maintain and record your justification  
13 of what you did, as you rightly point out. And I can't  
14 exactly remember the time of this search, but the officers  
15 then go on to other duties and if you don't have it  
16 recorded, how are you going to know what to put in the COPS  
17 entry?  
18  
19 Q. Quite. There are a whole lot of: "Someone came to me  
20 as I was about to make my note and I had to do this and  
21 I was deflected and I just never got back to it", that's  
22 one thing; or "I never make a note because I can't be  
23 bothered. I know I can put it all in the COPS report".  
24 That would be appalling?  
25 A. Yes.  
26  
27 Q. So it very much depends on why.  
28 A. Yes.  
29  
30 Q. But if there was no note made, it would be a  
31 significant matter that would at least provoke a question  
32 "Why not"?  
33 A. Correct. I would be then interested in what happened  
34 in the minutes following that, if not 15, 20 minutes later.  
35 For all I know, there could have been a call over the radio  
36 for urgent assistance required, so everyone drops  
37 everything --  
38  
39 Q. One can always think of good reasons. The point is  
40 that you would ask a question and they would tell you why,  
41 and that would be a good reason or not?  
42 A. Correct.  
43  
44 MS DWYER: Q. You accept, don't you, that the strip  
45 search of a 16-year-old - or of anybody - is an extremely  
46 invasive procedure?  
47 A. I think you rightly point out, Dr Dwyer, the strip

1 search of any person is a major incident.  
2  
3 Q. When it is a 16-year-old person who is being searched,  
4 particularly in the absence of a parent, guardian or  
5 a support person, you would appreciate that that could  
6 cause significant distress, firstly at the time?  
7 A. Quite possibly.  
8  
9 Q. And it could also cause ongoing harm if somebody was  
10 particularly distressed?  
11 A. Well, yes, that's - obviously, it depends on the  
12 circumstances and the individual.  
13  
14 THE CHIEF COMMISSIONER: Q. Plainly. But there is  
15 always a risk, isn't there?  
16 A. There's - yes.  
17  
18 Q. If they were otherwise psychologically fragile, for  
19 example, you might have very significant problems following  
20 from this. Of course, one doesn't know. But one has to  
21 bear in mind there is always a risk?  
22 A. I couldn't agree more, Chief Commissioner. And that  
23 again comes back to the importance, so much, of acquiring  
24 people's personal details. That individual, whether male  
25 or female, could be the subject of severe domestic  
26 violence, they could have been the victim of a sexual  
27 assault offence, and that could trigger that type of, you  
28 know, emotional recall or something that was encoded in  
29 their brain. But I acknowledge, yes, the significance  
30 surrounding a strip search. But, again, could I please  
31 acknowledge or have it acknowledged that a strip search is  
32 a fairly broad spectrum.  
33  
34 MS DWYER: Q. Sure. I'm talking about here a search of  
35 a 16-year-old that she tells the Chief Commissioner was  
36 conducted when she had to be completely naked, but for her  
37 shoes.  
38  
39 THE CHIEF COMMISSIONER: Q. And she was told to squat -  
40 I'm embarrassed using ordinary terms - and the nether parts  
41 of her anatomy were inspected by the police officer. That  
42 is about as thorough as it gets.  
43 A. Well, I'm not aware of the actual search, but I take  
44 it - I acknowledge what you have said.  
45  
46 Q. That's her evidence. We're yet to test it.  
47 A. Yes.

1  
2 Q. But that's the assumption which you are being asked to  
3 make. But at all events, the point is, there is always  
4 a risk, looking forward, that that is what a search will  
5 amount to. You are dealing, anyway, with a stranger. It  
6 usually, or often, will not be a kid that you know anything  
7 about.  
8 A. Correct.  
9  
10 Q. And, therefore, the risk that you may be doing some  
11 real damage has to be taken into account when you are  
12 dealing with this kind of problem?  
13 A. Correct.  
14  
15 Q. You have to try to mitigate any such risk, so far as  
16 you can?  
17 A. Yes, try to minimise any harm that would be brought.  
18 And whether - that goes towards the adults as well.  
19  
20 MS DWYER: Q. You have to have a lawful justification  
21 for a search, obviously?  
22 A. Correct.  
23  
24 Q. And a strip search in particular?  
25 A. Correct.  
26  
27 Q. And you have to record your lawful justification for  
28 a strip search?  
29 A. Correct.  
30  
31 Q. If you would have a look, please, at tab 4 - my  
32 instructing solicitor will provide you with a copy of that  
33 so it doesn't have to go on the screen. I will just ask  
34 that the COPS event go on the screen, please, 8427386,  
35 bearing in mind this has the names of certain police  
36 officers on it which are subject to the non-publication  
37 order. It's 8427386. It has the name of the young person  
38 on it as well, your Honour, so I note that her name is  
39 subject to a non-publication order.  
40  
41 THE CHIEF COMMISSIONER: Yes.  
42  
43 MS DWYER: Q. Is that up on your screen, Detective  
44 Sergeant?  
45 A. It is now.  
46  
47 Q. Thank you. You see there that the name of

1 a particular police officer appears in terms of who created  
2 that document?  
3 A. Correct.  
4  
5 Q. Do you see there that the justification recorded is  
6 that the young person was stopped by a drug detection dog,  
7 Buster, entering the location. A positive indication was  
8 made to drugs by the dog. She was taken to a private room  
9 and admitted to being around persons who smoked cannabis  
10 recently. She was searched by a female officer and nil  
11 found. If you can accept that elsewhere in the COPS entry  
12 there is an indication that it is a strip search, that  
13 justification would not be sufficient to justify a strip  
14 search of a 16-year-old, would it?  
15 A. Not based on what I have just read there.  
16  
17 Q. You must be disappointed to read that there, then,  
18 given that that is supposed to record a proper  
19 justification; correct?  
20 A. Correct.  
21  
22 MS DWYER: That can be taken down.  
23  
24 Q. Did you have any knowledge of that - that is, did you  
25 have any knowledge that that particular incident had  
26 occurred and there was inadequate justification recorded  
27 for it --  
28  
29 THE CHIEF COMMISSIONER: Sorry, that's a double question.  
30  
31 MS DWYER: I will withdraw that.  
32  
33 Q. Page 2 of that document indicates that the incident  
34 status and class for that COPS entry was verified. Should  
35 that mean, in ordinary circumstances, that the COPS entry  
36 is looked at and approved of by another officer, other than  
37 the person who creates the COPS entry?  
38 A. Correct.  
39  
40 Q. Is that what happened in this case?  
41 A. Yes. Well, sorry, Dr Dwyer, it's what we call,  
42 though, it was self-verified.  
43  
44 Q. What does that mean in this instance?  
45 A. That means - and, unfortunately, I will harbour back  
46 on 2018, because we acknowledge that, in 2018, staff that  
47 created that type of entry had the capability to

1 self-verify events.

2

3 Q. So doesn't that mean that that particular COPS entry  
4 was not checked by a senior or by any other officer?

5 A. Correct. And routinely - and say in day-to-day  
6 policing - staff, it doesn't matter what unit you are from,  
7 those that create COPS entries, they go into, let's say,  
8 the Tweed-Byron PD area, and then they are verified by  
9 a senior officer.

10

11 THE CHIEF COMMISSIONER: Q. An inspector or a sergeant?

12 A. No, a sergeant, normally a sergeant, that they would  
13 then obviously check the contents of the entry.

14

15 Q. Is that usually the duty officer?

16 A. No, the shift supervisor.

17

18 Q. The shift supervisor, who might be a sergeant or -  
19 usually would be a sergeant?

20 A. Normally, in most cases it will be a sergeant. Quite  
21 possibly it could have a leading senior constable, someone  
22 relieving as a sergeant. Normally, it's the inside  
23 supervisor or the station manager, but there is a quality  
24 assurance system that takes place. It could be as simple  
25 as grammatical errors or something, and then it is  
26 returned, resubmitted. So in that case, the supervisor  
27 could have read that and looked at it and then thought,  
28 "No, I'm not quite happy with" --

29

30 Q. Let's assume, because you were not in this role, you  
31 were the supervising officer and you had seen this - it  
32 hadn't been self-verified and you had seen it. I take it  
33 from what you are telling me, you would have sent it back  
34 and said, "What were your reasons? Explain what happened  
35 on the search. This is inadequate"; am I right?

36 A. Correct. Correct. I would resubmit that event. And  
37 could I just then elaborate on - and we acknowledged that  
38 there was a flaw that that was allowed to happen, and  
39 I totally take responsibility for that. Moving forward,  
40 then, as our data for 2019, that function was removed and  
41 then we had a fairly - probably more strict regime than  
42 day-to-day policing, that there was a number of checking  
43 mechanisms and quality assurance steps put in place to make  
44 sure that --

45

46 Q. Did you do that or that was done by you and the team,  
47 the --

1 A. In consultation with my senior management. We had,  
2 obviously, a number of planning meetings moving forward  
3 into major events, and that was a decision that was made.  
4 We acknowledged that, that that's what happened, not based  
5 on knowing this particular event, in general, we believed  
6 there were some unsatisfactory COPS entries that lacked  
7 detail, that routinely - and we believe some of the numbers  
8 of strip searches were elevated because they were recorded  
9 incorrectly; whereas then, if you look at the numbers from  
10 2018 then into 2019, when we had our strict measures in  
11 place, the numbers decreased significantly.  
12

13 Q. Yes, markedly. We will come to that, because I would  
14 like to explore why you think that happened.

15 A. Sorry, Commissioner.

16  
17 THE CHIEF COMMISSIONER: We will come to that shortly.

18  
19 MS DWYER: Q. You said if you came across this, you would  
20 suggest to the officer that they go back and write more  
21 complete detail --  
22

23 THE CHIEF COMMISSIONER: Not suggest; require.

24  
25 MS DWYER: Q. You would require of the officer. If  
26 there was nothing in their notebook as to the  
27 justifications for the search, they wouldn't have any  
28 worthy contemporaneous note to go back to, would they?

29 A. No.

30  
31 THE CHIEF COMMISSIONER: Q. And if they came back to you  
32 and said, "I'm sorry, Detective Sergeant, I actually don't  
33 remember anything more about this", you might have to put  
34 up with it, but you would not be happy, I take it?

35 A. No. Correct.

36  
37 MS DWYER: Q. BR4 gave evidence that it was her practice  
38 in 2018 and prior that she could ask somebody to squat and  
39 then she would squat and look underneath them from behind.  
40 Is that acceptable practice, in terms of a strip search?

41 A. Yes.

42  
43 Q. Did you, in 2018, give any particular direction to  
44 officers as to what was an acceptable strip search, or did  
45 you take it that they knew?

46 A. I took it that they knew, as, again, that's - each  
47 circumstance has got to be treated on its own merit. The

1 strip search could be as minimal as pulling a shirt up of  
2 a male or female to the nth degree of a full removal of  
3 their clothing.  
4

5 Q. Similarly, in 2019, it's not part of your briefing to  
6 instruct officers what strip searches they can and can't  
7 do?

8 A. No.  
9

10 THE CHIEF COMMISSIONER: Q. But in this particular case,  
11 the evidence is that she was wearing - I want you to make  
12 this assumption, because you were not present, you are not  
13 a witness, so just make this assumption as to the facts;  
14 okay?

15 A. All right.  
16

17 Q. She's wearing a leotard and she's wearing a denim -  
18 she is wearing shorts over her leotard and she's wearing  
19 a denim jacket.

20 A. Okay.  
21

22 Q. She takes off the jacket. The jacket is searched,  
23 right? She's asked to remove the shorts. The shorts are  
24 searched. So she's there in her leotard. She's asked to  
25 remove the top of her leotard. That's all one piece.  
26 Ultimately, if you are going to look at her whole body, you  
27 are going to have to take off the whole thing, you see.  
28 But I find it difficult to understand why, having examined  
29 her upper body, you wouldn't give her her jacket back  
30 whilst you - to give her at least some dignity whilst you  
31 did the rest of the search. Do you see?

32 A. I totally agree.  
33

34 Q. And, indeed, as I understand it, that is the required  
35 practice. Unless there is a very good reason for not doing  
36 it, that's the way you do it. Even if you have to do  
37 a total body search, you do it in stages, and so far as is  
38 consistent with the need for the search, you might give  
39 them their T-shirt or some upper body item while you are  
40 looking at their under the waist part. Do you agree?

41 A. I agree.  
42

43 Q. You mentioned, Detective Sergeant, that it was  
44 suspected that more strip searches were recorded as having  
45 occurred in 2018 than your management team thought had  
46 actually occurred.

47 A. Correct.

1  
2 Q. What was the basis for that suspicion?  
3 A. Well, I think, your Honour, they were recorded  
4 indirectly, that some people were of the belief that there  
5 were cases where items were volunteered that might have  
6 been removed, say, for instance, from within a bra, and  
7 there was no contact by the police officer at all, and that  
8 may have justified or been defined then as a strip search  
9 because it was within the outer layers of the garment.  
10  
11 Q. So in a case where, for example, they said, "Have you  
12 got any drugs on you?" "Yes." Reach inside the bra and  
13 give it, you think that may have been recorded as a strip  
14 search?  
15 A. Correct.  
16  
17 Q. But if so recorded as a strip search, that would be  
18 a successful strip search, in the sense there was an  
19 outcome?  
20 A. Correct.  
21  
22 Q. There was a find.  
23 A. But it's still recorded as a strip search.  
24  
25 Q. Right, when, strictly speaking, it's not?  
26 A. No.  
27  
28 Q. Say, in this case, the person was wearing a shirt over  
29 a bra and was required to remove their shirt, then she  
30 might say, "Oh, well, I might as well show you and give  
31 you", but having required her to remove the shirt, that  
32 would qualify as a strip search?  
33 A. Correct.  
34  
35 Q. Okay, so it's --  
36 A. Anything - sorry, Commissioner. Anything then - so  
37 a general search, obviously, is constituted by the removing  
38 of the clothing, a jacket, coat, for instance, shoes, socks  
39 and hat. Anything beyond that is defined then as a strip  
40 search.  
41  
42 Q. Right. And we have heard evidence in other cases -  
43 and I think there are judicial decisions - talking about  
44 males, if a male puts his hand in the band of an  
45 underpants --  
46 A. Correct.  
47

1 Q. -- and pulls out the underpants to inspect, that's  
2 a strip search as well?  
3 A. Correct. Correct. Yes.  
4  
5 Q. All right. So you suspected some wrong descriptions  
6 of strip searching?  
7 A. Yes. And, unfortunately, because those events had  
8 then been self-verified, Commissioner --  
9  
10 Q. No-one ever went back to --  
11 A. No. And I don't think it's quite then lawful for me  
12 then to go back into 120-odd, 140 events and change them  
13 based on that. I wasn't there.  
14  
15 Q. Right. But the reason that you would know that was  
16 what happened would be the event would say, for example,  
17 "I asked so-and-so whether she had any drugs on her. She  
18 reached inside her bra and pulled it out"?  
19 A. Correct.  
20  
21 Q. And so that would be evident from the COPS report  
22 itself. So although it's recorded statistically as a strip  
23 search, if you went back, you could at least know what had  
24 actually happened?  
25 A. It's more of a general search. You've still got -  
26 because we have two types, the general search or the strip  
27 search.  
28  
29 Q. Quite. But the point I'm making is if you went back  
30 to it, at least you would know what happened because it  
31 says what happened?  
32 A. Yes, and particularly being a find, there would then  
33 be a more thorough COPS entry done, because particularly  
34 with the adults you would have legal process.  
35  
36 Q. Yes, quite.  
37 A. So you are then getting into a facts sheet.  
38  
39 THE CHIEF COMMISSIONER: Have we finished with 2018 now?  
40  
41 MS DWYER: Almost, your Honour.  
42  
43 THE CHIEF COMMISSIONER: I keep asking. You have noticed,  
44 that, I hope.  
45  
46 MS DWYER: I have. I can stop after this section, but  
47 I do have a chain of thought, if I may, Commissioner.

1  
2 Q. Detective Sergeant, you have an expectation that if  
3 you go back into those COPS entries from 2018, there will  
4 be sufficient detail in the narrative to tell you actually  
5 what happened?  
6 A. Yes, that would be my expectation. It would be my  
7 expectation that the justification is recorded.  
8  
9 Q. Can I ask you to have a look at this document, that  
10 can come up on the screen - it is exhibit 17, your Honour -  
11 8440934. My instructing solicitor is going to provide you  
12 with a copy of that, Detective Sergeant, for ease of  
13 reference.  
14 A. Okay, thank you.  
15  
16 Q. If you could take it from me that that is an analysis  
17 of the Operation Brugge search data that has been performed  
18 by --  
19 A. It is on my screen, is that what you --  
20  
21 Q. Whichever is easiest for you, sir. You will see there  
22 total searches at Splendour in the Grass 512; total strip  
23 searches analysed, 143, et cetera; total young persons  
24 searched, 7. Do you see that?  
25 A. I do see that.  
26  
27 Q. Above the table is this --  
28 A. Could I make a comment, Dr Dwyer?  
29  
30 Q. Please.  
31 A. That I'm not sure where these figures come from.  
32  
33 Q. No, that's why I'm just asking you to accept --  
34 A. Okay.  
35  
36 Q. -- that they were based on the analysis of Commission  
37 staff from COPS entries provided.  
38 A. Because they conflict with the data I have.  
39  
40 THE CHIEF COMMISSIONER: Q. I beg your pardon?  
41 A. They conflict with data I have, Chief Commissioner.  
42  
43 MS DWYER: Q. That's accepted. That's accepted.  
44 A. Okay, sorry.  
45  
46 Q. If I can ask you to have a look at the table, you will  
47 see there that Commission staff have discovered there is

1 a number of general searches in which events suggest it may  
2 have in fact been a strip search - for example, the item is  
3 found in the underwear or internally concealed, there were  
4 19 searches in that category. That's not in line with your  
5 expectations, is it - that is, where there is not clear  
6 evidence in the COPS entry, whether it was or was not  
7 a strip search?

8 A. That's correct.

9

10 Q. So just by way of example, you will see seven down,  
11 ending in 3497, a search located tablets and a resealable  
12 bag of powder hidden in between the cheeks of someone's  
13 buttocks. That certainly suggests a strip search, doesn't  
14 it?

15 A. Not necessarily.

16

17 Q. Why not?

18 A. Well, he could have volunteered it.

19

20 THE CHIEF COMMISSIONER: Q. Subject to being  
21 volunteered, that would be a strip search. If he hadn't  
22 volunteered it and that was discovered by a police  
23 officer --

24 A. Yes.

25

26 Q. -- almost certainly a strip search?

27 A. Correct.

28

29 MS DWYER: Q. You agree that a COPS entry that says  
30 "search located tablets and a resealable bag of powder  
31 hidden in between the cheeks of his buttocks" rather  
32 suggests a search, doesn't it?

33 A. Correct.

34

35 Q. You would have expected that to be recorded as a strip  
36 search?

37 A. Correct.

38

39 Q. Second from the bottom, for example, "Admitted to  
40 having drug concealed in underwear"; if there is nothing  
41 more than that that indicates what type of search it was,  
42 then you are not going to know if it was a general search  
43 and he's produced the drugs or it is a strip search.

44

45 THE CHIEF COMMISSIONER: Q. Or no search at all.

46 A. Correct. And this, Chief Commissioner, can be a bit  
47 of an anomaly as well. Let's take, for instance,

1 Dr Dwyer's question there, ending in 175, "admitted to  
2 having drugs concealed in underwear", obviously, if that  
3 scenario, and then formal process is taken, unfortunately,  
4 sometimes we see entries go on for drug detection - what  
5 was it, drugs concealed, having drugs. For instance, let's  
6 say MDMA, so they record it, then the drug, ecstasy, or  
7 whatever it is, and then put that on as an event, and then  
8 no subsequent incident then as a search. So we don't  
9 actually get recorded then as a person search. What it is  
10 again, it's an education and training for all our staff.  
11 That actually constitutes as search as well. So we want to  
12 see two incidents recorded. We want to see the drug  
13 detection, but we also want to see a search incident put  
14 on.

15

16 Q. But if you say to someone, "Are you carrying any  
17 drugs", and they say, "Oh, well, fair cop", reach in, give  
18 you the drugs and no further search - nothing further is  
19 done, is that still a search?

20 A. Yes. I would --

21

22 Q. Even though, as it were, he's done the search, the --

23 A. Correct. Because I would still regard that as then  
24 a general search. You've brought him in there, you've  
25 stopped, searched and detained that person, obviously,  
26 because you have your reasonable suspicion to do so. He  
27 has volunteered, and it would be my expectation then that  
28 you wouldn't just take that, because --

29

30 Q. No, you would look at his pockets as well?

31 A. 100 per cent, Chief Commissioner, because,  
32 unfortunately, we have what is called then a hand-up, so it  
33 might be just a small amount of cannabis to put us off the  
34 scent because they know they might be entitled to  
35 a cannabis caution.

36

37 Q. That's really a no-brainer, isn't it; if they give you  
38 drugs, you have to at least do a general search?

39 A. That starts to help you with your justification.

40

41 And the reason we ask, then, for that search thing,  
42 Dr Dwyer, is there is then another checking mechanism in  
43 the COPS system, in the search fields, to not only put it  
44 in your narrative, but when you put the date and time and  
45 the registered number of the searcher - because it may be  
46 a male officer instigated the contact, but you have  
47 a female officer - I would put the female officer's details

1 in. Then "Type of search", there's a field that drops  
2 back, so you select one. Then under that are the reasons  
3 for the search. So there actually is a couple of areas  
4 that you can put your justifications in.

5

6 MS DWYER: Q. Was that the case in 2018?

7 A. It has been the case for as long as I can remember.  
8 COPS has been in, I think, since 1994.

9

10 Q. I want to take you to one on page 2 and I will ask you  
11 how to do deal with this. The top entry on page 2, which  
12 I think you have in front of you, 8440935, but if you look  
13 at the hard copy, "Suspect was strip searched" --

14 A. Sorry, Dr Dwyer, which number was it?

15

16 Q. The top entry on the table on page 2 of that document?

17 A. Ends in 788?

18

19 Q. That's the case. So the detail in the event suggested  
20 a strip search. It says:

21

22 Suspect was strip searched with LSD being  
23 located in underwear. The narrative made  
24 it clear a strip search was conducted but  
25 in the incident, it states a person search  
26 took place.

27

28 If you accept that the Commission's analysis is correct  
29 about that, then that is disappointing because the records  
30 aren't accurate?

31 A. Correct.

32

33 Q. Does that suggest to you, looking at that information  
34 now, that there needs to be specific instruction again to  
35 police post 2018 about the importance of getting these  
36 records right?

37 A. And that's what we did in 2019, we put different  
38 things. We removed the right for self-verifications and we  
39 had checking mechanisms in place and we are continuing to  
40 improve those mechanisms.

41

42 THE CHIEF COMMISSIONER: Q. On the debrief, after 2018,  
43 because now you have the benefit of an independent  
44 verification by a more senior officer --

45 A. Correct.

46

47 Q. -- what was their hit rate? In other words, were

1 90 per cent of the COPS reports adequate or only 50? Do  
2 you recall what the - because that would be useful data,  
3 wouldn't it, for training purposes, if you had some idea of  
4 how many needed to go back to the reporting officer?  
5 A. Yes, correct.  
6  
7 Q. Do you happen to know that?  
8 A. No. Oh, off the top of my head, because I think in  
9 2018, from memory, there were 520-odd, I think, events put  
10 on in relation to search things. To be honest, Chief  
11 Commissioner, the majority of those events were quite  
12 adequate, you know, apart - you could get a grammatical  
13 error here and there, you are not just going to return and  
14 resubmit them, you know, for a full stop.  
15  
16 Q. No, quite.  
17 A. But when they start to take on justifications or it's  
18 not the right type of search, because that, obviously, you  
19 know, helps us with different things, too, the type of  
20 search --  
21  
22 Q. Of course, because you need to have, for management  
23 purposes, accurate statistics about this material?  
24 A. We need reliable data, correct.  
25  
26 Q. But what I'm talking about, in 2019, because then you  
27 had independent - you had the verification of it, do we  
28 know or was there a report about how many needed to be sent  
29 back? Or what is your sense of it? Relatively few or  
30 a surprising number?  
31 A. Yes, I would say a surprising number. We were quite  
32 shocked, and I know I was personally, because the data  
33 I had was there was 120 recorded strip searches, of adults.  
34  
35 Q. No, I'm talking about 2019.  
36 A. Oh, 2019? We --  
37  
38 Q. Because that's the year upon which you were  
39 verifying --  
40 A. Yes.  
41  
42 Q. -- you had a verification process?  
43 A. Yes.  
44  
45 Q. People couldn't self-verify?  
46 A. The majority of events were very good. Yes.  
47

1 Q. Well, let's talk more generally with your experience.  
2 Was the quality of the COPS reports consistent with what  
3 you would expect generally --  
4 A. Yes.  
5  
6 Q. -- in the force?  
7 A. Yes.  
8  
9 MS DWYER: Q. My second-last question: your evidence is  
10 clear that each COPS event should clearly state the details  
11 of the searching officer, shouldn't it?  
12 A. Yes.  
13  
14 Q. And did you say that you have statistics yourself that  
15 have been crunched by your command?  
16 A. Yes.  
17  
18 Q. Do you have them available with you?  
19 A. Yes, they are available. We can certainly get them  
20 made available to you, Dr Dwyer.  
21  
22 MS DWYER: I would ask, Chief Commissioner, that they be  
23 provided to the Commission.  
24  
25 THE CHIEF COMMISSIONER: Q. Would you mind arranging to  
26 have them emailed to us?  
27 A. No, certainly.  
28  
29 MS DWYER: Q. Sorry, could I just confirm one thing with  
30 you: could I hand you this document, which is exhibit 47.  
31 We have been provided with this document, a field arrest  
32 form, for Splendour in the Grass. Is it the case that that  
33 is the updated document for 2019?  
34 A. No. That's 2018.  
35  
36 Q. That was, in fact, the 2018 document; is that right?  
37 A. Yes. Correct.  
38  
39 Q. I will hand you this document, exhibit 50, this is  
40 a Splendour in the Grass field arrest form. The two forms  
41 are different.  
42 A. Yes.  
43  
44 Q. I had thought that exhibit 47 was in fact from 2019  
45 and that it is a typo at the top.  
46 A. No.  
47

1 Q. But do you say both forms were active?  
2 A. No. The one that you have just handed me, number 15,  
3 that was the form, I believe, that was used in 2017, and  
4 then someone has obviously - not myself - changed the date  
5 at the top. I examined the form prior to the deployment of  
6 the operation and I believed it didn't have adequate data  
7 in it, so I amended it . So prior to the operation kicking  
8 off in July 2018, that is the form I used, number 47.  
9  
10 Q. I will just ask that you be shown a copy of this, if  
11 I may. I will just hand you a folder of what is a bundle  
12 of different exhibits.  
13 A. Thank you.  
14  
15 Q. Just take, by way of an example, tab 21. Do you see  
16 there that the top page is the old arrest form, it says  
17 "Field arrest form"?  
18 A. I do.  
19  
20 Q. It has the date 2018 on it?  
21 A. Yes, I don't know where that came from, or why they  
22 were using that form.  
23  
24 Q. Okay. And if you look at tab 22?  
25 A. Similar.  
26  
27 Q. The same one. So that's the old version you did not  
28 intend to be used; correct? You are agreeing with me?  
29 A. Yes, I agree.  
30  
31 Q. If you have a look over in tab 23, the same thing, you  
32 will see there on the second page, old field arrest form?  
33 A. Yes.  
34  
35 Q. If I can just ask you to accept from me, officer,  
36 rather than taking you to them, my instructions are that  
37 each of the field arrest forms that were obtained from  
38 Splendour were in fact those old forms?  
39 A. Okay.  
40  
41 Q. So there has been a communication breakdown, hasn't  
42 there, between you and your team, if they were using the  
43 old forms?  
44 A. Yes, because that's the updated form, and if you have  
45 a copy of my form from 2019, you will note that the  
46 change - I mentioned earlier in my evidence about the type  
47 of search and the justification, and that's the other

1 update I did for this year.

2

3 Q. Do you know who was responsible for providing  
4 officers, then, with the updated form that you took the  
5 time to prepare for 2018 that wasn't used?

6 A. No, it was just part of a pack. So what we do, as  
7 I alluded to earlier, each of the team leaders are provided  
8 a pack with the little box, if you remember, with the  
9 plastic bags, the sun cream, et cetera, et cetera, and  
10 forms were put in with that.

11

12 Q. Do you think that there must have been an error,  
13 mustn't there, that the old form was put in with that pack?

14 A. Quite possibly, it would appear that, and I take it  
15 that - I didn't fill that form out, but it's obviously  
16 abundantly clear that that's an old form.

17

18 Q. On the new form, where are the corroborating officers'  
19 details supposed to go? It is tab 50. I think you should  
20 have a copy of that still there. I beg your pardon, it's  
21 tab 47. That can go on the screen.

22 A. This one, yes, that's 2018's form.

23

24 Q. So it's been updated further since then; is that  
25 right?

26 A. Correct. It's now referred to - because I didn't like  
27 the words so much "field arrest", because it is a field  
28 detection or arrest, because we're not actually always  
29 arresting people.

30

31 Q. I see. So is it the case that that should be used  
32 only if there is a find? Should it be used with a nil  
33 find?

34 A. No, that is correct, and that's another thing that we  
35 have made an improvement on going forward for this year,  
36 that we're going to have a form for searches even with no  
37 finds. So then it's another mechanism in order to capture  
38 contemporaneous notes.

39

40 THE CHIEF COMMISSIONER: Q. What's going on?

41 A. Correct.

42

43 MS DWYER: Q. So I just need to clarify, if you have  
44 a look at tabs 47 and 50 that are in front of you --

45 A. Yes.

46

47 Q. -- both of those documents are termed, "Field arrest

1 form Splendour in the Grass 2018"; correct?  
2 A. Correct.  
3  
4 Q. But in fact the evidence reveals that neither of those  
5 forms were used for 2018. Do you agree with me, given what  
6 you have just been shown?  
7 A. Neither of these two forms?  
8  
9 Q. Just let me double-check.  
10 A. No, you showed me documents, I think, in 21 and 22  
11 which were item 50.  
12  
13 Q. So item 50 was used?  
14 A. In the three - yes.  
15  
16 Q. When you had intended exhibit 47 to be used?  
17 A. Correct.  
18  
19 Q. And on exhibit 47, is there space for the  
20 corroborating officer's details to be recorded?  
21 A. Yes. They were then to write it at the top and also  
22 underneath it, the searching officer, because in that  
23 form - and we acknowledged then that the form actually, and  
24 if I could say, in regards to 47, and that's why we changed  
25 it - it is the searching officer, but it doesn't actually  
26 have a field for the OIC.  
27  
28 Q. So that has been updated since?  
29 A. Correct.  
30  
31 Q. Since 2018?  
32 A. So into 2019 there is a different form. It has then  
33 changed slightly.  
34  
35 Q. Does it have a specific reference to the corroborating  
36 officer?  
37 A. We have an area, because we want them to record the  
38 OIC, because, as I said, it could be a male/female  
39 searched, so there is a field there for the searching  
40 officer. But we could send that back to the searching  
41 officer and they would say, "Well, actually that was never  
42 my matter. That was BR5's matter."  
43  
44 Q. So now there is a box to trigger recording the OIC?  
45 A. Yes, and we always wanted to know their areas too,  
46 because you can imagine, when we have 60 or 70 staff, and  
47 we need to return it back to the individual platoons, if

1 you want to call it, or groups, A, B, C, D, E or f, because  
2 then the forms are coming in bulk, when you are dealing  
3 with 400 or 500 forms - yes.

4

5 Q. Do you agree that, for a strip search, you also want  
6 to know who the corroborating officer is?

7 A. Correct.

8

9 Q. Would it be appropriate do you think now to add an  
10 extra box in there or a reference to the corroborating  
11 officer so that is recorded?

12 A. And even so with the support person, whether it is  
13 a parent or guardian, a contact number, who they spoke to,  
14 attempts made.

15

16 Q. So there is always room to update these forms and you  
17 are willing to take on this new information?

18 A. Totally acknowledge that.

19

20 Q. Can you please provide the Commission with a copy of  
21 the 2019 form and any additional improvements that are  
22 made?

23

24 MR COFFEY: Could I just say that I have a copy of that  
25 form and I'm just not sure that this witness is - I don't  
26 want him to give misleading evidence. He doesn't have  
27 a copy in front of him. Some of the things that may be  
28 supposed to be there are not there. I just want to give  
29 him an opportunity to do that. I know that my friend  
30 doesn't have this particular document, but I wonder if the  
31 witness could have my computer to have a look at it.

32

33 THE WITNESS: I have a hard copy in my bag, Chief  
34 Commissioner.

35

36 MR COFFEY: Could I maybe get that hard copy?

37

38 THE CHIEF COMMISSIONER: Yes, by all means.

39

40 MR COFFEY: I can email that through now, Chief  
41 Commissioner.

42

43 MS DWYER: Your Honour, while the detective is getting  
44 that out, could I formally tender exhibits 43 through to  
45 55.

46

47 THE CHIEF COMMISSIONER: Yes.

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CONFIDENTIAL EXHIBITS #43-54 TENDERED

THE WITNESS: Dr Dwyer, there is a copy of the form.

MS DWYER: Q. Thank you very much.

A. And in relation to what I was making reference to about the OIC can whilst there is no box there, it's in our briefing about writing it at the top. But I acknowledge that really is another improvement, that there should be a box to determine OIC, and if different to searching officer, who that is - for instance, male OIC, female searching officer, to record that on the document.

MS DWYER: I will tender that document, if I may, Chief Commissioner.

THE CHIEF COMMISSIONER: Very well.

CONFIDENTIAL EXHIBIT #55 DETECTION FIELD ARREST FORM  
SPLENDOUR IN THE GRASS 2019

MS DWYER: Q. Last question, rather than asking you to do it on the run in the witness box there: given you are nominating several improvements for that form as you think it through, would you be in a position to make those improvements and then provide them to the Commission?

A. Yes, I would.

DR DWYER: Thank you very much. Nothing further, Chief Commissioner.

THE CHIEF COMMISSIONER: Q. I have this question: there was a marked reduction in the numbers of searches, both general and strip searches, in 2019 as against 2018. What do you attribute that to? There's probably more than one explanation, but why do you think that is that very great difference - perhaps you might tell us. What was the number of searches in 2019?

A. Number of searches or strip searches, Chief Commissioner?

Q. Let's deal with strip searches, then.

A. So strip searches, the total was 16 - 14 adults, two children.

Q. That is in marked contrast to 2018.

1 A. Very much so.

2

3 Q. And I think I am right in saying that even more people  
4 attended in 2019 than had attended in 2018?

5 A. Correct.

6

7 Q. So what do you attribute that marked reduction in  
8 searching to?

9 A. I think it's a number of reasons, Chief Commissioner:  
10 firstly, education and training for staff. We are better  
11 equipped in regards to the legislative requirements. In  
12 2019 I think we took a number of positive steps and we  
13 learnt, not just with us in general, but I think as an  
14 organisation. Our briefings - I think our briefings, and  
15 I take responsibility for that - my briefing in 2019 was  
16 vastly different to 2018. I learnt in the 12 months  
17 certain things, and I worked in other festivals leading up  
18 to that. I did Falls. I was the operation coordinator for  
19 the drug dog. Then I did Blues. So I did Falls in the new  
20 year period, I then did Blues in April and then leading  
21 into Splendour. I learnt myself and I took that on board  
22 as well.

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Also equipment - I believe the initiative of the  
Police Service having body-worn cameras has an effect on that as  
well, and I'm not saying people then see it, that they are  
being recorded, but I just think that the initiative of  
body-worn cameras is fantastic as a use of stuff. For some reason  
I just think people - we had a lot of people volunteering  
stuff, and we also had the initiative there working with  
Splendour management in 2018, and more so into 2019, with  
the eviction tent, that then people understood - and again,  
could I just make a declaration there, that this is not  
readily known what I'm about to say.

THE CHIEF COMMISSIONER: Well, in that case, don't; no,  
don't say it. Perhaps if you wouldn't mind recalling what  
it is and asking Mr Coffey, in due course, to let us have  
a statement about it.

MR COFFEY: Yes, of course.

THE WITNESS: It's in my 54 statement, I allude to it.

THE CHIEF COMMISSIONER: Q. If it is there, we don't  
need it.

A. We took some positive measures with the organisers

1 leading forward. It is not there that we were being the  
2 fun police, but, obviously, we were the last sort of  
3 barrier trying to recover the prohibited drugs. Sadly,  
4 whilst there was a reduction in searches generally - we  
5 went under the 400 marks, or I think off the top of my head  
6 we were about 414, give or take a few, with 16 of those  
7 being strip search, but, sadly, the seizure of our  
8 prohibited drugs was just over 3 kilos.

9

10 Q. So much greater?

11 A. So much greater. What we did, and as I said, I took  
12 a number of things on board, I learnt and I changed my  
13 strategy and we then went more after the suppliers, per se,  
14 and we had a stronger approach, if I could say, locally,  
15 because we only had --

16

17 MR COFFEY: Sorry, Chief Commissioner could I object to  
18 this questioning, just on the basis that some of this is  
19 about the strategy that is being deployed in crime  
20 reduction. It is a fine balance.

21

22 THE CHIEF COMMISSIONER: Perhaps we don't have to go there  
23 anyway.

24

25 THE WITNESS: Sorry.

26

27 THE CHIEF COMMISSIONER: I think you have answered my  
28 question.

29

30 THE WITNESS: Yes, sorry.

31

32 MS DWYER: Q. I am asked to just clarify one thing about  
33 an acronym. You used the term OIC, officer in charge,  
34 obviously, you meant?

35

36

37 Q. Do you mean the officer in charge of that particular  
38 search of an individual or something else?

39

40 A. No. So the officer in charge of, say, that incident.  
41 So if it is individual A that has the initial contact, what  
42 we say - or if they're in pairs - is that they've got  
43 ownership of that matter. So there may be two male  
44 officers, but it may be a female individual they are  
45 searching. They have to take some ownership. They don't  
46 then delegate it back to the female; like, it's not up to  
47 our female police officers to have carriage of all females  
and vice versa, males with males.

1  
2 MS DWYER: Thank you.  
3  
4 THE CHIEF COMMISSIONER: Do you have any questions?  
5  
6 MR COFFEY: Just very briefly, please, Chief Commissioner.  
7  
8 <EXAMINATION BY MR COFFEY:  
9  
10 MR COFFEY: Q. There was a running sheet used in both  
11 the 2018 operation and 2019 operation?  
12 A. That's correct.  
13  
14 Q. Could you explain to the Chief Commissioner what the  
15 purpose of the running sheet was?  
16 A. In relation to data entry and exhibit management?  
17  
18 Q. Please.  
19 A. So Mr Coffey's asked, Chief Commissioner, back in our  
20 data entry, we have - there is a number of aspects to our  
21 operation, particularly with regard to the drug detection  
22 dog, so we have exhibit management staff on site at the  
23 festival that commenced the data entry, and they do  
24 a spreadsheet, we start off a sheet with date, time, place  
25 and type of drugs, the name of the individual. So then we  
26 collate our data as the day goes on, because obviously  
27 I have to do a return. I can't be in two places at once.  
28 So I'm not exactly aware of what's going on in different  
29 areas, but then it's a good document for me to look at at  
30 the end of each day and then we utilise that for a number  
31 of reasons.  
32  
33 Whilst the exhibit management starts at the festival,  
34 we do have then other data entry people back at Tweed Heads  
35 police station assisting the staff on the ground to  
36 commence the COPS entries. But there is a live running  
37 sheet that takes place at the police operations centre, or  
38 the command post, per se.  
39  
40 Q. In relation to the reason why staff, other than those  
41 staff who are police officers who are doing the detections,  
42 are creating the COPS event, would you agree with me that  
43 the sole reason for that is because an EFIMS, an  
44 exhibit record, cannot be created on that electronic system  
45 without an event number already being in existence?  
46 A. Correct.  
47

1 Q. The Chief Commissioner rightly pointed out earlier  
2 when you were talking about the youth command and the  
3 presence of the youth command in 2019 and, sorry, the  
4 specific thing that was pointed out was that the youth  
5 command could not be present during the course of a search  
6 because they are police officers?

7 A. Yes.

8  
9 Q. Could you tell the Chief Commissioner about the  
10 involvement of PCYC?

11 A. Yes. So the PCYC were there present as well. They  
12 had a stall. The commander had them represent the youth  
13 command as unsworn staff there. They were obviously in  
14 their attire, had some banners out there to interact with  
15 the youth as well. They were called upon when required,  
16 and we used some of those staff during our interactions  
17 with the youth. Again, they are very good at their job,  
18 what they do in their day-to-day job.

19  
20 THE CHIEF COMMISSIONER: Q. You couldn't use them as  
21 a support person in a strip search, could you?

22 A. Yes. Some of those are unsworn.

23  
24 MR COFFEY: Could I clarify that. Some of the PCYC,  
25 although it is an affiliation of the police force, are  
26 volunteers or persons who are not employed by NSW the  
27 Police Force, they are from outside in the community.

28  
29 THE WITNESS: Yes, correct.

30  
31 THE CHIEF COMMISSIONER: Q. So it would be those  
32 persons?

33 A. Correct.

34  
35 MR COFFEY: Q. Just taking off from the question from  
36 counsel assisting in relation to amendments and proposing  
37 further amendments --

38 A. Yes.

39  
40 Q. -- in terms of COPS, you've had particular COPS event  
41 before you today and you've seen that earlier, the one in  
42 relation to the young girl?

43 A. Yes.

44  
45 Q. And you've given some evidence that it is not an  
46 acceptable level of narrative in that form?

47 A. Yes.

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Q. Is it the case that one of the things that you may consider doing is making suggestions about improvements to the narrative process so that the narrative requires police officers to record the basis of how they form their suspicion, what actually happened throughout the search and what happens afterwards?

A. Correct. We've got - sorry, Mr Coffey, we've got the capability there, to what we call a generic narrative, so we can design - it's, like, say, with some of the jobs we go to, we have a point plan that they have to tick, so with a break and enter about canvassing, et cetera, a number of things, a 15-point plan - that we have the capabilities to create a generic narrative, as again another trigger for the staff member to fill that in.

THE CHIEF COMMISSIONER: Q. It prompts them?

A. It prompts them.

MR COFFEY: Q. Just finally, in relation to this concept under section 33 about reasonableness and safety, in your police experience, you would be concerned - you are concerned, based on all of the attendances at the gaol and also other festivals, that all ranges of people, whether they are adults or young persons, conceal drugs inside themselves?

A. Yes.

Q. And you said you are concerned by that because the items that they use to conceal those drugs inside their cavities may burst or may not hold the drug within them to protect them from being ingested totally by their body?

A. 100 per cent. Couldn't agree more.

Q. Have you had any specific experience with this happening?

A. Yes.

Q. What is that experience?

A. Yes, not so much at the festival, although I have seen some terrible things at the festival where kids have obviously ingested it leading up to. I have a short video, actually, on my work phone of a girl, sadly, at this year. We didn't even search her, we just got her straight to the medic because we knew; her friend had told us what happened. And more so with the gaol, that obviously what we were calling the mules, then, trying to have stuff



1 inserted inside their person and we've had to take a female  
2 to hospital and get --  
3  
4 THE CHIEF COMMISSIONER: Q. Still, the point is the  
5 Crimes (Forensic Procedures) Act is very specific about  
6 what to do when there is a suspicion of concealment within  
7 the body cavity.  
8 A. Yes.  
9  
10 MR COFFEY: Could I clarify that? You said the Crimes  
11 (Forensic Procedures) Act, is that in fact what your Honour  
12 means, or LEpra?  
13  
14 THE CHIEF COMMISSIONER: No, I mean that. LEpra doesn't  
15 tell you anything about concealment. Well, it does maybe  
16 in what I might call a left-handed indirect way. It really  
17 doesn't allow you to do anything.  
18  
19 MR COFFEY: Yes.  
20  
21 THE CHIEF COMMISSIONER: There is an issue with tampons,  
22 but I think that is not for a public hearing.  
23  
24 MR COFFEY: Could I ask that that be extended in respect  
25 of specifically that word in a non-publication order in  
26 terms of police methodology? I'm concerned about what's in  
27 the search manual and that being reported in the media.  
28 I would ask --  
29  
30 THE CHIEF COMMISSIONER: I have only said it is an issue.  
31 I haven't said how it is resolved.  
32  
33 MR COFFEY: Certainly.  
34  
35 THE CHIEF COMMISSIONER: That, I think, is a matter of  
36 public notoriety. It is obvious that I am more than  
37 sympathetic about the operational needs of police, but at  
38 the same time, a certain degree of public information needs  
39 to be out there. Aside from anything, you are hoping you  
40 are going to be deterring some people.  
41  
42 MR COFFEY: Could I just have one moment, your Honour?  
43  
44 THE CHIEF COMMISSIONER: Yes.  
45  
46 MR COFFEY: Q. Detective Sergeant, you are aware that  
47 last night the news reported that this inquiry was

1 inquiring in respect of whether police were seeking the  
2 consent of police officers [sic] to perform a strip search?  
3 A. Yes.

4  
5 Q. It is your understanding that the legislation doesn't  
6 in fact require police to seek the consent or permission of  
7 a parent or guardian, but it is very clear what the  
8 legislation actually requires?

9 A. Correct.

10  
11 Q. My final question is in relation to something --

12  
13 THE CHIEF COMMISSIONER: I suppose insofar as consent is  
14 material in that respect, it's probably fair to say that  
15 you need the consent of the person being searched to having  
16 a parent or guardian present.

17  
18 MR COFFEY: Yes.

19  
20 THE CHIEF COMMISSIONER: Sorry, a young person.

21  
22 MR COFFEY: Of course, Commissioner. The point being that  
23 the police were not seeking the consent of the parents to  
24 do the search, but --

25  
26 THE CHIEF COMMISSIONER: No, no, quite.

27  
28 MR COFFEY: Q. The final question in relation to --

29  
30 THE CHIEF COMMISSIONER: Although, I think I will be  
31 saying something in the report about the duties of an  
32 independent person or parent and guardian in safeguarding  
33 the interests of the child. One of them would be to  
34 interrogate the police officer about why the search is  
35 taking place. I think they would be entitled to know that  
36 and, indeed, that's something a police officer is obliged  
37 to tell the person being searched. So there are some  
38 interactions between - I think it is expected that a parent  
39 or guardian or independent person may be interacting with  
40 police, because the young person may be frightened or  
41 worried or just too young to be able to take care of their  
42 own interests.

43  
44 For example, in the case of that young lady, on the  
45 assumption that what she says is true, a parent or guardian  
46 might say, "Well, look, let her put her coat on", for  
47 example". There are a number of interactions. They don't

1 have to be just there silently watching what's going on.  
2  
3 MR COFFEY: No, of course. Thank you, Chief Commissioner.  
4 Those are my questions.  
5  
6 THE CHIEF COMMISSIONER: Yes. Do you have any questions?  
7  
8 MS CHAPMAN: Yes, just a few, Chief Commissioner.  
9  
10 <EXAMINATION BY MS CHAPMAN:  
11  
12 MS CHAPMAN: Q. Detective Sergeant, in one of your  
13 answers when you were shown some data from counsel  
14 assisting, you indicated that the analysis search data that  
15 you were shown conflicted with your own data. What did you  
16 mean by that?  
17 A. We have had a review, with the assistance of our  
18 senior analyst at Tweed-Byron, and I note there on the  
19 document Dr Dwyer gave me, total strip searches indicates  
20 143. I had the data at 120 for adults and 4 for children.  
21  
22 Q. That's just 2018?  
23 A. 2018.  
24  
25 THE CHIEF COMMISSIONER: Q. I'm not sure that I have  
26 seen that. Would you mind letting us have a copy of that?  
27 A. Yes, I'm in the process of getting that acquired and  
28 I will send it to Mr Coffey.  
29  
30 THE CHIEF COMMISSIONER: Right.  
31  
32 MS CHAPMAN: Q. In relation to when it is necessary to  
33 caution someone who has been positively indicated by the  
34 drug dog, there has been some evidence about that. What is  
35 your view about when that is necessary?  
36 A. So in relation to - and how - it was probably remiss  
37 of me to say in my evidence that at the briefing, a member  
38 of the dog unit is also in attendance and provides their  
39 own briefing to the staff involved in the operation, Chief  
40 Commissioner. If I could go so far as to say then we have  
41 another briefing on site, just to --  
42  
43 THE CHIEF COMMISSIONER: Q. I don't think that's the  
44 question.  
45 A. No, I was just --  
46  
47 Q. I beg your pardon.

1 A. And then we have another mini briefing just to say -  
2 particularly for those who haven't been to Splendour  
3 before, so they get a feel for the area. Then the dog  
4 unit - because we only have two start early. We then have  
5 four, because they are staggered starts, obviously. So  
6 then four more come in, they give obviously their own spiel  
7 or warning towards a patron as they come in. I'm obviously  
8 not privy to that, but I have heard it on a number of  
9 occasions. That's not what we would call the official  
10 caution, under the Evidence Act. It's my expectation that  
11 that is delivered at the time, when you believe that person  
12 is then a suspect or if you've detected an offence and that  
13 you are about to then officially question those  
14 individuals, that you would afford them their legal right  
15 to say, obviously, "You don't have to say or do anything",  
16 et cetera.

17

18 MS CHAPMAN: Q. There was evidence earlier today about  
19 some errors - my first question is whether you are aware of  
20 this evidence - in relation to the weight of drugs found -  
21 that is, an error or a discrepancy between the COPS event  
22 and the facts sheet. Were you privy to that evidence?

23 A. No.

24

25 Q. Are you able to describe the procedure in terms of the  
26 continuity of the drugs found or the exhibit, if you like,  
27 at the music festival?

28 A. Okay, so a quick overview for that. As I explained to  
29 the Chief Commissioner, we have an exhibit team on site at  
30 Splendour, as well as back at the station as a final thing.  
31 They are charged with booking up the exhibits that are  
32 detected. So we have the scenario then, a patron is then  
33 found, whether an adult or a child, with drugs on them, by  
34 individual officers.

35

36 They are brought, then, back to one of the compounds,  
37 the search compounds, and we have tables all set out. They  
38 then get sat down and then they start - the officer will  
39 start to fill out the form, the detection form, going  
40 through obviously all the details, and then it's based on  
41 that. There may be an interview take place, whether it is  
42 on a dictaphone, depending on the nature of the offence, or  
43 whether it requires an electronic recording to take place.

44

45 So then what happens is the individual officer will  
46 make some contemporaneous notes, take some photos.  
47 I provide them videos and photographic equipment there - so

1 that could be the first one - scales, because they need to  
2 be weighed in the presence of the individual.

3  
4 After that has been completed, they are then provided,  
5 as I said, some small sandwich bags, some small resealable  
6 bags, to put the item into. Let's say hypothetically it's  
7 three ecstasy tablets, even though they may be in a bag,  
8 just to protect those, they are then put in a little  
9 sandwich bag.

10  
11 THE CHIEF COMMISSIONER: Q. Can we just go back a step?  
12 My understanding is, let's suppose a small bag or  
13 glad-wrapped MDMA is found in a pocket. That is weighed.  
14 Now, as I understand it, it's not appropriate for the  
15 individual tablets to be handled by the searching officer?  
16 A. No.

17  
18 Q. The whole item is weighed. A picture is taken so you  
19 can see that it's in something, but what is recorded is the  
20 entire item?

21 A. It's weighed in its gross form.

22  
23 Q. And the gross form remains the exhibit?

24 A. Correct.

25  
26 Q. If the laboratory needs to examine it, they will  
27 extract the substance?

28 A. Correct.

29  
30 Q. And they will then weigh the substance, which is  
31 obviously going to be slightly less because the packet will  
32 always weigh something?

33 A. Correct.

34  
35 Q. And then they will analyse it and tell you what it is  
36 or isn't. Now, is that the process?

37 A. Yes, that is.

38  
39 Q. So police, as I understand it, never actually handle -  
40 unless they have to, I mean, if the pills are loose in the  
41 pocket, that's a different matter.

42 A. Yes.

43  
44 Q. But if they are in a packet of some kind, they are  
45 left in that packet, so far as the police are concerned,  
46 and the police always handle that exhibit with gloves?

47 A. With gloves on. You want your staff to have minimal

1 contact, obviously, with the prohibited drugs. There could  
2 be occasions, and it's not a bad practice, that you may  
3 have similar types of baggage there available, empty ones,  
4 and we have the capability, obviously, to weigh that.

5  
6 Q. So you can deduct?

7 A. Correct.

8  
9 Q. You can calculate weight?

10 A. So you start to get, then, a more accurate  
11 understanding of what - of the gross amount. Because  
12 obviously - and I know while the weight is important, it's  
13 still only just, obviously, an offence, possess under  
14 section 10.

15  
16 Q. Quite. By and large, there are exceptions, but  
17 overwhelmingly these are small quantities?

18 A. Correct. So, ma'am, sorry. And then, so, we then  
19 have - and that's purely for the protection of our staff,  
20 to put it in there in a second bag, if they are in a bag.  
21 That's purely just in case it ruptures, because, as you can  
22 imagine, there are that many exhibits going on and there is  
23 a fair bit happening. So then the little sandwich bag goes  
24 in - no, the drug goes in the sandwich bag. With this  
25 form, that sandwich bag then goes in an A4 resealable bag,  
26 clear resealable bag.

27  
28 There's then a supervisor in charge of a drug box. It  
29 is a locked drug box. There are two keys. The supervisor  
30 will have one on. Say, hypothetically, that was me,  
31 I would keep that key in my pocket or on my person  
32 somewhere. The other key is with the exhibit sergeant back  
33 at operation centre.

34  
35 I then maintain control over that box. That box does  
36 not leave my sight, so I have continuity of the drugs that  
37 come in. So I'm in charge of area A. As the staff come in  
38 from the three teams that are my unit, or four teams, it  
39 might be, when they are finished processing the individual,  
40 they will then bring that item to me. I then secure it in  
41 the box and then I maintain, as I said, integrity and  
42 continuity of that box.

43  
44 Once I believe there are sufficient items in there -  
45 you know, there might be 10, there might be 20, depending  
46 on the circumstances - I will then make contact with the  
47 operations centre and say, "Could I have an exhibit officer



1 down to me, please?" They will bring me another box with  
2 another key and then I will hand over custody. That then  
3 goes back to the operations centre to the exhibits sergeant  
4 and his staff. Then it's then and there that, as Mr Coffey  
5 pointed out, we can't then assign that an EFIMS number  
6 without creating a COPS entry. So someone, either there or  
7 at Tweed Heads, will start to create a COPS entry for that  
8 item. It is then booked up, again, photographed, weighed,  
9 and then --

10

11 Q. And the form is used, amongst other things, to start  
12 off that COPS entry?

13 A. Correct.

14

15 Q. Because that's the information, the basic  
16 information --

17 A. The basic information.

18

19 Q. -- identifying where it comes from?

20 A. Yes. It's only the basic information to start it,  
21 because we only need a couple of screens to get a generic -  
22 to get a number. Sorry, I shouldn't say "generic",  
23 a unique number. That form is retained over here, per se,  
24 in a corner ready to hand back to the OIC. The drug then,  
25 and only at that point. Is put in an actual drug bag, an  
26 issued drug bag, a drug security bag, with a unique  
27 identifying number, and sealed. That then goes in another  
28 secure cabinet ready to be transported back to Tweed Heads  
29 police station to go in our drug safe.

30

31 Then these forms, then, the finalising as we would go,  
32 are then handed back to me at the end of each day and then  
33 I go amongst the teams and I give them back to the  
34 individual officers, and see down the bottom "Action  
35 taken", whether it is down here, and then it says down  
36 here, "Photographed, registered number", and this is the  
37 grey areas by the exhibit staff. So it's bag sealed and  
38 then it shows the continuity. So I hope that explains  
39 that.

40

41 THE CHIEF COMMISSIONER: That was a little more  
42 information than you were hoping for.

43

44 MS CHAPMAN: That was helpful.

45

46 THE WITNESS: Sorry.

47

1 THE CHIEF COMMISSIONER: That's all right. Once you ask  
2 the question, you have to take the answer. Yes?

3  
4 <EXAMINATION BY MR EURELL:  
5

6 MR EURELL: Q. Detective Sergeant, you told us about  
7 some improved forms from 2018 to 2019. Were any  
8 improvements made to the operational orders in 2019 as  
9 compared to how they looked in 2018?

10 A. Yes.

11  
12 Q. Did they include, for example, more detailed  
13 instructions on the search methodologies which should be  
14 adopted in the case of young people as opposed to adult  
15 subjects?

16 A. Yes, yes.

17  
18 Q. And was there a reminder of police of the requirements  
19 in LEPR to make records where there is a search of a young  
20 person?

21 A. Yes, and in my briefing that the Chief Commissioner  
22 has access to, I reinforced that, about notes and records.

23  
24 Q. How long have you been a police officer for?

25 A. Twenty-five years.

26  
27 Q. You would have attested from the police academy prior  
28 to LEPR coming into existence or into effect?

29 A. Correct.

30  
31 Q. During that period of time prior to LEPR, were police  
32 officers - I don't think the training included anything  
33 about the record-keeping requirements for searches of young  
34 people; is that right?

35 A. No, but we were always trained to make notes. I think  
36 it's - I think note-taking can't be overstated, the  
37 importance of keeping good, detailed, meticulous notes.

38  
39 Q. That might be right, but my question is a slightly  
40 different. The training you received at the police academy  
41 prior to LEPR coming into force wouldn't have trained  
42 police officers to make records where a search is conducted  
43 of a young person in the absence of an adult?

44 A. No.

45  
46 Q. Could I just ask you to have a look at the document  
47 that has barcode 8440934. It is the statistics.

1 A. Yes.  
2  
3 Q. Could you look, for example, at the fourth entry in  
4 that table, event number 70065680?  
5 A. 680, yes.  
6  
7 Q. The fourth entry down?  
8 A. Yes.  
9  
10 Q. It says:  
11  
12 Removed a condom from her vagina containing  
13 a number of items.  
14  
15 A. Yes.  
16  
17 Q. That would indicate, wouldn't it, that that event was  
18 not a strip search, per se, but, rather, that the person  
19 who had the drugs concealed internally produced them  
20 voluntarily?  
21 A. Yes.  
22  
23 Q. And if you have a look at the tenth entry, event  
24 number 68267803?  
25 A. Yes.  
26  
27 Q. Do you see there it says, "Person retrieved a plastic  
28 bag from underpants"?  
29 A. Correct.  
30  
31 Q. That would suggest, wouldn't it, that the suspect or  
32 offender voluntarily produced the drugs as opposed to  
33 a strip search?  
34 A. Yes.  
35  
36 THE CHIEF COMMISSIONER: Well, I think there is a bit of  
37 confusion here that the sergeant has already explained.  
38 First of all, it is a bit difficult, because these entries  
39 were not designed to deal with the kind of question that  
40 you are asking.  
41  
42 MR EURELL: I accept that these are not objective  
43 statements of what has occurred and that the problems that  
44 have been alluded to by the Commission exist. I just want  
45 to make --  
46  
47 THE CHIEF COMMISSIONER: There is another difficulty. The

1 point made by the sergeant is you get someone who  
2 presumably is asked, "Have you got anything", says, "Yes,  
3 I'm concealing", and delivers it, almost certainly that  
4 would provide a proper basis for, first of all, certainly  
5 a general search; do you agree, Detective Sergeant?  
6 A. Yes.

7  
8 Q. And likely a strip search also to check whether there  
9 was concealment in underpants or some other place; do you  
10 agree?

11 A. Yes.

12  
13 Q. I think the problem is that those indications - and  
14 I haven't read those particular notes. It's true that, in  
15 the circumstances, that condom was not discovered by the  
16 officer, but it's very likely it was produced by the person  
17 because a strip search was about to take place. So the  
18 cause --

19  
20 MR EURELL: May I just --

21  
22 THE CHIEF COMMISSIONER: Your question assumes a cause and  
23 effect which I think frankly is unlikely.

24  
25 MR EURELL: Chief Commissioner, if the implication is  
26 nothing more than the drugs might have been produced as the  
27 result of threat of a search, whether it be strip search  
28 or a general --

29  
30 THE CHIEF COMMISSIONER: No, this is not designed to lead  
31 to an inference one way or another whether there was  
32 a strip search. These are just examples of the production  
33 of drugs.

34  
35 MR EURELL: If that's the case, then I will leave this be.

36  
37 The reason that arose, Chief Commissioner, is that you  
38 might see, just above the table, what is recorded is that  
39 they may have in fact been strip searches, so I'm not sure,  
40 for example, that that necessarily follows, and, in fact,  
41 is even the most consistent inference where you are talking  
42 about a young person removing drugs from an internal  
43 cavity, because it's not going to be discovered by a strip  
44 search.

45  
46 THE CHIEF COMMISSIONER: No, no, but the very point that  
47 that is seeking to make is the actual circumstances in

1 which that is produced are not contained in the COPS  
2 report, when plainly they should be. So that is what they  
3 are examples of.

4  
5 MR EURELL: I will move on from that. I have just  
6 a couple of quick questions.

7  
8 Q. It is well known, or a notorious factor within law  
9 enforcement circles, isn't it, that the way that people try  
10 to bring drugs into music festivals and other sort of dance  
11 parties where they are commonly used is by concealing them  
12 internally?

13  
14 THE CHIEF COMMISSIONER: A way?

15  
16 MR EURELL: The preferred way.

17  
18 THE CHIEF COMMISSIONER: You said "the way".

19  
20 MS DWYER: I object to that. How could it possibly be put  
21 that it is the preferred way to bring drugs into a music  
22 festival?

23  
24 THE CHIEF COMMISSIONER: Okay, it's late in the afternoon.

25  
26 MR EURELL: I will use the construction that you have  
27 suggested, Commissioner.

28  
29 Q. Is that a way that it is done?

30 A. Yes.

31  
32 Q. Just finally, has any consideration been given in  
33 future planning of these events to giving search teams,  
34 say, regular breaks, every hour, every two hours, to  
35 actually make their records on the COPS system  
36 contemporaneously rather than doing it all at the end of  
37 a 10-hour shift?

38 A. No, that's an excellent point. In 2019, again, that  
39 was another thing - and thanks for bringing that up, I had  
40 forgotten that point - that, again, we had probably a few  
41 more advances in technology, or not so much, we had the  
42 capabilities but our command was lucky enough to acquire  
43 more devices, they are known as MobiPols, and they are like  
44 a mini computer and they have the capability of doing  
45 certain things, to commence COPS entries and the like and  
46 search data and holdings, and we also had some more  
47 computers, laptops, with the capabilities of starting that.

1 And that was another thing that I took on board, that some  
2 of these poor staff members had been out on their feet for  
3 eight hours searching and then, you know, we wanted them to  
4 sit there and record, you know, 15 COPS entries at the end  
5 of the day.

6  
7 THE CHIEF COMMISSIONER: Q. It is a tough call.

8 A. You know, so we acknowledged that.

9  
10 Q. That's not a recipe for efficiency.

11 A. No. We took that on board, hence 2019 we had - and  
12 then we will do that again more so in 2019, to say, "Well,  
13 how about you just quickly" --

14

15 Q. 2020?

16 A. Sorry, Commissioner, yes, 2020.

17

18 MR EURELL: Thank you, Chief Commissioner.

19

20 <EXAMINATION BY MS KLUSS:

21

22 MS KLUSS: Q. Do I understand it correctly that as of  
23 2019, when a search is being conducted, there are now two  
24 police officers present, one with a body-worn camera; is  
25 that correct?

26 A. It is what we would say is best practice.

27

28 Q. And that best practice, with the body-worn camera,  
29 indicates to the person being searched that the camera  
30 flashes and lights up to show that there is a recording  
31 occurring?

32 A. No, because the camera is behind the person.

33

34 Q. I see. Are they informed --

35 A. Yes.

36

37 Q. -- when the camera is operational?

38 A. Yes, you have to inform them and seek their consent  
39 that the recording --

40

41 Q. Thank you. As of 2018, was the interpretation of  
42 LEPR that it was one police officer of the same sex who  
43 would conduct the search to provide the minimum possible  
44 intrusion into the privacy of the person?

45 A. Yes, correct.

46

47 MS KLUSS: Thank you.

1  
2 THE CHIEF COMMISSIONER: Thank you, officer. You are free  
3 to go.  
4  
5 THE WITNESS: Thank you, Chief Commissioner. I have got  
6 those documents there. I will just leave them there.  
7  
8 <THE WITNESS WITHDREW  
9  
10 MS DWYER: Your Honour, might I call, then, the last  
11 witness for today - I think, perhaps not - Officer BR6.  
12  
13 MS HILL: Chief Commissioner, may I be excused for one  
14 moment, please? Thank you.  
15  
16 MS DWYER: Before my learned friend is excused, would  
17 your Honour propose that this is the last witness for  
18 today, because I misspoke.  
19  
20 THE CHIEF COMMISSIONER: Yes, I think so.  
21  
22 <OFFICER BR6, sworn: [4.07pm]  
23  
24 THE CHIEF COMMISSIONER: You may be seated. I'm sorry we  
25 have kept you waiting so long.  
26  
27 THE WITNESS: That's okay.  
28  
29 THE CHIEF COMMISSIONER: I think, Mr Hall, you seek leave  
30 to appear for this witness?  
31  
32 MR HALL: Yes, Commissioner.  
33  
34 THE CHIEF COMMISSIONER: That leave is granted.  
35  
36 MR HALL: Thank you.  
37  
38 THE CHIEF COMMISSIONER: I should make some things clear,  
39 although I am sure that Mr Hall has already told you this.  
40 You have to answer every question you are asked, unless  
41 I tell you you don't have to.  
42  
43 THE WITNESS: Yes.  
44  
45 THE CHIEF COMMISSIONER: You have to produce anything you  
46 are asked to produce, unless I tell you you don't have to.  
47

1 THE WITNESS: Okay.  
2  
3 THE CHIEF COMMISSIONER: You may object to answering or  
4 producing, but you must still answer or produce, but the  
5 effect of your objection is that your answer or what you  
6 produce cannot be used against you in any proceedings,  
7 except under the Police Act --  
8  
9 THE WITNESS: Okay.  
10  
11 THE CHIEF COMMISSIONER: -- for perjury of this Commission  
12 or contempt of this Commission, if you should breach any  
13 order. Do you understand that?  
14  
15 THE WITNESS: Yes, I do.  
16  
17 THE CHIEF COMMISSIONER: Now, I think you have probably  
18 been told, I can make a declaration that avoids the need  
19 for you to object to every question or object to every  
20 request, and I take it you want me to make that  
21 declaration?  
22  
23 THE WITNESS: Yes, I do.  
24  
25 THE CHIEF COMMISSIONER: Very well. I make a declaration  
26 pursuant to section 75 that all answers and other things  
27 given by this witness will be regarded as having been given  
28 on objection by the witness. Yes, thank you.  
29  
30 <EXAMINATION BY MS DWYER:  
31  
32 MS DWYER: Q. Officer, may I hand you, please,  
33 a schedule of code names. You will see, I think, your name  
34 there as Officer BR6.  
35 A. That's correct.  
36  
37 Q. Do you see your colleagues' names also listed there  
38 with code names against them?  
39 A. Yes, correct.  
40  
41 Q. When I ask you, if I do, about the name of one of your  
42 colleagues, would you mind, please, using the code name?  
43 A. I will try to remember that, thank you.  
44  
45 Q. Can I ask you, please, just to let us know what your  
46 role is within the police force?  
47 A. Yes, I'm a youth liaison officer at Tweed-Byron.

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Q. How long have you held that role for?

A. At Tweed Heads for seven and a half years, and previously to that at Blacktown for two and a half years.

Q. When did you first attest in the police force?

A. 14 May 2007.

Q. Did you spend a period of time in general duties before specialising as a youth liaison officer?

A. That's correct, about two and a half years at Blacktown.

Q. Aside from music festivals, what does your role generally involve?

A. So as the youth liaison officer, part of my job is to go into schools and educate young people about lots of things - cyber crime is obviously one big one; whether it is drug related or assaults, sexual assaults, things like that, and that is preschools, primary schools and high schools. Part of my job as well is to conduct cautions, under the Young Offenders Act and also attend youth conferencing. I also give advice to my colleagues in relation to the Young Offenders Act and things like that.

Q. Have you attended a music festival for the purposes of providing assistance to general police?

A. Yes, I have.

Q. When was the first time you did that?

A. Do you mean in the role as a youth liaison officer?

Q. Yes.

A. In a role as a youth liaison officer, it would be the recent Splendour in 2019.

Q. It follows, doesn't it, that you did not have any role in at Splendour in the Grass in 2018?

A. That's correct.

Q. So in 2019, what was your role at Splendour in the Grass?

A. Yes, so my role was to be as a youth liaison officer at the music festival and to assist other police in obviously the legal process, if a young person was to come into custody, as well as I liaised with the Byron Bay youth services and was able to, in conjunction with them,

1 provide - they actually provided some people to assist with  
2 being independent people for the young people if they  
3 didn't have parents or guardians present.  
4

5 Q. For the caution or anything that was delivered after  
6 a find of drugs, for example, or prior to that, for  
7 a search?

8 A. No, it would be prior to that. So if a person  
9 obviously got brought into custody or brought into - under  
10 police, into the tent, so then we had an independent  
11 person, which would be one of the youth workers from the  
12 Byron Youth Service, to be present so that they had some  
13 form of adult presence so that they could supply some sort  
14 of support for them.  
15

16 Q. So arrangements were made in 2019 for youth workers  
17 from the Byron Youth Service to be available as the person  
18 who was capable of representing the interests of a young  
19 person who was going to be strip searched if they didn't  
20 want their parent or guardian; is that right?

21 A. I believe so. That was the option there, yes.  
22

23 Q. And were they the only persons who were made available  
24 for that purpose?

25 A. Yes, as far as I'm aware.  
26

27 Q. Did you have any conference with them before the 2019  
28 Splendour festival to discuss what their role would be?

29 A. I didn't have an official conference. I had  
30 a conversation with one of the ladies from there, from the  
31 Byron Youth Service, and we discussed - because they also  
32 had like a young persons' hub, so to speak, in the  
33 festival, which they invited me to attend whenever I could  
34 during the festival, just to interact with the young people  
35 and build some rapport with the young people at the  
36 festivals, and that was really good, as well as then I sort  
37 of said, "Well, this is my role at the festival as well",  
38 which they know what my role is, and then I said, "Are you  
39 guys available" --  
40

41 THE CHIEF COMMISSIONER: Q. More specifically, did you  
42 discuss with your liaison, let's say, what they ought to do  
43 or what they might think it appropriate to do in the  
44 context of the search of a young person?

45 A. Wouldn't - not specifically, no. I just --  
46

47 Q. Can I just give you some examples of things that occur

1 to me?

2 A. Sure.

3

4 Q. A person who was looking after the interests of the  
5 child might start off by saying to the searching officer,  
6 "Why are you searching this child?" If it's going to be  
7 a strip search, "Why is a strip search necessary?", "What's  
8 urgent about it?", and so on. And you would think, well,  
9 that's fair enough, or not fair enough. A child, I think -  
10 it's a nice question - is probably not able to consent to  
11 things; there is either a legal power or there isn't. They  
12 might also make a suggestion during the search like, you  
13 know, "Hey, that's a bit rough. Just slow down a bit. You  
14 don't have to talk" - you know, sometimes police are  
15 reasonable and polite and sometimes they are not, they  
16 might remonstrate with a police officer and say, "Listen,  
17 you don't have to talk to the kid like that." They might  
18 say, in a particular case, for example, where someone was  
19 going to be completely strip searched, naked, after the top  
20 had been taken off and they had a coat or jacket which had  
21 already been searched, "Why don't you let them put their  
22 jacket on so that they are not at least totally naked" -  
23 you see the kind of thing?

24 A. Yep, sure.

25

26 Q. And if the person starts - say the girl or boy, well,  
27 it wouldn't be - well, that's another question, I will come  
28 to that, I hadn't actually thought of that myself. If the  
29 boy starts to cry - often they are frightened; it can be  
30 a very frightening situation when you are surrounded by  
31 police and you are being searched. They might start to  
32 cry. You might say, "Well, let's just wait for a bit.  
33 Let's recover. Would you like a glass of water?" You see  
34 that what I'm talking about is the kind of sympathetic care  
35 and support with an idea of what is legally appropriate so  
36 that you can actually look after the interests of the  
37 child. Most lay people would not know that, know what they  
38 could do, they would just kind of stand there awkwardly not  
39 knowing whether they should interfere or not interfere. Do  
40 you follow what I mean?

41 A. Yes, I understand.

42

43 Q. So it occurs to me that it is very important that  
44 people working with young people who are being brought in  
45 to this kind of thing - you should actually have a seminar  
46 or afternoon's discussion or something so that they are  
47 aware of the kinds of things that maybe they ought to be

1 doing. Now, I take it from what you have said, you never  
2 did that?

3 A. There wasn't, no, official, per se meetings.

4

5 Q. But did you do it unofficially?

6 A. Yes, I would say unofficially, with that main person  
7 who runs the youth centre, yes.

8

9 Q. You took them through LEpra? I mean, they are  
10 laypeople, but, still, LEpra's in English?

11 A. Yes, I explained, I suppose, their role as a support  
12 person, what they would be required to do to obviously  
13 support the best interests of the young person at the time,  
14 and obviously to monitor police and, you know, if they had  
15 any issues with what police were doing, to certainly  
16 question that, so.

17

18 Q. I haven't thought to ask, but I think it's obvious  
19 that, leaving aside the parent and guardian, a support  
20 person when a girl is being strip searched has to be  
21 female?

22 A. Sure.

23

24 Q. And vice versa for a boy being searched, has to be  
25 male - it just goes without saying, really?

26 A. Yes.

27

28 Q. I wonder, though, if you had prepared any circulars or  
29 something, some points of guidance, that might, if they  
30 were distributed to the people who were taking this  
31 responsibility, be helpful?

32 A. I think that would be a great idea, definitely, yes.

33

34 MS DWYER: Q. That was going to be my last question, so,  
35 having heard that, is that something that you would --

36

37 THE CHIEF COMMISSIONER: I'm taking half your fee for  
38 today.

39

40 MS DWYER: Q. Having heard that, is that something that  
41 you would be prepared to assist with drafting for next  
42 year?

43 A. Absolutely, yes. I think it's a great idea. Like,  
44 you know, you have a conversation with the people that,  
45 like I said, were assisting in that, in those roles, and  
46 sure you can, you know, address people and have  
47 a conversation, and people will only take in so much, where

1 at least if they've got something tangible like a piece of  
2 paper that they can go through and, you know, reiterate  
3 what we've been through - I think that's a fantastic idea.  
4

5 Q. One further question. Did you have any role in 2019  
6 in discussing with a police officer whether or not a search  
7 should be carried out on a child?

8 A. Not any specific officers. I believe the process was  
9 that if a young person was brought into custody, that they  
10 would then speak with the supervisor who was there and  
11 discuss, like, what it was, whether it was going to be -  
12 what type of search or something like that, and then  
13 I think it was up to the supervisor then to discuss whether  
14 it was a justifiable search or not, or certainly to  
15 question that.  
16

17 Q. Not part of your role to determine whether or not  
18 a search or a strip search was justifiable for a child?

19 A. No, that wasn't my role.  
20

21 THE CHIEF COMMISSIONER: Q. There was another mandated  
22 interaction, though, as I understand it, and that is, let's  
23 say that with a young person, drugs were found, so the  
24 question then was should that young person be charged or  
25 not - other courses are available in relation to young  
26 people --

27 A. Yes.  
28

29 Q. -- including cautions, but other things?

30 A. Yes, sure.  
31

32 Q. Now, as I understand it, they must not be charged  
33 until either an SYO or you, as the youth officer - YLO --

34 A. Yes.  
35

36 Q. -- has a chance to assess whether they should be  
37 charged or otherwise; is that right?

38 A. That's correct, yes.  
39

40 Q. In 2019, were you called in to do that on any  
41 occasion?

42 A. Yes, I was. I recall one female that was arrested  
43 with quite an amount of drugs at the time, and she had the  
44 support person of the youth services there as well, who did  
45 a fantastic job, by the way, with this young person, and  
46 I think still - they are actually still doing work with  
47 that young person, which is fantastic, but in regards to

1 having interaction, as soon as the drugs were found, then  
2 I was - not "straight in there", but obviously the young  
3 person was introduced to myself and I was able to explain  
4 to them, step by step, how the process would go and where  
5 we would go, in what direction.

6  
7 Q. Is the arresting officer present at that or do you  
8 speak to the child with a support person alone?

9 A. Generally, that was a conversation where the police  
10 officer was also listening, so everybody understood what  
11 page we were on, sort of thing. If I needed to speak to,  
12 liaise with, the officer for some reason - like usually  
13 they came to me first and said, "This is what I've got" or  
14 whatever, "What do you think?", and then I would say,  
15 "Look, I think you should go down this road", and then  
16 together we would then go back to the young person and the  
17 support person.

18  
19 Q. Could I just go back to the rank issue - sorry, not so  
20 much the rank, but the decision. Someone has to take  
21 responsibility for charging or not charging?

22 A. Yes.

23  
24 Q. I take it that would be the arresting officer. In  
25 other words, you can have an input to that and you can  
26 recommend a course --

27 A. Yes.

28  
29 Q. -- but ultimately it's for the arresting officer to  
30 decide the appropriate action?

31 A. That's correct.

32  
33 Q. Do I correctly understand?

34 A. Yes.

35  
36 Q. Now I want to ask you something that is totally  
37 unconnected with Splendour in the Grass.

38 A. Yes.

39  
40 Q. You are the YLO in what area? In what region?

41 A. Tweed-Byron.

42  
43 Q. Now, there are a number of young people on STMP in  
44 Tweed-Byron?

45 A. Yes.

46  
47 Q. Is that right? And I'm just wondering, what role do

1 you play as the YLO, if any, in relation to those kids on  
2 STMP?  
3 A. I'm not 100 per cent sure whether anybody is, at this  
4 present time, but if - and there has in the past, where  
5 I try and engage --  
6  
7 Q. I can't tell you. I'm not sure whether there are any  
8 now, but --  
9 A. Yes, whenever there are, then we either try and  
10 encourage them to be involved --  
11  
12 MS CHAPMAN: Commissioner, could I object to this?  
13  
14 THE CHIEF COMMISSIONER: No.  
15  
16 MS CHAPMAN: It's plainly --  
17  
18 THE CHIEF COMMISSIONER: This is for my information in  
19 relation to another investigation.  
20  
21 MS CHAPMAN: I appreciate that. There are also members of  
22 the media present. I'm not sure what is about to flow.  
23  
24 THE CHIEF COMMISSIONER: No, we will not lurch into  
25 something which is sensitive. Thank you, yes, go on.  
26  
27 THE WITNESS: Yes, you know, if there needs to be any  
28 interaction, I would try and touch base with that person.  
29 Usually, I've already had interactions in the past with  
30 that person, so I've built --  
31  
32 THE CHIEF COMMISSIONER: Q. Because they wouldn't be on  
33 the STMP without some history?  
34 A. Yes, obviously they have had some cautions or  
35 conferencing in the past, which I've had some sort of  
36 interaction in, so I've built some form of rapport. And if  
37 needed, then, and if I can engage with them and have any  
38 further advice or help them to get any further assistance  
39 in whatever, engaging in the community with other agencies,  
40 then I certainly do that; or if there is anything - say we  
41 have like a "Fit For Life" type thing at PCYC - which  
42 I think they would be appropriate to move into, then  
43 I think I would engage them in that as well.  
44  
45 Q. So, generally speaking, you would regard it as part of  
46 your duties in relation to any young person on STMP to  
47 actively be involved in the management of that person in

1 that context?  
2 A. Yes.  
3  
4 THE CHIEF COMMISSIONER: Thank you, very much. That's  
5 all.  
6  
7 MS DWYER: Nothing further, thank you.  
8  
9 THE CHIEF COMMISSIONER: Are there any questions arising?  
10  
11 MR HALL: No, sir.  
12  
13 THE CHIEF COMMISSIONER: Thank you. You are free to go.  
14 As I say, I am sorry that we kept you waiting so long.  
15 I think you are anxious to get back tonight.  
16  
17 THE WITNESS: No worries. Thanks very much.  
18  
19 <THE WITNESS WITHDREW  
20  
21 THE CHIEF COMMISSIONER: Thank you. Well, then, that is  
22 all for this afternoon, we will resume sitting tomorrow.  
23  
24 MS CHAPMAN: Chief Commissioner, could I make one inquiry,  
25 in terms of tomorrow, after the witnesses, what is then  
26 proposed, are submissions proceeding?  
27  
28 THE CHIEF COMMISSIONER: These examinations will then be  
29 ended. What the team, which is continuing to do work, will  
30 need to do is to first of all examine whether further  
31 examinations are necessary. We may be having private  
32 examinations, but those matters are undecided at this  
33 point. We have to evaluate what has been happening at the  
34 end of tomorrow, by the end of tomorrow. The witnesses  
35 tomorrow are more general witnesses, really.  
36  
37 MS CHAPMAN: Yes. So submissions are something in the  
38 future?  
39  
40 THE CHIEF COMMISSIONER: Yes, I wouldn't expect  
41 submissions. The submissions from your point of view,  
42 I think - there will be a report, as part of the process,  
43 that relates to this Splendour in the Grass and to this  
44 particular complaint, but they form part, as you know, of  
45 an umbrella investigation, and quite how we manage their  
46 interrelationship is undecided, because there are other  
47 investigations which are ongoing as I speak. So I'm afraid

1 we will just let you know when we know, really.  
2  
3 MS CHAPMAN: Yes.  
4  
5 THE CHIEF COMMISSIONER: Obviously we have a general track  
6 in mind, but we can't be more specific at this stage.  
7  
8 MS CHAPMAN: Understood, thank you.  
9  
10 MS KLUSS: May I just inquire, in relation to my client,  
11 I have had access to no exhibits. Would your Honour  
12 indicate whether or not I might be entitled to observe some  
13 of the exhibits? I appreciate that I have received a list,  
14 but not the content of any of them.  
15  
16 THE CHIEF COMMISSIONER: No, I think what you need to do  
17 is specify those that you want. I can imagine no problem  
18 with giving them to you, but you just need to specify those  
19 that you wish to see.  
20  
21 MS KLUSS: Thank you. May it please the Commission.  
22  
23 THE CHIEF COMMISSIONER: Very well. Thank you for your  
24 assistance and I will adjourn.  
25  
26 AT 4.25PM THE COMMISSION WAS ADJOURNED TO THURSDAY,  
27 24 OCTOBER 2019 AT 10AM  
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