

LECC

Law Enforcement
Conduct Commission

Hearing: Operation Gennaker

Before the Hon M F Adams QC, Chief Commissioner

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

On Monday, 2 December 2019 at 10.15am

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1 THE CHIEF COMMISSIONER: This is a public examination
2 pursuant to section 63 of the Law Enforcement Conduct
3 Commission Act. Dr Peggy Dwyer has been appointed by me
4 as counsel assisting the Commission.
5

6 It may be useful now for me to deal with leave to
7 appear, so we might as well start at the end of the Bar
8 table.
9

10 MS H CHAPMAN: Thank you, Chief Commissioner. Ms Chapman.
11 I seek leave to appear for the Commissioner of Police and
12 GEN1.
13

14 MS DWYER: Might I just remind the parties about the code
15 names that we have for the different officers.
16

17 THE CHIEF COMMISSIONER: Ms Chapman, it is not for me to
18 tell you how to deal with your professional
19 responsibilities, and the matter is right at the beginning,
20 so one doesn't know how it will end, but it is possible to
21 foresee a conflict between your client and the
22 Commissioner's interest. The Commissioner, of course, has
23 no personal interest, but institutional interests and your
24 client's personal interest - have you discussed this with
25 those instructing you?
26

27 MS CHAPMAN: The answer is no to your question, Chief
28 Commissioner. It has certainly been at the forefront of my
29 mind, and based on my previous experience and what I have
30 seen - if I had been asked to appear for some other
31 officers, I certainly would have had to decline - right
32 now, I can't see any perceived conflict, but I take that on
33 notice.
34

35 THE CHIEF COMMISSIONER: I rely on your professional
36 judgment. It is not for me to tell you how that should
37 be - I just raise it as a question mark, that's all. But
38 if you are not troubled by it, you can always change your
39 position.
40

41 MS CHAPMAN: Thank you, Chief Commissioner.
42

43 THE CHIEF COMMISSIONER: So you wish to appear for GEN1
44 and the Commissioner of Police?
45

46 MS CHAPMAN: Yes.
47

1 THE CHIEF COMMISSIONER: All right. That leave is
2 granted, thank you.
3
4 MR M TAYLOR: Chief Commissioner, Taylor is my name,
5 solicitor. I seek your leave --
6
7 THE CHIEF COMMISSIONER: Yes, Mr Taylor, you seek leave to
8 appear for GEN5; is that right?
9
10 MR TAYLOR: That's correct.
11
12 MR J MADDEN: Chief Commissioner, Madden, solicitor.
13 I seek your leave to appear for Officer GEN9.
14
15 THE CHIEF COMMISSIONER: Yes, Mr Willis?
16
17 MR G WILLIS: Chief Commissioner, I seek leave to appear
18 for the officer with the code name GEN11.
19
20 THE CHIEF COMMISSIONER: That leave is granted.
21
22 MR E OATES: Chief Commissioner, My name is Oates. I seek
23 leave to appear for officer designated GEN12.
24
25 THE CHIEF COMMISSIONER: Yes, that leave is granted.
26
27 MR B HALL: Hall for GEN8.
28
29 THE CHIEF COMMISSIONER: Yes, that leave is granted.
30 Thank you, Mr Hall.
31
32 MR H WHITE: Chief Commissioner, my name is White. I seek
33 leave to appear for GEN2.
34
35 THE CHIEF COMMISSIONER: Yes, Mr White, that leave is
36 granted.
37
38 MS P DAVID: Chief Commissioner, my name is Davie. I seek
39 leave to appear for GEN6.
40
41 THE CHIEF COMMISSIONER: Yes, thank you, Ms David.
42
43 MR P MCGIRR: Chief Commissioner, I appear for GEN3. My
44 name is Paul McGirr.
45
46 THE CHIEF COMMISSIONER: Certainly, that leave is granted.
47 Are there any other applications?

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MS CHAPMAN: No, chief Commissioner, but having mentioned the name of officer GEN1, could I seek a non-publication order.

THE CHIEF COMMISSIONER: Yes. There is to be no publication of that officer's name.

Considering his rank, I must tell you, I might reconsider the need. He is in a different position from what I might call frontline officers. But we will deal with that at a later point.

MS CHAPMAN: Yes, thank you, Chief Commissioner.

THE CHIEF COMMISSIONER: Bear it in mind. I am less certain about keeping his name confidential. But for the present, it will be confidential.

MS CHAPMAN: Understood.

THE CHIEF COMMISSIONER: All right.

The scope and purpose of this public examination, and generally of the investigation being conducted by the Commissioner, is whether NSW Police Force officers failed to comply with the Law Enforcement (Powers and Responsibilities) Act 2002 during the stripsearching of several young people at the Lost City Music Festival on 23 February 2019 and whether there was conduct of the NSW Police Force that is or could be unlawful, oppressive or unreasonable in connection with the applications of the laws relating to searches, including in particular strip searches.

Shortly, counsel assisting will open. But if I can just make the point, we have some particular examples which we will focus on, but the interest of the Commission is not confined to particular cases but rather to the general question of how the NSW Police Force deals with the exercise of LEPR powers in the area of searching and stripsearching in particular.

It is very likely that the particular examples which the Commission has identified are but examples of much wider conduct which requires attention.



1 Unless I otherwise state, all exhibits will be
2 confidential. In due course, it may be possible to make
3 exhibits - for example, COPS entries - public, but that
4 will require a redaction of identities. This is
5 particularly so in a case of this kind where the persons
6 subject to searches, by definition, are young people. So
7 initially, all COPS entries and other exhibits will be
8 confidential unless the opposite is stated, but I rather
9 hope in due course redacted copies can be made available.
10 Counsel will have available to them on their screens - you
11 might need to share screens - unredacted copies, but you
12 are to regard them as confidential and you cannot disclose
13 them, except of course to your clients, who are bound by
14 the confidentiality orders.

15
16 In the event that you want any to go further, then you
17 need to make an application in writing and I will consider
18 it. Of course, the confidentiality requirement, I think,
19 in the very nature of things, can't apply to your clients,
20 Ms Chapman, but of course they need to deal with it in
21 accordance with the general rules of confidentiality that
22 operate in that space.

23
24 MS CHAPMAN: Yes.

25
26 THE CHIEF COMMISSIONER: I think, Mr White, your client
27 also is entitled to access, because my assumption is that
28 he has already had access to them just for doing his job.
29 But he is bound by the rules of the NSW Police Force
30 governing the confidentiality of police material. I don't
31 need to make an additional order so far as he is concerned.

32
33 MR WHITE: Thank you, Chief Commissioner.

34
35 THE CHIEF COMMISSIONER: A principal function of the Law
36 Enforcement Conduct Commission Act is to detect,
37 investigate detect and expose conduct that is or could be
38 serious misconduct or serious maladministration. It is not
39 bound by the rules or practices of evidence and can inform
40 itself on any matter in such manner as it considers
41 appropriate.

42
43 The Act further requires the Commission to exercise
44 its functions with as little formality and technicality as
45 possible and, in particular, its examinations are to be
46 conducted with as little emphasis on the adversarial
47 approach as is possible.

1
2 Following this investigation, the Commission will
3 prepare a report to parliament. The Commission envisages
4 that particular reports as to particular investigations in
5 this space will be prepared, but a general report relating
6 to the systemic issues, drawing on the information gathered
7 in the particular investigations, will ultimately be
8 provided and hopefully will give a constructive way forward
9 in managing this difficult and fraught area.

10
11 I now call on Dr Dwyer to open.
12

13 MS DWYER: Over the course of this week, the Commission
14 will hear evidence in an inquiry known as Operation
15 Gennaker, one of a number of investigations that have
16 highlighted concerns with the legality of strip searches
17 carried out by police on young people under the age of 18.
18 The inquiry this week shines the spotlight on
19 strip searches of children on 23 February this year at the
20 Lost City Music Festival, an under-18s event held at
21 Homebush.
22

23 It is important to note at the outset that there are
24 two matters which the Commission is not investigating and
25 is not concerned with. The first is whether or not pill
26 testing should be introduced. The second is whether or not
27 drug dogs should be used at music festivals. The
28 Commission is solely concerned with the lawfulness of the
29 exercise of police powers and the adequacy of the system
30 put in place by police to ensure that the law is obeyed.
31

32 In this opening address to the Commission, I propose
33 to proceed by setting out first the powers of the
34 Commission and why a public hearing is to be conducted;
35 second, the broader legal context; third, the nature of the
36 lost city music festival held in February this year; and,
37 finally, the specific three incidents that are alleged to
38 have taken place, and focus on this issue of the legality
39 of strip searches of young people.
40

41 The Law Enforcement Conduct Commission is a permanent
42 independent investigative commission providing oversight of
43 the NSW Police Force and the NSW Crime Commission. The
44 Commission is separate from and completely independent of
45 the NSW Police Force and the Crime Commission. This means
46 that LECC can both investigate and oversight law
47 enforcement conduct impartially and fairly. The functions

1 and powers of LECC are governed by the Law Enforcement
2 Conduct Commission Act 2016.

3
4 While many hearings are conducted in private, the
5 Commission may decide to hold a public hearing where it is
6 determined to be in the public interest to do so. There
7 has been significant public interest in the issue of police
8 powers to stripsearch in the music festival environment and
9 beyond, and particularly to stripsearch young people under
10 the age of 18.

11
12 There are likely to be several reasons for that.
13 First, a strip search is, by necessity, a grave intrusion
14 into a citizen's privacy and dignity. Absent any legal
15 justification, it would constitute an assault punishable by
16 imprisonment. Little imagination is needed to understand
17 how stressful and potentially embarrassing a strip search
18 may be, even for law-abiding adults, even more so for young
19 people with little experience of law enforcement in this
20 context and limited understanding of their rights.

21
22 In this investigation and in others, the Commission
23 has received information from some of the young people
24 stripsearched that their experience has had lasting
25 negative effects for them, as law-abiding young people who
26 were separated from their friends and searched, sometimes
27 without a support person present.

28
29 Many members of the public will have children,
30 relatives or friends who they are concerned might be placed
31 in a situation where they are stripsearched. There is
32 great public interest in understanding what guidelines are
33 in place to ensure that such a search is lawful.

34
35 Second, it is perhaps trite to say that the power to
36 stripsearch can be lawfully exercised by police in certain
37 circumstances, and it is accepted that there will be times
38 when it is a justified and necessary course of action.
39 This oversight body can aid police by investigating whether
40 current guidelines can be clearly understood by police on
41 the ground and are the subject of appropriate training.
42 That may provide help for individual officers anxious to
43 properly perform their duties.

44
45 Third, NSW Police perform a vital service for our
46 community, often in difficult circumstances. Public
47 inquiries that highlight the existence of laws and

1 guidelines governing intrusive searches can inspire
2 confidence that law enforcement officers are subject to
3 scrutiny. As such, it is an important part of maintaining
4 public confidence in the NSW Police Force as an institution
5 and the important work of its officers that such a public
6 inquiry take place.

7
8 Fourth, members of the public may not realise that
9 they are able to make complaints to an independent body
10 with the powers of investigation, or they may feel unable
11 to come forward with relevant information if an inquiry is
12 underway that may facilitate other members of the public
13 coming forward.

14
15 If there has been a breach of the law in the conduct
16 of a strip search of a young person, then it is important
17 for the public to know the answers to questions like: one,
18 what are the circumstances in which that has occurred; two,
19 was this a failure of individual officers to follow clear
20 legislation and guidelines or are there systemic issues
21 that provide some explanation; three, is there, for
22 example, a lack of clear guidance as to why and when
23 strip searches are to be conducted; four, do police receive
24 sufficient training with respect to the legislation and how
25 to implement it; and five, what is in place to ensure that
26 those breaches of the legislation do not happen again?

27
28 A number of legal and policy documents govern the
29 police powers to stop and search citizens, including at
30 music festivals.

31
32 In New South Wales, police powers are governed
33 primarily by the Law Enforcement (Powers and
34 Responsibilities) Act, known as LEPR. Part 4 deals with
35 search and seizure powers without a warrant. Section 21(1)
36 states that a police officer may, without a warrant, stop,
37 search and detain a person and anything in the possession
38 of or control of a person, if the police officer suspects
39 on reasonable grounds that particular circumstances exist,
40 including that the person has, in his or her possession, or
41 under his or her control, a drug in contravention of the
42 Drug Misuse and Trafficking Act.

43
44 Section 30 of LEPR states that, for the purpose of
45 a general personal search, a police officer may do such
46 things as quickly run his or her hands over the person's
47 outer clothing; or require the person to remove his or her

1 coat or jacket, or similar article of clothing, and any
2 gloves, shoes, socks and hat, but not, except in the case
3 of a strip search, all the person's clothes, and examine
4 anything in the possession of the person.
5

6 Section 31(b) governs strip searches at music
7 festivals like this underage event, and it states
8 specifically that a police officer may carry out a strip
9 search of a person if the officer suspects on reasonable
10 grounds that the strip search is necessary for the purposes
11 of the search; and that the seriousness and urgency of the
12 circumstances make the strip search necessary.
13

14 Section 32 sets out requirements to ensure the
15 preservation of privacy and dignity during such a search.
16 Finally, section 33 provides specific rules relating to the
17 strip search of children. Relevantly, that includes the
18 requirement in section 33(3) that a strip search of
19 a child between the ages of 10 and 18 years must be
20 conducted (a) in the presence of a parent or guardian of
21 the person being searched; or (b) if that is not acceptable
22 to the person being searched, in the presence of another
23 person who is not a police officer and who is capable of
24 representing the interests of the person being searched and
25 whose presence is acceptable to that person.
26

27 It is clear, of course, that that section is
28 mandatory. A child cannot waive their right to a parent,
29 guardian or independent support person.
30

31 The actions of police are further governed by
32 operational orders which remain protected documents and are
33 not subject to publication.
34

35 The Lost City Music Festival is a ticketed underage
36 event held at Olympic Park in Homebush. It is organised
37 and produced by Good Life Presents. It is strictly for
38 children aged between 13 and 17, and patrons must produce
39 identification to prove that they are between those ages.
40

41 The festival showcases popular and established musical
42 artists as well as emerging Australian artists. The event
43 website advertises that security and police will be present
44 on site. It is a condition of entry that patrons may be
45 required to submit to a breathalyser and drug test and all
46 bags must be presented for a search. Both the website and
47 the tickets issued specify that this is a drug and alcohol

1 free event. Any person suspected of being intoxicated upon
2 arrival is to be declined entry. Any person found in
3 possession of alcohol or a prohibited drug is referred to
4 the police.

5
6 A number of security and emergency services assist at
7 the festival. Police provide services for the entire
8 festival to ensure the maintenance of law and order,
9 including by conducting operations targeted at the use and
10 sale of illicit drugs.

11
12 At the Good Life festival in February, the estimated
13 number of attendees was 10,000 young people. A total of 98
14 police officers were deployed to the event, consisting of
15 79 rostered staff and 19 user-pay staff.

16
17 As at other festivals around New South Wales,
18 a specific drug dog operation took place at the Lost City
19 Music Festival. Numerous general searches were conducted.
20 I anticipate that the evidence before this Commission will
21 be that there were at least 30 strip searches, and
22 I anticipate that the evidence will be that, in accordance
23 with the paperwork that the Commission has access to, there
24 is only an indication on that paperwork that a parent or
25 guardian was present in five out of the 30 strip searches -
26 that is, that if they were present, they were not clearly
27 indicated as having been so on the paperwork.

28
29 Along with the three specific complaints to be
30 investigated, the culture of stripsearching more generally
31 and the reasons for those apparent figures will be
32 explored.

33
34 I come now to the specific incidents that allegedly
35 took place. There are three teenaged male complainants,
36 none of them known to each other. None of the three were
37 found ultimately to have drugs on them after a strip
38 search, and each of them deny having been in contact with
39 drugs at any time.

40
41 The three young people came to the attention of police
42 prior to being stripsearched for different reasons. The
43 first, who will be known as GEN13C was intercepted as
44 a result of a drug dog suggesting in the free air
45 a positive indication. The second, GEN14C, carried
46 a bumbag for the entirely innocent reason of being able to
47 dance more freely, but since bumbags were not allowed, he

1 secreted that inside his shorts and was alleged to have
2 been noticed shifting something in his groin area prior to
3 entry.
4

5 The third, GEN15C, was seen in close proximity to
6 a suspected drug deal and although he was ultimately found
7 to have done nothing illegal and to have been carrying no
8 drugs, he was detained along with a larger group of young
9 people and ejected from the festival after his search.
10

11 I will deal with each of those in a little more detail
12 now. On 2 October 2019 GEN13C and his brother, who had
13 also attended the festival, were interviewed by
14 investigators from LECC. I anticipate that the Commission
15 will receive evidence that on the day of the festival,
16 GEN13C travelled by train with his older brother and some
17 friends. They had not consumed any alcohol or drugs and
18 they were not in possession of any alcohol or drugs.
19

20 In the queue for the festival, GEN13C was in close
21 proximity to others in the line. As they shuffled towards
22 the entry, security staff from ISEC Security made their way
23 through the crowd subjecting young people to breath tests
24 and questioning them about possible possession of alcohol
25 or drugs.
26

27 GEN13C was breath-tested with a negative result.
28 After passing security and entering the venue, GEN13C, his
29 brother and friends, turned a corner to the right and saw
30 various police officers, some with drug detection dogs.
31

32 A drug dog came and sniffed GEN13C's pockets, then
33 moved to his brother, and then came back in the vicinity of
34 GEN13C. The dog did not sit down, but before GEN13C could
35 move on, two officers approached him and told him to keep
36 his hands together in front of him. GEN13C was then
37 separated from his brother and friends and removed to
38 a separate area to be questioned and searched.
39

40 In his interview, to be received in evidence, GEN13C
41 states:
42

43 I didn't know why I was getting searched
44 really, 'cause when - I thought the dogs
45 had to sit down and it didn't sit down and
46 then they were, like, grabbing me and then
47 I was, like, pretty scared. I had no-one

1 there, just two cops I have never seen
2 before.

3
4 In describing the numbers of police present, he said:

5
6 I mean, it was just - I don't know, they
7 all sort of, like, look at you and when
8 there's, like, 20 faces, they all turn to
9 you in that blue uniform, like, I felt like
10 I had just done something wrong but, like,
11 I'm just trying to go to a music festival.

12
13 Prior to being searched, GEN13C was asked to hand over
14 his wallet and phone, which he did. Police searched the
15 wallet and asked GEN13C for his phone passcode, which he
16 handed over. Police then accessed the device and scrolled
17 through his message history. The officer in question did
18 not ask permission from GEN13C to look at the phone, and
19 I anticipate that the Chief Commissioner will receive
20 evidence that GEN13C just assumed he had to give it to him,
21 along with the passcode. I anticipate the Commission will
22 hear that GEN13C was then taken into a room. He was asked
23 to lift his shirt and show his armpits, then to remove his
24 socks and shoes. Lastly, he was asked to pull his pants
25 down and the officer told him to:

26
27 Hold your dick and lift your balls up and
28 show me your gooch.

29
30 I anticipate that the Commission will hear that a gooch is
31 a slang term for the space between the testicles and the
32 anus.

33
34 The young person then lifted up his testicles and the
35 officer bent down to have a look, approximately one metre
36 away from him.

37
38 In his interview with investigators, the young person
39 explains in detail what happened after being asked to pull
40 his pants down. I quote:

41
42 I sort of like froze for a bit I guess
43 like, 'cause I was like, I had my shirt up
44 and then he's like, alright now like pull
45 your pants down. And I was sort of like,
46 just stood there for a bit like, are you
47 sure? Like, do I just pull down my pants

1 and show you everything or like what? And
2 he's like, no pull down your pants, ah hold
3 your dick and lift your balls up and show
4 me your gooch. And I was like oh okay.

5
6 GEN13C said that he was so nervous he was shaking. He
7 was asked by police whether that was because he had drugs
8 on him and he explained that no, it was because he was
9 nervous and hadn't been in this situation.

10
11 When nothing adverse was located, GEN13C was allowed
12 to leave and re-enter the festival. I anticipate that the
13 Commission will hear in GEN13C's interview that he was
14 unable to enjoy the festival after what had happened. To
15 this day, the event has affected his trust in police. He
16 is fearful of being in close proximity to police in case he
17 is falsely accused and subject to another search.

18
19 THE CHIEF COMMISSIONER: How old was he?

20
21 MS DWYER: Fifteen years old.

22
23 In relation to the search, a COPS entry was created by
24 an officer known as GEN9 some hours after the event. The
25 second officer in the COPS narrative is officer GEN10.
26 Both of those officers will be called to give evidence this
27 week. Neither the COPS entry nor the field processing form
28 identifies that this was in fact a strip search. There is
29 no indication that a parent or guardian was present or ever
30 offered to GEN13C.

31
32 I come now to GEN14C. On 1 October 2019, that young
33 person was interviewed by LECC investigators. I expect
34 that the Commission will receive evidence that he attended
35 the festival with a friend. Prior to attending, he and his
36 friend had secreted small bumbags in their underwear,
37 knowing that they were not allowed to do so. The reason
38 they wanted the bags was for the entirely innocent reason
39 of being able to hold their phones and wallets while they
40 danced, so that they would not lose their valuables.

41
42 Whilst standing in line, GEN14C was seen by security
43 staff fiddling with his groin area because he was adjusting
44 the bumbag secreted. GEN14C was told by police that he was
45 going to be stripsearched. While being subject to
46 a general search, GEN14C removed the bumbag and explained
47 to police his reasons for concealing it and that he had no

1 drugs on him.

2
3 Police questioned GEN14C further and he was subjected
4 to the strip search. I expect that the Commission will
5 receive evidence that GEN14C was asked to "lift up his
6 balls" and to "squat and cough". He did so and then asked,
7 "Why is this happening?" I expect that GEN14C will inform
8 the Commission that he was not told of his legal rights,
9 and nor was a parent or guardian or support person present
10 during the search. The search was conducted in a small
11 room with GEN14C in close proximity to two male officers.
12

13 A COPS event for the search was created by Officer
14 GEN12. It is dated 25 February 2019, suggesting that it
15 was created some two days after the festival. It does not
16 identify that a strip search took place, nor does it
17 mention that a bumbag was removed and an explanation given
18 from the young person as to why it had been concealed. It
19 does not nominate an independent guardian or support person
20 or provide an explanation as to why the support person was
21 not there. GEN14C was 16 years of age.
22

23 Might I just correct a matter I referred to earlier.
24 GEN13C was in fact only 14 years of age.
25

26 I come now to GEN15C, who was 15 years of age when he
27 was stripsearched. On 11 October 2019, investigators
28 interviewed GEN15C. I expect the Commission will hear that
29 he arrived at the event with some friends and planned on
30 meeting others inside. He was stopped by security because
31 he too had a bumbag, but in this case not secreted. He was
32 planning to carry his phone, headphones and wallet into the
33 music festival because it seemed to be a convenient way to
34 hold his valuables.
35

36 Security approached him and told him that he needed to
37 discard it, and he did so. On entering the festival,
38 GEN15C noticed a lot of police and some drug dogs. After
39 only a minute or so, he was rounded up by security along
40 with six other young people, only three of whom he knew.
41 He was told to move to another area but not told the reason
42 why.
43

44 He was moved to a secured and private area, where he
45 waited for 20 to 30 minutes before being spoken to by
46 police. He was initially subjected to a general search and
47 told to empty his pockets and take off his shoes. Police

1 examined his phone and wallet. The young person denied
2 having any drugs on him or being in the proximity of drugs.
3

4 A short time later, GEN15C was taken to a separate
5 private area by a male officer, believed to be
6 Officer GEN8, and he was subjected to a strip search. It
7 is alleged that GEN15C was told to take off his shorts,
8 which he then lowered to his knees. I anticipate that the
9 Commission will hear that that already made him feel weird
10 and embarrassed. GEN15C was then told to grab his penis
11 and lift it up. The young person did so, keeping one hand
12 on his shorts to hold them halfway up and one hand on his
13 penis. At that time, the male officer inserted his hands -
14 that is, the male officer's hands - inside GEN15C's
15 underwear, making contact with his testicles. GEN15C
16 states:
17

18 It was like that, just like checking like in
19 the undie bit. Like they were, like his
20 hands was, like it was touching 'em and
21 then he's like ... moved to see if there's
22 anything in the undies.
23

24 It's further alleged that after doing that, the
25 officer moved around behind GEN15C and placed both hands
26 inside GEN15C's shorts and ran his hands around the young
27 person's buttocks in a circular motion, apparently in an
28 effort to detect if drugs were concealed around the buttock
29 area. The officer's hands made contact on the young
30 person's skin. The officer was not wearing gloves.
31 Despite police finding nothing illegal, no drugs or any
32 indicia, GEN15C had his wristband removed and was ejected
33 from the venue, along with other young persons.
34

35 A field processing form suggests that the young person
36 was suspected of possessing prohibited drugs and being
37 involved in a drug supply, a fact vehemently denied by
38 GEN15C.
39

40 A COPS event was created by Officer GEN8, who is also
41 listed as the searching officer. That COPS event gives
42 a detailed account of how various young people were rounded
43 up in that group, but does not provide an explanation as to
44 why GEN15C was searched with no guardian, parent or support
45 person.
46

47 I anticipate that the Commission will hear that as

1 at February 2019 there was no obligation for police to film
2 a general or strip search and it does not appear that they
3 did so on any of the three occasions that are being
4 investigated, or at least that has not been provided to the
5 Commission.
6

7 In order to understand the nature of the search
8 operations at this event, the Commission forwarded
9 a section 55 notice to the Commissioner of Police
10 requesting all the field processing forms, event numbers
11 and narratives for all young people stripsearched at the
12 music festival.
13

14 In reply to that notice, a spreadsheet revealed that
15 there were 30 strip searches formally recorded by police -
16 three females and 27 males. A review of the narratives
17 attached suggests that out of those 30 searches, only five
18 were recorded as having involved a parent, guardian or
19 independent person, in spite of the legislative
20 requirements.
21

22 On one occasion, a 13-year-old girl was stripsearched
23 by police in the presence of a representative from the
24 organisation Red Frogs, but a check of her birth date
25 reveals that she was only 17 years of age - that is, the
26 support person for the 13-year-old was herself under the
27 age of 18.
28

29 I anticipate that a theme in this inquiry will be the
30 inadequacy of paperwork completed regarding some of the
31 searches, a matter of significance given the gravity of
32 a strip search and the significance of legal requirements.
33

34 Commission intel analysts interrogated the narratives
35 and found approximately nine events in addition to the
36 30 which indicate that a strip search may have been
37 completed but not recorded as such. Those COPS narratives
38 mention the removal of a young person to an area designated
39 for person searches.
40

41 Chief Commissioner, I have previously mentioned that
42 the consequences of a strip search are felt acutely by some
43 of the young individuals who explain that fact in their
44 interviews. Other consequences flow from recording their
45 details, in spite of a finding that no drugs were found and
46 that the young persons deny ever having had drugs on them.
47

1 As a result of their interaction with police, all
2 three of the young persons who I mentioned - that is, young
3 persons 13C, 14C and 15C - are recorded on the New South
4 Wales COPS system as being suspected of being in possession
5 of an illegal drug and having been subjected to a person
6 search. It is possible that they will be subject to
7 greater scrutiny and surveillance in the future and
8 possible searches as a result of that intelligence holding
9 against their names. I anticipate that the Commission may
10 hear that this is contrary to police guidelines, which
11 allow for police in circumstances where no drugs are found
12 to record the patron as "unknown male". There is a generic
13 COPS event number from that scenario.
14

15 It is proposed that 12 witnesses will give evidence
16 before the Commission this week. Today, the Chief
17 Commissioner will hear from the first of 14 of those
18 witnesses, all of whom have been given pseudonyms.
19

20 At this stage, Chief Commissioner, it is not proposed
21 to call the young persons, each of whom have participated
22 in a lengthy interview with Commission staff, but they may
23 give evidence at a later date in a private hearing.
24

25 Just before I conclude, I've just been handed a note.
26 Can I just clarify the ages of the young people. I think
27 I was right the first time. GEN13C was 15 at the time of
28 his search; GEN14C had just turned 17; GEN15C was 16 years
29 of age. Thank you, Chief Commissioner.
30

31 THE CHIEF COMMISSIONER: Very well. Call the first
32 witness.
33

34 MS DWYER: The first witness is Officer GEN1.
35

36 <OFFICER GEN1, sworn: [10.57am]
37

38 THE CHIEF COMMISSIONER: Officer, you may be seated.
39 Thank you very much.
40

41 MR MADDEN: Commissioner, the evidence seems not to be
42 coming up on the screen.
43

44 MS DWYER: I am told that there is a problem and that
45 unfortunately the Commission can't fix it because it is an
46 external operator. I apologise to my learned friend for
47 that. I don't think we are in a position currently to deal

1 with it.
2
3 THE CHIEF COMMISSIONER: I'm afraid you will just have to
4 take good notes. Of course, transcripts will ultimately be
5 available to you, but I can't do anything about that.
6
7 MS CHAPMAN: Chief Commissioner, could I seek
8 a non-publication order in relation to the number of police
9 present at the festival.
10
11 THE CHIEF COMMISSIONER: Why?
12
13 MS CHAPMAN: Your Honour, I understand that GEN1, the
14 witness now in the witness box, can give evidence in
15 relation to the need for the confidentiality in order to
16 protect the efficacy of police investigations.
17
18 THE CHIEF COMMISSIONER: I must confess, I find it hard to
19 see the connection. Perhaps we can deal with that in due
20 course. I won't make it confidential at the moment.
21
22 MS CHAPMAN: May it please the Commission.
23
24 THE CHIEF COMMISSIONER: Q. Officer, why should it be
25 confidential, the number of police?
26 A. Chief Commissioner, it discloses, I guess, the
27 methodology and rationale behind our deployments, whether
28 it be a music festival. S particularly around numbers of
29 officers per drug dog, I guess, is where I'm concerned.
30 Also, I guess, in a general sense for the NSW Police
31 Forces, we have always sought PII around actual numbers of
32 police for any operation. I know that previously there was
33 a GIPA request in regards to the coronial matter before
34 her Honour Grahame, where I myself obviously did not
35 disclose the numbers of police, but we certainly gave away
36 information in respect to gender breakdowns of police at
37 those festivals. We don't --
38
39 Q. But each festival is sui generis, isn't it? Every one
40 is different, every number is different, every location is
41 different. No-one could draw any general conclusions from
42 the fact that there were 90 or 500 police at any particular
43 festival, could they?
44 A. Generally, my experience, Chief Commissioner, is
45 always to --
46
47 Q. I understand that. I'm finding it difficult to see

1 a rational basis for it.
2 A. It discloses our operating methodologies based on
3 numbers of police.
4
5 THE CHIEF COMMISSIONER: I don't think it does. I won't
6 make it confidential on that basis.
7
8 MS DWYER: Might I provide the officer at this stage with
9 a schedule of 6 code names.
10
11 There is a section 75 declaration as well.
12
13 THE CHIEF COMMISSIONER: Yes, I should make that.
14
15 Officer, you have almost certainly been told this
16 already, I expect, by your counsel, bu I just need to do it
17 myself - that is, you have to answer every question you are
18 asked, unless I tell you you don't have to. You have to
19 produce anything you are asked to produce unless, again,
20 I tell you you don't have to. You can object to answering
21 a question or producing something, but you must
22 nevertheless answer and you must nevertheless produce. The
23 effect of the objection is that what you say and what you
24 produce cannot be used against you in any proceedings,
25 except proceedings under the Police Act. You understand
26 that?
27
28 THE WITNESS: I do, Chief Commissioner.
29
30 THE CHIEF COMMISSIONER: I can make a declaration under
31 section 75 which, in effect, says that all your answers and
32 all your responses are to be taken to be made under
33 objection to avoid the necessity for you doing it on each
34 occasion, and I take it you would like me to make that
35 declaration?
36
37 THE WITNESS: Yes, Chief Commissioner.
38
39 THE CHIEF COMMISSIONER: Pursuant to section 75 of the
40 Act, all of this witness's answers and everything that he
41 produces are taken to have been given or produced under
42 objection.
43
44 MS DWYER: Thank you, Chief Commissioner.
45
46
47



1 <EXAMINATION BY MS DWYER:

2

3 MS DWYER: Q. Sir, you understand that you are known in
4 these proceedings at GEN1?

5 A. That's correct.

6

7 Q. For the music festival known as Lost City that was
8 held on 23 February 2019, were you the event commander?

9 A. That's correct.

10

11 THE CHIEF COMMISSIONER: Q. Had you performed that duty
12 in relation to other festivals beforehand?

13 A. I had, Chief Commissioner. Yes, there was a festival
14 known as HTID that occurred in January 2019, where
15 I performed the function.

16

17 Q. That was the month before?

18 A. The month prior. That's correct.

19

20 Q. Was that for all ages or was it also a young persons
21 festival?

22 A. No, that was an over-18s festival only.

23

24 Q. So that was only for adults?

25 A. That's correct.

26

27 Q. I suppose for licensing reasons, is it, because they
28 were serving or selling drinks or --

29 A. Yes, HTID was an alcohol-listed event. Traditionally
30 or generally music festivals are generally over-18 events.
31 Good Life or this festival that you are examining today was
32 an under-18s event, and there is only one other event I'm
33 aware of, particularly in the region I represent, which is
34 south-west metropolitan, there was a festival which is
35 16 years and above. It is a dual event.

36

37 MS DWYER: Q. Your rank is detective superintendent?

38 A. That's correct.

39

40 Q. What is the role of the event commander?

41 A. The role of the event commander is to ensure that the
42 operation - well, the police deployments are conducted
43 lawfully. It is also to I guess ensure that the event is
44 conducted in a safe manner for both police and patrons who
45 are attending, and it is also to engage with the other
46 stakeholders who are, I guess, managing and operating the
47 event, to ensure that safety is paramount to the operation

1 of the event.

2

3 Q. When you say that police deployments are exercised
4 lawfully, do you include amongst that that searches are
5 done lawfully?

6 A. All aspects of the police deployment.

7

8 Q. In terms of your liaison with stakeholders, did you
9 meet with relevant stakeholders in the months leading up to
10 the festival?

11 A. Yes, so the first meeting that occurred for this
12 festival was 4 February 2019. There was a stakeholders
13 meeting that was conducted at the Royal showground, which
14 is traditionally where we have all of our meetings. And
15 there was a pre-event briefing and discussion around that
16 at that point in time.

17

18 Q. By "stakeholders", you include the organisers or
19 promoters of Lost City; is that right?

20 A. That's correct, yes.

21

22 Q. And also police, ambulance and security?

23 A. Yes. So at that meeting it was - so the venue
24 themselves, which is the Royal Agricultural Showground,
25 they are the venue holders and operate and function to that
26 premises. It would have been the promoters, it certainly
27 was security, ambulance, police. From my recollection,
28 also Liquor & Gaming may have been there, because of
29 a history with the venue, even though this was an
30 alcohol-free event, but they were still present. There may
31 have been some other people there but I'm not sure who they
32 were.

33

34 Q. Was there any discussion at that first meeting or any
35 subsequent stakeholder meetings that there may well be
36 illegal drugs present?

37 A. Not that I recall in respect to actual discussions at
38 the event. The events are more about, I guess, the
39 process - the process of how the event will take place,
40 let's say, opening times, and basically checking that each
41 of the stakeholders or organisations involved have in place
42 what they need for the event to take place.

43

44 Q. Can I come to some of the paperwork prepared prior to
45 the Lost City event. Your name is down I think as having
46 checked a guideline called Operation Good Life 2019.

47 I will show you this document. It appears at 8405629. It

1 is tab 15 of the brief of evidence. It can be up on the
2 screen. There are two names of the officers, though, on
3 the front sheet, which I note must be subject to
4 non-publication. What is that document that I have just
5 handed you?

6 A. So they are the overarching operational orders for the
7 conduct and deployment of the festival, for the police side
8 of the operation.

9
10 Q. So they are prepared by the officer whose name is
11 mentioned on the left, who is GEN3, and then checked by
12 yourself; is that correct?

13 A. That's correct.

14
15 Q. I think I'm right that they don't have any specific
16 mention in them about LEPRAs; they are more an overview of,
17 for example, the numbers that can be expected and the type
18 of event. I will come to other documents that do mention
19 LEPRAs, but could you confirm that for me?

20 A. Yes, just one second. No, on page 13, under heading
21 4.2.8 "Drug detection dog support officers", you will see
22 at dot point 3 "Conduct person searches in accordance with
23 the provisions of LEPRAs"

24
25 THE CHIEF COMMISSIONER: Q. Sorry, what page are you
26 referring to?

27 A. Page 13.

28
29 MS DWYER: The large red number 13 in the bottom
30 right-hand corner, Chief Commissioner, otherwise page 11 of
31 14.

32
33 Q. Under the subheading "Drug detection dog support
34 officers", there is a list of tasks, and that includes to
35 conduct person searches in accordance with the provisions
36 of LEPRAs?

37 A. That's correct.

38
39 Q. No further specific explanation as to how those
40 searches are to be conducted in accordance with LEPRAs, just
41 a general reminder of the obligation; is that fair?

42 A. That's fair, yes.

43
44 THE CHIEF COMMISSIONER: Q. How many people were you
45 expecting to be there, more or less as patrons?

46 A. So the estimated crowd was 10,000.

47

1 Q. And you knew there were drug dogs and you knew it was
2 likely there would be some positive indications - that's
3 a given pretty well; do you agree?
4 A. Yes, correct. Based on the event from 2018.
5
6 Q. Previous history?
7 A. From 2018, this event, yes.
8
9 Q. And of course unpredictable how many?
10 A. Correct.
11
12 Q. Probably more than a handful, though?
13 A. That would be correct.
14
15 Q. So you knew these were children?
16 A. Correct.
17
18 Q. Youth, right? And you knew that LEpra required there
19 to be support persons available if guardians or parents
20 were not available - yes?
21 A. Yes, correct.
22
23 Q. What arrangements did you make to ensure that there
24 were contact numbers for support persons or a group of
25 support persons present and available?
26 A. So in the subsequent orders that are annexed to the
27 overarching ones, Officer GEN4 in your list there, who put
28 together the operational orders and facets of that
29 particular operation, the drug dog operation, ensured there
30 was an independent body present for the purposes of --
31
32 Q. Had you given him a direction to do that or did you
33 just expect --
34 A. No.
35
36 Q. -- that he would understand that was part of his
37 responsibility?
38 A. So I - I did not give him a specific direction.
39 However, that officer had also conducted the operation the
40 year prior, with the same organisation acting in that
41 capacity as well. So the way that the region - south-west
42 metropolitan region - operates is we have a planning unit
43 that consists of a number of officers who undertake to
44 prepare and facilitate the organisation of large-scale
45 operations across the region. Whether they are music
46 festivals, supporting fixtures and the like, they undertake
47 the planning phases of that operation.

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Officer GEN4, who has been in that region for predominantly 10 years plus, has worked and commanded particular areas in respect to the drug dog operation components of just about every festival that has been undertaken in that region. So that officer is acutely aware of what aspects of his operational arm need to be arranged and facilitated in conjunction with the planning unit.

Q. I think this is probably a no-brainer, but it was obvious that some arrangements needed to be in place to ensure that there were going to be independent people available for searches, strip searches of young people?

A. That's correct, and that was organised.

Q. Did you yourself check those arrangements?

A. I did ask the question and was informed that two officers from the SES would be at the event for the purpose of being independent persons.

Q. How is that organised?

A. How is that? So officer GEN4 made contact with that organisation and arranged - and facilitated those officers.

Q. Are these SES officers volunteers or is this part of their duty?

A. No. It is a volunteer organisation, Chief Commissioner.

Q. How would you assess the suitability? You have naked young people. How would you assess the suitability of SES volunteers to be independent observers at such an occasion? Have you got a process? Do you send out a questionnaire? Do you ask someone who is responsible? How do you assess that they are suitable?

A. Well, I guess they are members of a very reputable organisation, being the SES. They are volunteers. They volunteer --

Q. Yes, but it is not part of their ordinary duties to watch naked young people being searched by police, is it?

A. I guess their duties in this was to act as independent on a variety of functions. Their organisation gave permission for them to be present and undertake that function. It is a role they have done previously. As I said, they are a volunteer organisation, as is the case

1 with organisations like the Salvation Army, who, on
2 occasions, will come to police stations and act in the role
3 of independents for police.
4

5 Q. So is your answer, then, that no vetting needs to take
6 place because, being volunteer SES persons, it can be
7 safely assumed they are appropriate? Is that what you are
8 telling me?

9 A. That's correct. And my understanding with the SES is
10 they do undergo their own checks to make sure that people
11 are appropriate and fit for their organisation.
12

13 Q. From whom do you get that understanding?

14 A. I don't - I have not asked anybody, but my
15 understanding is that because at times they may be working
16 with children in the capacity of the volunteer components
17 they do, I would - my understanding is they do undergo
18 checks to ensure their suitability.
19

20 Q. I just need to press you on that. Is what you are
21 saying little more than a guess or do you have some basis
22 for it? Is it just what you think would be reasonable and
23 sensible and, therefore, you assume it's being done? What
24 is the basis for your conclusion?

25 A. My understanding is that - my assumption is that
26 that's correct, it is done. I can seek information for the
27 Commission on that process.
28

29 Q. Yes, I can assure you we will be asking about that.
30

31 I would just like to dig a bit about your own
32 supervisory granular knowledge, if you like. So you have
33 GEN4 responsible for that area. Once you had assigned that
34 task or he had accepted or undertaken that task, did you
35 then just take a view he knew what he was doing, he had
36 relevant experience and you didn't check any further? Or
37 did you take some further steps?

38 A. No. So once I allocated the task of preparing the
39 drug dog operation phase of the operation to GEN4, I was
40 confident that that was - that process was undertaken.
41 Once I received a set of operational orders from the office
42 of GEN4, obviously that's where I was aware and was assured
43 by the planning unit that the aspect of independent people
44 was secured, and those names were known to the planning
45 unit, and the aspect of his operation or part of the
46 operation was on track.
47

1 MS DWYER: Q. You understand that LEPRA requires that if
2 a parent or guardian is not present - that is, if the young
3 person doesn't want their parent or guardian - the support
4 person must be someone who is acceptable to the young
5 person?
6 A. That's correct.
7
8 Q. You understood that as at February 2019?
9 A. Yes.
10
11 Q. Do you know what arrangements were in place or what
12 instructions were given by police to ensure that the SES
13 persons were acceptable to the young people?
14 A. There was a briefing that was conducted prior to the
15 deployment of the officers to the operation. So as I said,
16 in this component we had two, I guess, separate
17 deployments. One was the drug dog constables that were
18 involved in the drug dog operational side of the event, and
19 then we had our user-charge police who came on a short time
20 after the drug dog operatives, who were then, I guess,
21 managed for or tasked for crowd control inside the venue.
22 So there were two separate briefings that were undertaken
23 in regard to both of those groups and at different times.
24
25 Q. Who did those briefings?
26 A. So [NAME SUPPRESSED].
27
28 THE CHIEF COMMISSIONER: That name is not to be published.
29
30 THE WITNESS: I apologise. GEN2 undertook the briefing of
31 both of those bodies, and Officer GEN6 gave a detailed
32 briefing in respect to the drug dog constables that were
33 supporting that phase of the operation on all aspects of
34 the deployment for the drug dog operations.
35
36 THE CHIEF COMMISSIONER: Q. Were you present at those
37 briefings?
38 A. I was present at the commencement of both of those
39 briefings, Chief Commissioner. I was then required to go
40 to a different briefing with the stakeholders, particularly
41 around the time when the drug dog operatives were being
42 briefed.
43
44 Q. I assume that the officers conducting the briefings
45 would have had briefing notes to assist them with the
46 briefing?
47 A. That's correct.

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Q. But was a full record of the briefing kept or directed to be kept?

A. There was no direction in regards to what records they were required to keep. I know that for a fact, that Officer GEN6 had a screed that that officer would read from, and that was standard practice across all music festivals. It wasn't solely part of this festival. It is a screed that they read constantly in regards to the operational aspect and requirements of those officers for that specific part.

With respect to the user pay officers or the crowd control officers, GEN2 - I'm not sure if that officer made notes, but I know that, having worked with that officer on many different occasions, over many different operational aspects, that they would thoroughly go through the operational orders with respect to the requirements for those officers who were conducting crowd control duties.

Q. Those briefings, who would be present?

A. Every officer that was involved in the operation, except - sorry, I should say, except the logistics officers. So we had three officers who were tasked for logistics only, and there was three additional officers who were conducting custody duties or custody functions, but they were stationed offsite at a nearby police station.

THE CHIEF COMMISSIONER: Thank you.

MS DWYER: Q. In relation to the period of time that you were at the briefings, did you hear any mention of the acceptable person concept, if parents or guardians weren't there?

A. Not while I was present, no. And I must say, the way that the briefings were conducted is that I would commence the briefing initially, where I would, I guess, set my expectations, what my requirement of each officer was, whether they were involved in the drug dog operations or the standard general crowd control operations. I think what is important to note at this point in time is that at that juncture, there was obviously a large interest and both organisationally and in the wider community around music festivals and the deaths that had occurred pre this event, the last death being Devqon, and I think there might have been one in FOMO, as it was known, shortly prior to this event. So the use of illicit drugs and the deaths



1 from illicit drugs at dance festivals was a very serious
2 and major concern for police operations.

3
4 With that in the forefront of everyone's mind, those
5 themes were certainly passed on to the officers by me. But
6 my expectation was more about the professionalism of the
7 officers, ensuring that my expectation was that they were
8 professional at all points in time.

9
10 Recently, prior to this, we had some issues in other
11 festivals where media were excluded from the events at the
12 direction of organisers by the police. So my briefing
13 spoke about interactions with the media and that, in short,
14 if there was any interaction with the media, then I was to
15 be advised and I would handle those interactions so that
16 I could ensure that the officers weren't doing - weren't
17 hampering or contradicting any conditions of entries for
18 the festival organisers or the law itself.

19
20 Q. Do we take it from the answer that you gave earlier
21 that the number of young persons who had passed away that
22 summer was emphasised to police as being a reason why they
23 should be searching young people?

24 A. No, not so much as a reason why they should be
25 searching young people, but it is a context - I guess it is
26 giving some contextualisation to what occurs at a music
27 festival - that is, that the prevalence of drug use is high
28 at music festivals and that is the evidence from the
29 organisation and from our previous dealings, and that
30 people - obviously there has been an increase in deaths at
31 particularly music festivals leading up to obviously this
32 one, and, sorry, also the additional parts of
33 hospitalisation from overdose, reactions to drugs.

34
35 Q. But you start this operation with the expectation that
36 many of the young persons who want to go to this under-18
37 event will in fact be concealing drugs on them?

38 A. No.

39
40 Q. Doesn't it follow from what you just said that your
41 understanding is that there is that there is a - I think,
42 the prevalence of drug use is high at music festivals?

43 A. That's correct.

44
45 Q. So did you start with the assumption that many of the
46 young people attending this under-18 event would be
47 concealing drugs?

1 A. No.
2
3 Q. Would be taking drugs once they got there?
4 A. No.
5
6 Q. So you think even though the prevalence of drug-taking
7 at music festivals is high, that didn't apply to this
8 particular festival?
9 A. No, it did, based on the actual detections and
10 seizures from the 2018 festival, where nine persons were
11 charged with supplying prohibited drugs, and we're not
12 talking three or four pills, you know, quite high levels in
13 that account; the fact that a number of persons were
14 charged with possession of prohibited drugs from the year
15 before, that certainly is given and in the forefront of the
16 mind. But you are saying to me that my assumption is that
17 most people coming to that festival were carrying drugs.
18
19 Q. No.
20 A. Well, that's how I understood your question. My
21 response to that is that whether somebody preloads with
22 a drug or does not preload with a drug, the reality is -
23 and this is the reality - that prohibited drugs are used by
24 people under the age of 18 at these festivals.
25
26 THE CHIEF COMMISSIONER: Q. Yes but we're talking about
27 risk and therefore we're talking about the measurement of
28 risk. Although, of course, that must necessarily contain
29 a high degree of uncertainty, if not speculation, it's fair
30 to say, isn't it - and I think you agreed with me much
31 earlier - that you're looking at more than just a handful
32 of these kids who are likely to be carrying drugs?
33 A. Potentially, Chief Commissioner.
34
35 Q. Surely?
36 A. Yes, potentially.
37
38 Q. It is just commonsense, is it not?
39 A. That's correct, yes.
40
41 Q. So, I mean, whether you are going to say it's going to
42 be 20, 30, 40, 60 or 100 is anyone's guess, really;
43 correct?
44 A. Correct.
45
46 Q. Nevertheless, it's fair to say, as I gather what you
47 are telling me, but correct me if I am wrong, that there

1 was a substantial risk that a significant number of these
2 kids might be carrying drugs?

3 A. The answer to that one is --

4

5 Q. Look, ultimately we know at least, and probably more,
6 30 were stripsearched. Let's ignore ordinary searching,
7 stripsearching - 30 were?

8 A. Yes.

9

10 Q. Just so I can understand how you look at the
11 arithmetic, would you regard that as a significant number
12 or an insignificant number?

13 A. Well, with respect to the overall crowd, I would say
14 that's an insignificant number, given that that's
15 0.3 per cent of the overall crowd, were stripsearched.
16 There was 1.17 per cent of the overall crowd that was
17 subject to a search.

18

19 Q. So are you saying, then, that the risk is relatively
20 insignificant?

21 A. Well, no, the risk of somebody bringing drugs in to
22 the event, for my purposes, is very significant, because it
23 can lead to death, hence why the operation was risk rated
24 at a high - high rated for the risk assessment for the
25 purpose of that. But, you know, more so for a person under
26 the age of 18 who may take a drug, the risk of death is
27 a lot higher than it would be for someone over the age of
28 18, based on chemistry --

29

30 Q. It is virtually certain, though, isn't it, that kids
31 enter carrying drugs which are undetected?

32 A. That is the case, correct.

33

34 Q. It is inevitable, really?

35 A. That's correct.

36

37 MS DWYER: Q. It follows, doesn't it, from what you have
38 just said that you knew prior to the commencement of the
39 festival that a significant number of young people would be
40 searched by police to determine whether they had drugs on
41 them?

42 A. As I said, my figures have we conducted 113 person
43 searches of a crowd of 9,800, which is 1.17 --

44

45 THE CHIEF COMMISSIONER: Q. Indeed, but we're talking
46 here about absolute numbers. In other words, you have to
47 cope with the notion you have 20 or 30 or 40, even at

1 1 per cent or 2 per cent. So we're talking about absolute
2 numbers here. So you would have to plan for - you would
3 know there's going to be more than half a dozen?
4 A. I'd certainly know that the possibility is there may
5 be more than half a dozen, but the reality is that the
6 officers need the reasonable suspicion to undertake the
7 search. For me to sit here and say that before the event I
8 knew with certainty, sir, that there would be 10 searches,
9 1,000 searches - I can't --
10
11 Q. No, no, of course not. We're talking --
12 A. I can't give you a "yes" to that. We --
13
14 Q. No, no, please. I will give you some credit, please
15 give me some credit. We're not talking about absolute
16 numbers. Of course you can't say how much and I think
17 I have probably said that four times. What I'm talking
18 about is risk here.
19 A. Mmm.
20
21 Q. When you are looking ahead, you don't know, but you
22 are trying to assess risk. The only point that I'm making,
23 which I must say strikes me as a commonsense point, is that
24 the risk was you were going to be faced with 20, 30 or
25 40 kids that your officers would have a reasonable
26 suspicion about who would be likely to be stripsearched.
27 And that was predictable at the beginning, that kind of
28 number, give or take, naturally. Is that not a fair
29 proposition to make? Or were you surprised to hear that it
30 was 30 who were stripsearched?
31 A. I wouldn't be surprised because the figure on the
32 previous year is the same number.
33
34 Q. Let's move on. Officer, there is no need to be so
35 defensive. I can tell you, I understand, of course, the
36 public and the police are concerned with drug deaths and
37 people who are badly affected by drugs. Of course it is
38 important. And of course the police have to do what they
39 can. So we start from there. You don't have to be
40 defensive. What I am trying to do is to say: was your
41 system, was your management - not you personally, but
42 structurally your management - able to cope with not only
43 the general management problems but the particular issues
44 that LEPR poses in relation to lawful searches? That's
45 what I'm concerned with.
46 A. I understand. I'm not trying to be defensive,
47 Chief Commissioner. I just want to make sure that my --

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Q. All right. Perhaps I misunderstood you.

A. I just want to make sure that my answers to the questions which are being put are correct for --

Q. All I can say is you were giving a very good impression of it.

A. I'm not being defensive, sir.

MS DWYER: Q. Chief Commissioner, I note the time, what I propose to do over the morning tea break, if you will accept it, is to provide the officer with the extended operational orders that he referred to earlier and then another document and to ask him specific questions about them after morning tea.

THE CHIEF COMMISSIONER: Q. Have you familiarised yourself for the purpose of giving evidence with those other documents?

A. I have. Is that the annexure orders drug dog, I think it might be called?

MS DWYER: Q. I will hand you this document and ask you if you are familiar with it. It is the longer form operational orders from Good Life Presents in Lost City. It is 8405643. I note that we already have an exhibit 1, which was tendered which is tab 15, and I propose to tender this document also.

A. I have read those documents.

Q. You are familiar with that? In that case, can I ask you this question --

THE CHIEF COMMISSIONER: Sorry, this is tab?

MS DWYER: Tab 16, Chief Commissioner.

EXHIBIT #1C SWMR OPERATION GOOD LIFE 2019 LOST CITY U18'S MUSIC FESTIVAL DOCUMENT BARCODED 8405269-8405642

EXHIBIT #2C SWMR OPERATIONAL ORDERS AND RISK ASSESSMENT - LOST CITY 2019 BARCODED 8405643-8405682

MS DWYER: So tab 15 is exhibit --

THE CHIEF COMMISSIONER: 1C.



1 MS DWYER: Q. Officer, do you agree with me that in this
2 document at page 5, there is a general reference, repeated
3 from the earlier document, that with respect to drug
4 detection dog support officers, one of their tasks is to
5 conduct person searches in accordance with the provisions
6 of LEPR?A?
7 A. That's correct, yes.
8
9 Q. But no specific instructions with respect to
10 stripsearching juveniles?
11 A. That's correct.
12
13 Q. Is that right?
14 A. That's right.
15
16 Q. And no specific instructions in that regard with
17 respect to the legal obligations of stripsearching
18 juveniles elsewhere in the document; do you agree?
19 A. That's right. Yeah, I agree with that.
20
21 Q. Can I then provide you with this document, behind
22 tab 17, barcoded 8405683, and I propose to tender this
23 document. This is the arrest and process management plan;
24 is that right?
25 A. That's what it is titled, correct, yep.
26
27 Q. Unlike the other two documents just tendered, I don't
28 believe your name appears on this; is that correct?
29 A. That's correct, yes.
30
31 Q. Nevertheless, you will have seen this document prior
32 to the event; is that right?
33 A. No, I actually haven't seen this document.
34
35 Q. Do you know who did prepare this document?
36 A. No, no, I don't.
37
38 Q. Have you familiarised yourself with this document
39 prior to this?
40 A. No.
41
42 Q. I don't need to ask you about it in circumstances
43 where you didn't prepare it or see it.
44
45 THE CHIEF COMMISSIONER: Q. One of the issues you would
46 have heard in the opening was the making of records, and
47 I don't see anything in the operational orders that makes

1 the point as to searching that it is of vital importance
2 that you demonstrate in your COPS entry or in the field
3 note that you have complied with the LEPRAs requirements.
4

5 That would require, for example, in relation to
6 a strip search - these strip searches, they were all on
7 young people - that you ask them about their parent or
8 guardian and they said they didn't want them, or whatever
9 they said; you asked them - let's assume there was an SES
10 officer available - were they happy with that officer being
11 present. Then if they said, "No, I don't want any stranger
12 around", then you would have to justify why you
13 nevertheless did the search?

14 A. Correct.

15
16 Q. So, in other words, a supervising officer would be
17 able to know whether or not LEPRAs had been complied with.
18 I think it's fair to say that, by February 2019, the fact
19 that LECC was looking at strip searches was a notorious
20 fact; it was public, it was notorious in the police? Not
21 that that should have made any difference, because you need
22 to have your processes in whether we are investigating or
23 not, but I thought that might sharpen the focus a bit.
24

25 I suppose in your position, you wouldn't have looked
26 at the COPS records, but it is concerning that this aspect
27 is not referred to at all. I must say that I would have
28 expected - again, I'm a lay person and I know there were
29 other fish to fry, aside from searches - that when you are
30 dealing with searches, you emphasise the necessity for
31 making appropriate records of what you did and why you did
32 it. For example, you can only do it where it is urgent and
33 it is necessary for that reason - you should have the
34 reasons in your COPS so that compliance can be checked.
35 Looking back now, do you think that kind of direction would
36 usefully be contained somewhere in these orders or in the
37 briefings that were available to officers?

38 A. Yes, and I agree with you, Chief Commissioner,
39 absolutely. And I can tell you that since, of recent
40 times, our operational orders are somewhat more detailed.
41

42 Q. Expanded?

43 A. Expanded, particularly around this aspect of
44 strip searches. The field process form, which had been
45 evolved from when I commenced in the region, they had been
46 evolved, they have now evolved even further. Before an
47 officer undertakes a strip search, at a festival or at

1 another area operation, they will, before undertaking that
2 strip search, go to a process adviser, I guess is a better
3 word, and that adviser will make sure that the indicators
4 that they are saying they have observed, or whatever the
5 case may be, I guess justify them undertaking a strip
6 search at that point. So our processes certainly have
7 evolved.

8
9 Q. So compliance then is clearly recorded?

10 A. Yes.

11
12 Q. And the vital thing of that is, aside from the fact
13 that it reminds the officers of what they should be doing,
14 that it enables management and supervision for senior
15 officers?

16 A. That's correct, yes. So, as I said, our processes
17 have certainly enhanced and improved since that. I guess
18 we go back to the point of, you know, the constables who
19 are deployed to these are operational officers. They are
20 not officers who traditionally will be in an office like
21 myself. They are operationally on the street. They are
22 doing - involved in interactions with people on a daily
23 basis, so undertaking searches, all sorts of varieties of
24 operational activity. There is an expectation that, you
25 know - and I'm currently a commander and I enforce to my
26 staff always that they are required to record the reasons
27 for undertaking any action in their notebooks and certainly
28 within COPS events, because obviously the Act calls for it.

29
30 Q. It is a vital part of their duty?

31 A. Absolutely. I agree. So I guess in the days previous
32 to where we sit today, there was an expectation that
33 constables and sergeants know what is their requirement,
34 because they do it every day, and that is enforced to them
35 at these operational briefings. Without knowing fully the
36 detail that GEN6 goes into, I am fairly certain from
37 subsequent briefings that I have had recently, at festivals
38 I've worked at, that they do talk about the importance of
39 recording the justifications.

40
41 Q. The interesting thing - and we will be asking this -
42 is of course that the duty inspector or duty officer is
43 required to go over the COPS reports for the previous day
44 and should note that no record is made of this or that, and
45 then should report back to the officer who made the entry
46 and ask why and make sure, in other words, that there is
47 a reporting. I may be unfair here, but I'm pretty sure

1 that didn't happen in this case. But we will ask the
2 people and my suspicion may be unfounded.

3 A. Mmm.

4
5 Q. It is disappointing if that is so. First of all, it
6 is disappointing that the COPS records are not complete as
7 they should be, and it is disappointing if the supervising
8 inspector did not note that that had occurred and take some
9 action about it.

10 A. The way that that process works, Chief Commissioner,
11 is that a sergeant or a supervising officer would verify
12 those events. Then the inspector at that relevant police
13 station is required to dip sample - yes, dip sample events.
14 So because the drug dog operatives come from all nine
15 police area commands within the south-west metropolitan
16 region, the events that they place on to the system would
17 not be verified by the planning unit team or the
18 coordinator for the event or the logistics officers or
19 custody people, they would be done by their relative
20 supervisors back at their home commands.

21
22 Q. But those supervisors should know the rules as well?

23 A. Correct, because they are doing it every day.

24 Correct, I agree with you.

25
26 MS DWYER: Q. You mentioned a change in the field
27 processing form. Do you have a copy of that amended field
28 processing form in court with you today?

29 A. I can obtain that at the next break. That's not
30 a problem.

31
32 Q. I would ask that you do that. Might I just ask you
33 now, you have refreshed your memory as to what the field
34 processing forms looked like in February this year; is that
35 right?

36 A. Yes, I believe --

37
38 Q. You will recall, then, that there is one line given
39 for the reason for the type of search in that field
40 processing form. Is that still the case with the existing
41 form?

42 A. No. The existing form has a number of tick boxes now.
43 It also requires them to properly nominate if there was an
44 independent or guardian present. And before they actually
45 get to the point of undertaking a strip search, the
46 supervisor who has that function needs to also sign to say
47 that they are satisfied that the reasons to undertake the

1 strip search are justified from what the officer --
2
3 Q. We might come back to that when we get - so that is
4 here present in the Commission somewhere?
5 A. I can obtain that for the Commission.
6
7 Q. Thank you. Is that then applicable, that document, to
8 your area command or more broadly throughout New South
9 Wales?
10 A. That's currently deployed, as far as I'm aware, across
11 south-west metropolitan region. There is, on my
12 understanding, a project occurring in respect to the
13 broader standardisation of operational orders and forms,
14 et cetera, for - across the organisation as a whole.
15
16 Q. In relation to strip searches or searching generally?
17 A. In relation to - not so much about strip searches.
18 I know that the organisation has developed two documents.
19 There is obviously an enhanced policy document in regards
20 to searches in general and there is a one-page, I guess,
21 ready reckoner which talks about all our functions and
22 powers in searches which has been distributed to all
23 officers in NSW Police.
24
25 THE CHIEF COMMISSIONER: Q. I think, as a result of our
26 own process, we are involved in discussions - I think that
27 is a work in progress. Do you understand that? It has
28 come to, "This is our present position, but we are
29 reconsidering a whole area"?
30 A. Yes, correct.
31
32 Q. That's what I understand the position to be.
33 A. Yes, my understanding is in June 2019 there was some
34 additional material.
35
36 Q. That's right.
37 A. Yes, that was placed out to the organisation.
38
39 Q. But that was aimed, as I recall it, at searches in
40 police stations, although it's obviously applicable
41 outside, but that was primarily aimed at police standing -
42 I'm not sure what they are called, operational orders --
43 A. Yes.
44
45 Q. -- that apply to persons brought into custody and then
46 searched.
47 A. Yes. But the way I actually read the document - and

1 also the one-page ready reckoner - is it just applies to
2 the searches in general, whether they are police-station
3 orientated or in the field.

4
5 Q. The difference is that you can only do them in the
6 field if it is urgent and --

7 A. Serious. And the policy document, I guess, talks to
8 some of that part.

9
10 Q. The real difficulty is, of course, for your ordinary
11 policemen is what is serious and what is urgent, which the
12 training needs to flesh out, and that is the kind of thing
13 we are having discussions about. Because part of the
14 problem with LEpra is that the standard is such a high
15 level of generality, even the Supreme Court has difficulty
16 in identifying particular cases. It is not easy at all.
17 So that process is one that requires some attention.

18 A. Mmm.

19
20 EXHIBIT #3C SWMR ARREST AND PROCESS MANAGEMENT PLAN,
21 BARCODED 8405683-8405692

22
23 THE CHIEF COMMISSIONER: Anyway, that current document
24 that you spoke about would be helpful.

25
26 MS DWYER: Q. Just before moving on from the
27 documentation, the document I showed you earlier, which is
28 now exhibit 3C, the arrest and process management plan, you
29 did not author, and in fact you didn't see, but can you
30 accept from me that that just contains a similar general
31 observation that police officers should obey their legal
32 requirements under LEpra, rather than going - there is no
33 specifics about stripsearching of children; do you agree?

34 A. Yes, that's correct. I guess, from just quickly
35 having a read of this document, and especially the title,
36 to me it seems to be an arrest and process plan for the
37 Sydney Showground, or here it refers to Spotless Stadium.
38 Within that stadium there are different events. There are
39 AFL matches, cricket matches held. I believe, again--

40
41 THE CHIEF COMMISSIONER: Q. You think this is really
42 a generic document?

43 A. For that particular venue.

44
45 Q. Site?

46 A. Correct. Yes. Whereas this event wasn't held at the
47 Spotless Stadium site. It was part of the showground

1 precinct but it was not in that site itself.

2

3 MS DWYER: Q. The reason for my question is I'm just
4 trying to identify what documentation, if any, guided
5 police into February 2019 as to specific requirements under
6 LEPRa for stripsearching children?

7 A. Yes.

8

9 Q. Having dealt with that one, there is a final document
10 at tab 18 headed "NSW Police Force detection dog unit",
11 8405693. I'm just going to provide you with a copy of it
12 rather than place it on the screen. Officer, can you tell
13 the Commissioner firstly if that's a document that you are
14 familiar with?

15 A. Again, I can't say that I have ever seen this
16 presentation previously.

17

18 Q. Will you accept from me that there is nothing specific
19 in that presentation --

20

21 THE CHIEF COMMISSIONER: There is no point.

22

23 MS DWYER: I withdraw that.

24

25 THE CHIEF COMMISSIONER: It adds nothing to document.
26 Anyway you want to make the point that it has nothing
27 particular about searching or searching children?

28

29 MS DWYER: Yes, thanks, Commissioner.

30

31 Q. It leads to this question. Are you aware, apart from
32 the documents you have been shown, of any specific document
33 that did refer to the legal requirements for the
34 stripsearching of children that were shown to police prior
35 to the commencement of the festival?

36 A. Not a document I've seen. I can only go back to GEN6,
37 who - in that person's briefing I'm aware that the issue
38 was raised in that, in that briefing.

39

40 Q. GEN6 will be giving evidence. Is it specific
41 information that you heard while you were at the briefing??

42 A. No. I was advised subsequent to the briefing that the
43 issue in the briefing of the operatives was raised and the
44 discussion was around the independent people were present
45 to aid in that capability.

46

47 Q. And GEN6 will be asked to give evidence of that, but

1 you are not aware of any documentation that provided
2 guidance to police in relation to that, are you?
3 A. Not that I'm aware of, no.
4
5 Q. I'm going to come back to the operational orders and
6 one aspect of them.
7 A. Sorry, which orders are those?
8
9 Q. The document which is now behind tab 16, exhibit 2C.
10 A. Yes.
11
12 Q. Do you still have a copy of that in front of you?
13 A. Yes, I do have tab 16, yes.
14
15 Q. Can you turn to page 27, please. I will just remind
16 you that this is a document which has the names of GEN4 and
17 your codename, GEN1. You are noted as having authorised
18 these operational orders?
19 A. Sorry, did you say page 27?
20
21 Q. Page 27, please. There are specific instructions in
22 relation to "Good Life, Lost City under-18s music
23 festival" - do you see that?
24 A. Sorry, on my document, page 27 is tab 4.
25
26 Q. "Tab 4" is written in the left-hand corner. That's
27 the same. Page 27 down the bottom right-hand corner,
28 I think you will see.
29 A. Yes.
30
31 Q. I just want to ask you to note, firstly, that that is
32 in relation to Good Life Lost City?
33 A. Yes.
34
35 Q. Then specific instructions are given in relation to
36 the event; do you agree?
37 A. Yes.
38
39 Q. And it notes, for example, at bullet point 7, that:
40
41 Any person processed for an offence is to
42 have their ticket confiscated ... not to be
43 refunded.
44
45 Do you see that?
46 A. Yes, correct.
47

1 Q. Then there is a specific note, in the last bullet
2 point, that this is an under-18s event:

3
4 Any patron found to be under the influence
5 of alcohol or drugs should be medically
6 assessed, and a patient/guardian must be
7 contacted to attend and collect their
8 child?

9
10 A. Correct, yes.

11
12 Q. But nothing in there about the specific legal
13 requirements of the strip search; would you agree?

14 A. Not on that document, no.

15
16 Q. Would you turn over the page. That page provides
17 instructions to officers of where there is a nil find
18 during a search. It says that even where there is a nil
19 find, the young persons are still to be considered for
20 ejection from the event. Do you see that?

21 A. Correct, yes.

22
23 Q. And that is by mutual agreement of the promoter, the
24 venue and the police, and it instructs police to ask them
25 specific questions - in fact, to question them thoroughly
26 to establish if they had preloaded with drugs or alcohol,
27 been in contact with drugs recently, have a history of drug
28 possession or supply and why else the drug dog may have
29 indicated on them. So are those things that might give the
30 officer a justification for ejecting a young patron even
31 when they haven't got drugs on them?

32 A. So in February 2019 that wasn't the decision of the
33 NSW Police. So the decision to refuse entry to a person,
34 to any event within the Royal Agricultural Showground, was
35 solely a decision for the venue. That's a standard on the
36 condition of entry of every ticket that is sold at the
37 Royal Agricultural Showground.

38
39 The venue has the right to refuse entry to any person
40 they so choose. The process - and I think you will find
41 on - I will just double-check whether it is tab 15, or it
42 might be within tab 16 potentially. There is a flow chart.
43 I will just need to find it, excuse me.

44
45 So on page 8 of the operational orders, which is
46 tab 16, you will see there is a flow chart on that document
47 there. That basically is the process around whether police

1 have the power to eject a person from a venue, and then if
2 we don't have the legal authority to do that, and there is
3 a certain number of criteria where we would have that
4 person, I guess, spoken to by the - in this case it was the
5 representative from the showground and a decision for that
6 person to allow entry or not allow entry. And I know from
7 this festival that after even being spoken to by the
8 licensee, some of the young people were allowed entry to
9 the venue.

10
11 Q. But it is the case, isn't it, that police had a role
12 to play in questioning those young people to determine
13 whether or not, in their opinion, they should be allowed to
14 stay at the venue even if they weren't found to be carrying
15 drugs on them, and even if they weren't found to be
16 affected in any way?

17 A. No. So the role of the officers is obviously when
18 they undertake the - well, prior to undertaking the strip
19 search, they will ask some questions about why would the
20 drug dog indicate on the young person, if that was the
21 case, or if there was --

22
23 THE CHIEF COMMISSIONER: Q. One of the difficulties that
24 I have with that is that, plainly, that is seeking
25 incriminatory evidence of a crime, and you are dealing with
26 young people here. It is difficult to see how that
27 collection of evidence can be justified if you are
28 talking - it is not recorded, you are talking to a young
29 person who has no support, not told about any legal advice,
30 but is being asked questions concerning the commission of
31 a criminal offence. It strikes me as somewhat unusual.

32 A. My understanding of the way that it works is that it
33 is an indication to say why - it's not about collecting
34 evidence; it's about "Drug dog has indicated on you. Why
35 would that be? Have you been around people? Are you in
36 possession, from that point?"

37
38 Q. No, no, if you ask someone, "Are you in possession of
39 drugs", you are asking them directly about whether they
40 have committed a criminal offence.

41 A. I accept that, Chief Commissioner. I accept that.

42
43 Q. Is it appropriate to question a young person about the
44 commission of a criminal offence, for a start without
45 cautioning? But there are special protections for
46 questioning children and it is plain those protections were
47 not operating.

1 A. It would be my expectation that before the
2 questioning, though, was undertaken, the independent person
3 would be present because they are under the age of 18, and
4 I know from the operational --

5
6 Q. No, because, if you will forgive my interruption;
7 I don't mean to be rude - the decision to make a strip
8 search invariably follows an interaction involving a dog
9 and then a conversation. So there is no decision to make
10 a strip search at that time, I don't think there is any -
11 it would be very unlikely there would be an independent
12 person there, because you don't need an independent person
13 until you decide you are going to conduct a strip search.

14
15 But the point is whatever one's speculative
16 understanding might be, it's a matter of legal rights that
17 require, if I may say so, I think, the police to have some
18 specific plan about. You don't just leave it to haphazard
19 decisions in the field. The officers have to know, "If
20 this happens, this is what you do." Do you not agree?

21 A. I agree, yes. Yes.

22
23 THE CHIEF COMMISSIONER: Yes, move on.

24
25 MS DWYER: Q. In relation to page 28, if you will just
26 have a look at it again, you will see paragraph 3 that
27 begins:

28
29 If they admit --
30
31 that's the young person --
32
33 or show signs of being affected by alcohol
34 or drugs then police are able to refuse
35 entry to the licensed premise as they are
36 breaching conditions of entry ... they are
37 not entitled to a refund ...

38
39 Do you see that?

40 A. That's correct.

41
42 Q. The next paragraph is:

43
44 If none of the above applies but you --
45
46 that is you the police officer --

47

1 are still of the opinion that the person
2 may be concealing drugs --

3
4 that is even when nothing is found --

5
6 seek advice from the event commander, event
7 coordinator or custody manager for
8 a decision to be made in consultation with
9 the licensee.

10
11 So the police have a role to play, don't they, in deciding
12 whether or not the young person gains entry again, even if
13 no drugs are found?

14 A. I guess it is not - our role in that would be we tell
15 the licensee what has just occurred. So based on what we
16 see or have interacted with, we tell the licensee that.
17 The licensee then makes that determination. We don't make
18 that determination.

19
20 Q. I will ask you if you still stand by that if you read
21 the next paragraph, which says:

22
23 If you are of the opinion that the person
24 has no drugs on their person, is not drug
25 or alcohol affected, and has possibly had
26 a false indication, you may choose to allow
27 this person to enter the event, once you
28 have justified this decision to the event
29 commander, event coordinator or custody
30 manager.

31
32 So it is in fact the discretion of the police, isn't it, as
33 to whether or not they allow the young person to go back
34 into the event?

35 A. No, the decision is to - the decision of the officer
36 is to refer them to the licensee. If they don't - if they
37 accept the fact that they aren't intoxicated, they don't
38 have any drugs on them and they haven't breached
39 a condition of entry, they can allow them entry. And that
40 happens on a festival basis all the time.

41
42 THE CHIEF COMMISSIONER: Q. Can I ask you a general
43 question, which is only marginal, though I have to deal
44 with it, and that is: you have COPS entries which deal
45 with kids who have been searched with no drugs being found.
46 It just seems to me as a matter of general principle that
47 it should not be possible for that occasion to be, as it

1 were, placed in the scales against them in relation to
2 possible future police action. Do you understand?

3 A. I do.

4

5 Q. Especially if they are a child - if it is an adult,
6 one might have arguments, but especially if it is a child.
7 What is your understanding about the present position? Is
8 it still the position that forever against their name will
9 be that they were reasonably suspected of being in
10 possession of drugs, but, as it happened, we didn't find
11 any, and that will still be intelligence that, if they were
12 in any future interaction with police, would be used or
13 might be used against them?

14 A. No, I don't know if it would be used against them.
15 I guess --

16

17 Q. But why should it be used at all?

18 A. Well, it's where we're recording the - I guess for
19 these purposes, Chief Commissioner, we are recording the
20 exercise of a power. We are saying that we stopped and
21 searched a person at a point in time. Pre the organisation
22 recording person searches, particularly when I joined the
23 NSW Police Force, I would create an intelligence report
24 saying that I stopped GEN1 on the street and I conducted
25 a search, I didn't find anything, and the reasons why, and
26 what he might have been - where he might have been,
27 et cetera, what clothing he might have been wearing,
28 et cetera, et cetera.

29

30 That was the standard practice when I joined the
31 police. These days, we create an event to say that we have
32 interacted with somebody and have exercised a power under
33 LEPR. It's not used in any application that I certainly
34 am - I have never undertaken an application where I say
35 that, again, GEN1 has been stopped 35 times, searched by
36 police and nothing found, to justify a search warrant, or
37 any other application of any other law or affidavit, no
38 matter what they are. But they are definitely a record
39 that we have interacted with a person. I guess on the
40 juxtaposed side of it, Chief Commissioner, it also,
41 I guess, to some degree protects the officer, because at
42 particularly a music festival environment, we will have
43 complaints about searches, unlawful searches.

44

45 Q. No, it really is that you might have a mode of
46 expungement after a certain period.

47 A. That part I don't believe does occur and I'm not sure

1 why - one way or the other why that would be.

2

3 MS DWYER: Q. Just before I finish on this point, do you
4 see on that paragraph:

5

6 If you are of the opinion that the person
7 has no drugs ... is not drug or alcohol
8 affected ... you may choose to allow this
9 person to enter the event...

10

11 Officer, in circumstances where a young person is not found
12 to be carrying any drugs or alcohol, is not found to be
13 drug or alcohol affected, has not otherwise been found to
14 commit an offence, what could possibly justify not allowing
15 them into the festival?

16 A. Again, it is a matter for the licensee. It depends
17 on, I guess, the responses to the questions. If the person
18 says whilst they have had an indication - let's say for
19 example, it is a drug dog, and the dog indicates but
20 nothing was found, but they say, "I was around two people
21 yesterday who had consumed some cannabis", for a better
22 term of words, "and my clothes must be impregnated with
23 that scent", the licensee may form the view that because
24 that person is around other people who were involved in the
25 consumption of illegal substances, for example, they don't
26 want that person inside the festival. But that's
27 a decision for the licensee, not for the NSW Police.

28

29 THE CHIEF COMMISSIONER: Q. I understand that point.
30 That is a matter for the venue, as you pointed out. They
31 are entitled to exclude anyone for any reason - if their
32 eyes are too close together they don't get in. But here
33 specifically it is phrased in terms of the police making
34 a decision about it.

35

36

37 Q. Which is a bit at odds with it being a decision only
38 for the venue.

39

40 A. The way I interpret that, it is a decision about
41 whether they should refer the young person or the person to
42 the licensee. So they have the ability not to refer the
43 person to the licensee and let them into - and allow them
44 entry to the venue as they normally would. Or, if they
45 believe, based on answers or observations, they think that
46 they should be referred to the licensee for them to
47 determine should they be allowed into the venue, that's an
observation for them as well.

1
2 MS DWYER: Q. That gets back to the paragraph, which is
3 not directed to the licensee; it is directed to the police
4 officer.
5
6 THE CHIEF COMMISSIONER: There is no point in this
7 interaction. The words speak for themselves.
8
9 MS DWYER: May it please the Commissioner.
10
11 Q. You understand, don't you - you were present during
12 the opening?
13 A. The opening of the festival?
14
15 Q. No. I beg your pardon - the opening of this inquiry?
16 A. Yes.
17
18 Q. You understand, don't you, that a request was made to
19 NSW Police to provide the field processing forms and COPS
20 entries in relation to all strip searches?
21 A. Yes.
22
23 Q. Would you have an expectation, or did you have an
24 expectation in February, that the field processing forms
25 would record what guardian, support person or independent
26 person was there for a child?
27 A. Yes, I believe it is on the form, that it does
28 indicate that. I would have to have a quick look at the
29 form. But I'm pretty sure the form does ask that question.
30 I think it says who else was present, or something along
31 those lines.
32
33 Q. I will just provide you with a copy, if I may, behind
34 tab 5 of a field processing form which is in relation to
35 a particular young person, GEN13C. If you just refresh
36 your memory - I think you said that there should be
37 a notation there for any other person present?
38 A. Yes.
39
40 Q. Are you in fact mistaken about that?
41 A. Mmm.
42
43 Q. Are you getting confused with the changes that have
44 been made in the new form?
45 A. Yes, it may be - so subsequent to this form, and again
46 I can get some advice in respect - because I know that pre
47 the current form I was speaking, referring to, there was

1 another amendment to this version where it had who else was
2 present, in an independent capacity.

3

4 Q. You accept, don't you, that this specific field
5 processing form used in February 2019 did not in fact have
6 a space to fill out who was present at the strip search of
7 a child?

8 A. That's correct.

9

10 Q. It does have a box which says "Any other rel
11 information" - relevant - about three-quarters down the
12 page?

13 A. Yes. I see that.

14

15 Q. Would you have expected that box to contain
16 information about who the support person, guardian or
17 parent was?

18 A. I would say probably no, in that, I guess, it's not
19 specific about an independent person. From that part
20 there, again, I'm not really sure of what that box would
21 honestly refer to, whether it's about an action taken that
22 is not recorded on the two lines above it - yes, I'm not
23 really sure what that would refer to.

24

25 Q. Where would you have expected, then, in February 2019,
26 police to record who the independent person was or parent
27 or guardian?

28 A. I would - if it was me, myself, I would probably be
29 placing it next to the box that says "Type of search",
30 where it says "General - strip", I would be recording it
31 there or recording it in my notebook.

32

33 Q. Did you have an expectation, though, that police would
34 record who the parent, guardian or support person was?

35 A. In some capacity, whether that was on the form,
36 whether that was in the COPS event, the police COPS event,
37 or in their notebook. But it would certainly be, yes, who
38 was actually the independent person present.

39

40 Q. Did you regard it as an important legal right for
41 a child to have a support person, parent or guardian
42 present?

43 A. Absolutely. Well, it's part of LEPR, yes.

44

45 THE CHIEF COMMISSIONER: Q. Can I just ask this, though,
46 because we have seen a lot of paper over the last year. In
47 all of that, I have never seen anything which actually

1 describes what the role of an independent person might be.
2 For example, can an independent person say, "Hey, you
3 should not be conducting this strip search. You've got no
4 basis for thinking that - what is your basis?" "Oh, his
5 pupils are enlarged", "No, they are not. I can look at
6 them" - so from kind of full-blown interrogation of the
7 police officer, down to just allowing the police officer to
8 do anything, right, what is the role, what is the
9 acceptable role? I have not seen anything at all that
10 gives any guidance, and it strikes me that that is an
11 extremely serious lack of really important information. Do
12 you agree?

13 A. I can understand what you are - where you are coming
14 from, absolutely. Again, it would go down to, I guess, the
15 instructions that GEN6 may have given the independent
16 people.

17
18 Q. Well, we will wait and see, but I would be very
19 surprised if there is anything about what is the role.
20 What you would expect at least is some pro forma that is
21 given to the independent person or the parent or the
22 guardian to say, "You can go and have a private
23 conversation", for example, "Ask them how they are feeling,
24 how they are going." So whatever it is, are you allowed to
25 have a communication with the kid or you are not allowed?
26 I would expect some pro forma that would indicate that,
27 because almost all these people would be entirely ignorant
28 of the process themselves.

29 A. Mmm.

30
31 Q. Do you agree?

32 A. Whether they're - they may not be, I guess, aware, as
33 you say, sir, about the specific dot points. Certainly --

34
35 Q. Well, they can see, obviously, the most obvious
36 things - if there was any assault or any actual indecency,
37 though we get close to indecency in one of these cases, for
38 obvious reasons I won't say any more about it now. But it
39 is a potential problem. You would expect them to protest.
40 So I can understand, as it were, for the grosser departures
41 from proper conduct, it would be a deterrent. Because
42 there is an independent person, it is a protection that
43 is unlikely that the police officer, were he or she so
44 minded - I'm not making a general allegation, I'm talking
45 about risk mitigation here.

46 A. Yes.

47

1 Q. The presence of an independent person obviously is
2 likely to deter any such inappropriate conduct. But that
3 is not the only purpose of it, obviously, and we don't know
4 what it is.
5 A. Yes. Look, and it's something that, like, I guess
6 from myself, that's probably a very valid point, and
7 maybe there - you know, I think in future, we could
8 actually draft a document an independent 6 1 person
9 document.
10
11 Q. If I may say this is part of the problem with those
12 operational orders where every police station in New South
13 Wales has its own. It has to be done institutionally. It
14 has to be done as a corporate exercise so everybody is on
15 the same page.
16 A. The templates that we do use are a corporate
17 standardised template.
18
19 Q. I understand that. I think that's essential to the
20 process. It has to be the corporate - the institution
21 taking responsibility for these tasks and ensuring that it
22 goes to everyone who is responsible for exercising those
23 powers or managing that particular --
24 A. And as I alluded to earlier, there is a current
25 project underway to standardise these orders in respect to
26 festivals and everything else.
27
28 Q. I can tell you I have had correspondence about it
29 myself with the relevant senior officers, but I haven't yet
30 raised this particular issue, but I think it is a real
31 issue that will need some response and we will make it part
32 of our ongoing discussions.
33 A. Yes.
34
35 MS DWYER: Q. Officer, you will have heard in the
36 opening, that we were informed by NSW Police that 30
37 persons were subject to strip searches. In the
38 documentation provided, it looks like there is a recording
39 of who the parent, guardian or independent person was in
40 only five of the 30. That must disappoint you, given your
41 role as event commander?
42 A. It does, yes.
43
44 Q. Were you aware of those statistics prior to being told
45 that, through the LECC investigation?
46 A. No, I wasn't.
47

1 Q. So there is no audit, that you are aware of, of the
2 field processing forms post-February that would alert you
3 to that information?

4 A. Not to the specific content of an event per se, but
5 there is an audit that is undertaken, and I can't recall
6 when I commenced that process to be placed or put into
7 place, but the audit now basically is that for every field
8 process form that is used at a festival or an operation,
9 the planning unit, on the Monday morning, will then review
10 each of those forms to make sure there is a corresponding
11 COPS event. So after seven days, the ones that are
12 outstanding are rechecked, and after seven days if there is
13 no event on the system, they then receive a personal email
14 from myself or the operations manager, to the constable
15 saying, "You undertook a search. You must now have
16 a further seven days to have it on the system, otherwise
17 there will be some additional action taken in respect of
18 that noncompliance."
19

20 Q. Does that process also check that the field processing
21 form corresponds with the COPS entry?

22 A. No, not necessarily in respect to detail. It just
23 obviously ensures that an event is on the system, and
24 I guess we go back to the point of there are supervisors
25 and inspectors at stations where these officers come from
26 to make sure that they detail the information that they are
27 required to detail, whether it's a general search, strip
28 search or the like.
29

30 Q. Was there a process in place as at February 2019 where
31 a supervisor checked over these field processing forms to
32 ensure that they were being completed properly?

33 A. In the event itself, yes, there was. We had two
34 senior sergeants and a senior constable fulfilling the role
35 of logistics and the process - of the process area, the
36 searching areas, and they would, when the form came back to
37 the officer, they were checking to make sure that they were
38 filled correctly as the form was at that point in time.
39 Not to the specifics, obviously, that there was an
40 independent person recorded on the form, but to make sure
41 that the form was filled out, whether it had - and the
42 legal action taken or not taken, et cetera, signed, all
43 that sort of stuff.
44

45 Q. So that system in place as at February 2019, you will
46 accept, wasn't sufficient to ensure that the independent
47 person, guardian was being recorded properly?

1 A. On that form; that's correct, yes.
2
3 Q. Are you satisfied that the system is now in place
4 where it would be recorded?
5 A. Absolutely, yes.
6
7 MS DWYER: I'm reminded that tab 18 is to be tendered as
8 exhibit 4C.
9
10 EXHIBIT #4C TAB 18 NSWP DETECTION DOGS DOG UNIT DOCUMENTS
11 BARCODED 8405693-8405722
12
13 THE CHIEF COMMISSIONER: And tab 5?
14
15 MS DWYER: Yes, please, Commissioner.
16
17 EXHIBIT #5C COPS EVENT BARCODED 8453498-8453501
18
19 MS DWYER: Subject to the superintendent providing us with
20 the updated field process form and any questions that might
21 flow from that, those are my questions.
22
23 THE CHIEF COMMISSIONER: Thank you. Do you have any
24 questions?
25
26 MS CHAPMAN: No, I don't.
27
28 THE CHIEF COMMISSIONER: All right. Subject to that - in
29 fact, if you just would give it to Ms Chapman, and
30 Ms Chapman, if you would pass it to counsel assisting - but
31 don't go immediately just in case there are some questions
32 that arise.
33
34 THE WITNESS: Yes.
35
36 THE CHIEF COMMISSIONER: I rather think we have covered
37 that ground now. Yes. Who is your next witness?
38
39 MS DWYER: I call GEN2, then.
40
41 THE CHIEF COMMISSIONER: Right. Thank you, officer.
42
43 <THE WITNESS WITHDREW
44
45 MS DWYER: Might I just have the documents returned.
46
47 THE CHIEF COMMISSIONER: While we are waiting, tab 5, the

1 document, although it has a number in the index, doesn't
2 seem to have a number on the document itself.
3
4 MR SAUNDERS: In the middle of it, sir.
5
6 THE CHIEF COMMISSIONER: Yes, I see.
7
8 <OFFICER GEN2, sworn: [12.15pm]
9
10 MR WHITE: I seek a declaration under section 75,
11 thank you, Commissioner.
12
13 THE CHIEF COMMISSIONER: Yes. I just want to say some
14 things which undoubtedly your lawyer has already told you,
15 but I need to go through this process. You are obliged to
16 answer every question unless I tell you you don't have to,
17 and you are obliged to produce anything you are asked to
18 produce unless I tell you you don't have to. You can
19 object to either thing, but you nevertheless must answer
20 and you must nevertheless produce. The effect of the
21 objection is that the evidence cannot be used, or what you
22 produce cannot be used, against you in any proceedings,
23 fundamentally, except those that might be taken against you
24 under the Police Act. You understand that?
25
26 The witness: I understand that, Chief Commissioner.
27
28 THE CHIEF COMMISSIONER: That has been explained to you by
29 your lawyer?
30
31 THE WITNESS: Yes, it has.
32
33 THE CHIEF COMMISSIONER: I can make a declaration that
34 avoids the necessity for you to object to each question or
35 each production, and I understand from your lawyer that you
36 are seeking for me to make that declaration?
37
38 THE WITNESS: Yes, Chief Commissioner.
39
40 THE CHIEF COMMISSIONER: Very well. I declare under
41 section 75 that each of this officer's answers and anything
42 that he is asked to produce is to be taken to have been
43 given or produced under objection. Thank you.
44
45 <EXAMINATION BY MS DWYER:
46
47 MS DWYER: Q. Sir, you understand that in these

1 proceedings you are known as GEN2?
2 A. Yes.
3
4 Q. I will check if you already have in front of you
5 a schedule of codenames?
6 A. Yes, ma'am, I have it in front of me.
7
8 Q. May I ask that when you refer to an officer or a young
9 person, you use those names.
10
11 THE CHIEF COMMISSIONER: Just familiarise yourself with
12 the list. Just take a bit of time.
13
14 THE WITNESS: Thank you, ma'am.
15
16 MS DWYER: Q. Sir, you are an inspector of police; is
17 that right?
18 A. Yes.
19
20 Q. In February 2019, is it correct that you had the role
21 as an event coordinator with respect to an underage gig in
22 Homebush?
23 A. Yes.
24
25 Q. That's the Lost City under-18s music festival?
26 A. Yes.
27
28 Q. Had you had the role of event coordinator for any
29 music festival prior to that time?
30 A. Yes.
31
32 Q. On how many occasions? Some?
33 A. I couldn't count, but it would be less than 10,
34 probably more than five.
35
36 Q. And were any of those other occasions under-18s
37 events?
38 A. I don't recall but I don't think so.
39
40 Q. What did the role of event coordinator involve?
41 A. Predominantly in name it is to coordinate all of the
42 resources. That includes, predominantly, the user-pays
43 personnel that are deployed to the event; to any vehicles
44 or other technical resources that may be deployed to the
45 event; to ensure that proactive taskings are upheld; to
46 allocate taskings to personnel to do; and basically just
47 oversee and coordinate the operation on behalf of the

1 commander.
2
3 Q. Did you have any role in the content of the
4 operational orders for the event?
5 A. No.
6
7 Q. Did you review the operational orders for the event?
8 A. I only received those at the event, but yes.
9
10 Q. You received them at the event and you reviewed them
11 at that time; is that right?
12 A. Yes.
13
14 THE CHIEF COMMISSIONER: Q. I take it they were
15 conventional; there was nothing particular in them that
16 came to your attention?
17 A. That's correct, Chief Commissioner.
18
19 Q. Was it your role, as the coordinator of resources, to
20 determine how many police officers should be present at the
21 event?
22 A. No.
23
24 Q. Who has the overall responsibility for that
25 determination?
26 A. Well, certainly my understanding is that that is
27 negotiated between the promoter and the region personnel.
28
29 Q. Once that is negotiated, is it your role to provide
30 those resources and to coordinate them?
31 A. It is my role to lead those resources on the day.
32
33 Q. Is it your role to determine how many of them are
34 user-pays police?
35 A. No.
36
37 THE CHIEF COMMISSIONER: Q. So you are given the
38 resources and it is your job to make your best of them and
39 organise them as you think most efficient; is that what it
40 boils down to?
41 A. Well, the resources are all defined prior to the day,
42 and as the coordinator your role effectively commences on
43 the day, sir.
44
45 Q. So, in substance, you tell them where they are going
46 and what they have to do?
47 A. Correct.

1
2 Q. I suppose it would be true that with the numbers that
3 you were dealing with, they certainly wouldn't be police
4 that just came from your region; they would have come from
5 other regions; is that right?
6 A. Yes, sir, the way that the user-pays is determined is
7 that applications are forwarded for police to bid for those
8 events, and they bid and they are successful.
9
10 Q. But there were other officers, who were not
11 a substantial contingent, who were not user-pays?
12 A. That is correct, yes.
13
14 Q. That contingent, was that from your region or again
15 from other sources?
16 A. My understanding, sir, is that the drug detection
17 contingent, the rostered contingent, were supplied through
18 south-west metropolitan region, so from a whole range of
19 the commands in that region.
20
21 MS DWYER: Q. Were you present at any briefings given to
22 officers prior to the commencement of the event?
23 A. Yes.
24
25 Q. Did you in fact coordinate any briefings prior to the
26 event?
27 A. "Coordinate" wouldn't probably be the word I would use
28 for that, but did I deliver a briefing, yes.
29
30 Q. You did deliver a briefing?
31 A. Yes.
32
33 Q. To whom?
34 A. My briefing was to the user-pays police.
35
36 THE CHIEF COMMISSIONER: Q. Sorry, to user-pays police?
37 A. Yes, Chief Commissioner. So I guess as the
38 coordinator, my predominant focus at that point in time,
39 early stages of the event, is around the police who have
40 been brought in for the high-visibility policing, the
41 proactive side of it, as opposed to the drug detection side
42 of it.
43
44 Q. So that we can have a convenient term, is "user-pays
45 police" a convenient description for those officers?
46 A. Yes.
47

1 Q. Or is there a more accurate description?
2 A. No, that's probably a reasonable way to describe it.
3
4 Q. So they came into a room or a space, and you briefed
5 them. Did you use notes?
6 A. Yes, sir. I predominantly use operational orders and
7 the risk assessment to undertake all briefings that
8 I undertake.
9
10 Q. So you would use that as, from your point of view,
11 a sort of checklist to cover the matters that you feel
12 needed to be covered; is that the --
13 A. Yes, correct.
14
15 Q. So there is no separate document that you created to
16 guide you in your briefing?
17 A. No. I guess the only thing that I did do was make --
18
19 Q. I'm just trying to make sure that we've got all the
20 relevant documents; that's all I'm doing.
21 A. Yes. I think I made maybe five or six words at the
22 most in my notebook, as just some heads-up of some of the
23 administrative issues I needed to brief.
24
25 Q. Of topics?
26 A. Yes.
27
28 MS DWYER: Q. When you say "operational orders and risk
29 assessment", I will just ask that you be provided with
30 a copy of the document behind tab 16, which is now
31 exhibit 2C. Can you just confirm that these are the
32 operational orders and risk assessment that you are
33 referring to?
34
35 MS CHAPMAN: Commissioner, I understood my learned friend
36 to refer to 2C, which I think are the drug dog operational
37 orders. I'm just wondering whether the witness should be
38 also directed to 1C.
39
40 MS DWYER: Tab 2C are the long form of the operational
41 orders.
42
43 THE CHIEF COMMISSIONER: The drug dog unit document is 4C.
44
45 MS CHAPMAN: Understood. Thank you.
46
47 THE WITNESS: So I would say to you that the risk

1 assessment is accurate to me, but as far as the operational
2 orders go, look, the content I would say is similar, but
3 I'm confident that I have a - no, perhaps I'm not
4 confident.
5
6 Q. Have you got a shorter document?
7 A. Yes, I believe so.
8
9 Q. I will show you this document, then, exhibit 1C behind
10 tab 15.
11 A. That looks better.
12
13 Q. That's it?
14 A. Yes.
15
16 Q. Then you also referred to your notebook where you made
17 a few short points. I will show you this document, which
18 I believe is a copy of your notebook. It's 8456292. It is
19 behind tab 34. It doesn't have to come on the screen, but
20 I seek to tender that, Chief Commissioner, once it is
21 identified.
22 A. Yes, that's correct.
23
24 Q. That's your notebook?
25 A. Yes.
26
27 Q. If you have a look, then, at page 6 of your notebook,
28 it notes, "Sydney Olympic Park Good Life. 10,000 people.
29 High risk". You've got an arrow going down from that,
30 "Weapons, drugs", and then another notification; is that
31 right?
32 A. Yes.
33
34 Q. Do you agree that there is nothing specific in there
35 in relation to the stripsearching of young people, for
36 example?
37 A. No.
38
39 Q. Was there any other documentation that you relied on
40 for your briefing of the user-pays police?
41 A. No.
42
43 Q. Did any part of your briefing concern the potential
44 for stripsearching of young people?
45 A. Stripsearching of young people, no.
46
47 Q. Searching of children or young people?

1 A. I would suggest no, because there were others also
2 undertaking briefings who were focusing more on custody,
3 whereas my focus was on the proactive, high-visibility
4 policing side of --

5
6 Q. So your briefing was not concerned at all with the
7 legal requirements of searching young people at the event?

8 A. No.

9
10 Q. Is that fair?

11 A. Yes.

12
13 Q. And you assumed that other people might take that
14 role; is that right?

15 A. Yes.

16
17 Q. Were you present at any briefing when there was
18 discussion of the legal requirements for searching,
19 including stripsearching, young people?

20 A. Yeah - I don't recall that occurring.

21
22 THE CHIEF COMMISSIONER: Q. Just so that I can clarify
23 your role, for the searching of young people, LEPR
24 requires there to be parent, guardian or an independent
25 person present. As I understand it now, arrangements were
26 made for two SES officers to be available on standby - we
27 will find the details, but to be available. One of the
28 things that would be important would be to tell the
29 officers who may be involved in stripsearching young
30 people - give them a contact number so that they would know
31 these persons were available and how to get in touch with
32 them; do you agree?

33 A. Yes.

34
35 Q. But am I right in understanding that that level of
36 detail was not part of your responsibility?

37 A. It was certainly not covered in my briefing, because
38 my briefing was, again, focusing on that high-visibility
39 proactive --

40
41 Q. I understand it was not in your briefing.

42 A. Yes.

43
44 Q. But looking back, was it something that should have
45 been in your briefing, or do you expect some other officer
46 to have that responsibility? I think, frankly, the reality
47 is it was just overlooked, but I'm just trying to find out

1 where - it seems to be an obvious point - it should have
2 gone.
3 A. The answer to your question would depend, so I need to
4 make sure I answer it correctly.
5
6 Q. Yes.
7 A. The answer to your question, sir, would depend on
8 whether I was the only person undertaking a briefing. So
9 if I were the only person undertaking a briefing, yes,
10 I would agree.
11
12 Q. But are you suggesting, then, there was another
13 officer whose duty would be more aligned or briefing more
14 aligned with that kind of information?
15 A. Yes.
16
17 Q. And who would that have been?
18 A. That, in this case, would have been GEN6.
19
20 THE CHIEF COMMISSIONER: Thank you.
21
22 MS DWYER: Q. Officer, I think you gave evidence earlier
23 that your role, at least in the morning, was to focus on
24 the user-pays police; is that right?
25 A. Predominantly, yes.
26
27 Q. What did you do for the rest of the day?
28 A. So a number of things evidenced when I arrived, one of
29 which was that taskings for those police were very, very
30 generic. They hadn't been assigned geographic
31 responsibilities. So one of the first things I did was
32 pull all of the staffing aside, look at the experience of
33 each of the officers, where they had come from, et cetera,
34 assign geographic - I will rephrase that, create
35 a geographic responsibility, so divided the event into four
36 quadrants, and assigned roles and responsibilities to each
37 of those.
38
39 Q. To each of those user-pays officers?
40 A. Correct, into those four quadrants. Then effectively
41 I would describe the remainder of my day as putting out
42 spot fires as they occurred.
43
44 Q. Did any of those spot fires involve the detention of
45 young people for searching to see if they had drugs on
46 them?
47 A_. Not specifically. That again is where the custody

1 area was utilised.
2
3 Q. Were you within the custody area at all?
4 A. Yes, from time to time I did go to the custody area.
5
6 Q. Were you involved in arresting or escorting any young
7 persons who were detained to see if they had drugs on them?
8 A. I'm not sure, is the honest answer. So I do know that
9 at some point during the afternoon I was called to an
10 incident that had occurred. At the time I arrived there
11 was a number of people behind I guess what I would call a
12 fence line. Whether or not I escorted those people later
13 I don't recall.
14
15 THE CHIEF COMMISSIONER: Q. When you say "people", you
16 mean patrons?
17 A. Yes.
18
19 Q. Kids who had been at the festival?
20 A. It was actually a mix of security personnel and
21 patrons, yes.
22
23 MS DWYER: Q. Can I ask that you be shown this document
24 from behind tab 8. It is in the middle of tab 8, I'm
25 afraid, barcoded 8441315. It has a number of names on it,
26 and so it does not have to come on the screen. It is the
27 field processing form for a particular young person.
28
29 THE CHIEF COMMISSIONER: Did you say tab 8?
30
31 MS DWYER: Tab 8, Chief Commissioner. It is the field
32 processing form.
33
34 THE CHIEF COMMISSIONER: I have it, thank you. This is
35 number 85?
36
37 MS DWYER: It is, and it is for the young person GEN15C.
38
39 Q. Do you see that on that field processing form, sir,
40 your name appears as one of four officers involved in
41 either arresting or escorting?
42 A. Yes.
43
44 Q. Do you expect that this is the only field processing
45 form where your name appears as the arresting or escorting
46 officer or one of them?
47 A. Yes.

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Q. Is this an incident that you now recall?

A. Yes.

Q. Did you have any role in filling out any paperwork at all in relation to this incident?

A. Only the notebook entry that you have given me here.

Q. I will just go back to that notebook entry.

THE CHIEF COMMISSIONER: That, by the way, is exhibit 6C.

EXHIBIT #6C NOTEBOOK ENTRIES OF GEN2, BARCODED
8456292-8456295

MS DWYER: Q. In your notebook from page 7 there are details that are separate from the briefing. There are several names and dates of birth, et cetera, written there, and then from page 8 there are notes. Do you agree with that?

A. Yes, ma'am.

Q. Your notes indicate that at 17:30 you attended area sector 3 behind the fence to see a particular sergeant, or two sergeants, who are named there; is that correct? I won't say their names on the record?

A. Yes, they are given GEN numbers here, yes.

Q. For the benefit of my friends, they are then GEN8; is that right, and GEN5?

A. GEN8 is the first, yes, and, correct, GEN5 is the second.

Q. A number of males were in custody, not including "Security 1 and 2". Is that correct?

A. Yes.

Q. Upon speaking to GEN8, it appeared a pink cap had been sold to Security 1; is that a particular security officer?

A. Yes, and so I think what I'm saying in my notes there is, if you go back to page 7, "Security 1" has a colon next to it on the third line. So that's - instead of writing that person's name, that's just me writing "SEC1.

Q. So, in fact, I think I suggested to you earlier that there were particular young persons' names and dates of birth there; they are in fact the names and dates of birth



1 of the security officers; is that right?
2 A. That is correct.
3
4 Q. You spoke with Security 1 who provided you with
5 certain information about what he did on the day with
6 respect to a young person?
7 A. Yes.
8
9 Q. In short he said that he had seen one person being
10 involved in what he suspected was a supply of one pink cap;
11 is that right?
12 A. He said a little bit more than that, but yes.
13
14 Q. Can you tell the Commission, then, what you were told,
15 without using the names of any young person or security
16 officer?
17 A. So, basically, he indicated that he and another
18 security officer had witnessed an individual, who I believe
19 from today's proceedings is most likely - I don't have the
20 name, but perhaps the third person mentioned earlier this
21 morning - to be acting suspiciously and in such a way that
22 the security officer described that person as - this is
23 from the security officer, not me - wanting to supply
24 prohibited drugs. As a result of that security officer's
25 belief, he engaged that particular individual - he, the
26 security officer, engaged that particular individual. As
27 I understand it, the security officer asked that individual
28 could he buy prohibited drugs from him.
29
30 Q. Can I just stop you there, I just want to make it
31 clear: there were a number of young people there that the
32 security officer was telling you were in the group? Do you
33 recall that?
34 A. Yes, but I think they were actually pointing in their
35 direction. So, as you will see in my notes, I refer to
36 them as the colour of the clothing they are wearing,
37 because I didn't have their names.
38
39 Q. Okay. I'm not going to take you to the COPS entry
40 now, but would you accept from me - and the COPS entry
41 begins at 8453420 - that the young person GEN15C is not the
42 person who is seen to be handing over or suspected to be
43 handing over a pill but is, in fact, in the vicinity.
44 A. That I can't say, ma'am. I am of the belief that may
45 be the first person who is engaged by security.
46
47 MS DWYER: I'm going to ask that this officer familiarise

1 himself with the COPS entry.
2
3 THE CHIEF COMMISSIONER: Q. You haven't seen the COPS
4 entry?
5 A. No, sir.
6
7 MS DWYER: Q. I will hand you a copy of that now.
8
9 THE CHIEF COMMISSIONER: Just give us the details while he
10 is reading it.
11
12 MS DWYER: Certainly. It's 8543420. This is the
13 documentation that is towards the end of tab 8.
14
15 Q. Do you see there, first of all, sir, that POI1 through
16 to 8 are listed - they are a group of young people and
17 their names and dates of birth are given?
18 A. Yes.
19
20 Q. The young person who is known in this inquiry is
21 GEN15C is referred to as YP3.
22 A. Okay.
23
24 Q. Could you just take the time, then, to familiarise
25 yourself with that?
26 A. Thank you.
27
28 Q. Officer, do you see there that in fact there is
29 a group of young people, POI1 to YP8, who appear to be in
30 the same vicinity, and as you are told, the security
31 officer sees young person 1 and young person 2 appear to be
32 acting suspiciously; correct?
33 A. Yes.
34
35 Q. And the security officer then tries to determine
36 whether or not his suspicions are correct that that
37 involves drugs and actually approaches them to try to buy
38 drugs; correct?
39 A. Yes.
40
41 Q. And, in fact, pays \$20 for a pink capsule, and that
42 exchange concerns young person 1 and young person 2;
43 correct?
44 A. Yes.
45
46 Q. But it does not concern young person 3, who is 15C,
47 who is ultimately strip searched; do you agree?

1 A. Yes.

2

3 Q. So what appears to happen is that the security officer
4 actually performs an illegal transaction, doesn't he, by
5 getting himself involved in what appears to be a drug
6 transaction?

7 A. Yes.

8

9 Q. With young person 1 and young person 2, and then that
10 results in eight young people who are in the near vicinity
11 being rounded up and taken into a separate area to be
12 searched; correct?

13 A. Yes, although I would say that the information I had
14 on arrival - and I will be honest, I don't recall eight
15 people being there - was that there had been some sort of
16 fight occurring and that's why so many people had been
17 arrested.

18

19 THE CHIEF COMMISSIONER: Q. But a fight wouldn't justify
20 a strip search, would it?

21 A. No, sir.

22

23 MS DWYER: Q. You in fact don't refer to the names of
24 young people in your notebook, do you? You refer to young
25 persons 1 and 2 as a particular description, "maroon shoes
26 and grey shirt"?

27 A. Yes.

28

29 THE CHIEF COMMISSIONER: Q. You didn't know their names
30 when you made your note?

31 A. That's correct.

32

33 Q. And you didn't subsequently find them out because they
34 moved on to other officers and that was the end of your
35 involvement?

36 A. That is correct, sir.

37

38 MS DWYER: Q. So did you have any involvement in filling
39 out any paperwork like the field processing form?

40 A. No.

41

42 Q. Did you have any involvement in making the COPS entry
43 at a subsequent date?

44 A. No.

45

46 Q. Did you have any involvement in checking the COPS
47 entry?

1 A. No.
2
3 Q. Might I then just go back to the field processing
4 form --
5
6 THE CHIEF COMMISSIONER: I should just say, the field
7 processing form is exhibit 7C, but I think I will make the
8 COPS entry, although it is a part of the same tab, I will
9 give it exhibit 8C.
10
11 EXHIBIT #7C FIELD PROCESSING FORM BARCODED 8441315
12
13 EXHIBIT #8C COPS EVENT BARCODED 8453420-8453429
14
15 MS DWYER: Q. Might I then just go back, please, to
16 exhibit 7C, which is the field processing form - do you
17 still have that in front of you, sir?
18 A. Yes, yes.
19
20 Q. You agreed with me earlier that your name appears as
21 an arresting or escorting police officer for this
22 particular young person who was not involved in that drug
23 transaction. Do you recall now what your involvement was?
24 A. No.
25
26 Q. You don't recall meeting that particular young person,
27 15C, having seen his name on that list?
28 A. No.
29
30 Q. Are you able to tell us anything else as to, racking
31 your memory, what you might have done by way of escorting
32 or arresting that young person?
33 A. I don't - so, firstly, I don't recall this individual.
34 My involvement in this scene came considerably after the
35 arrest had occurred. So I was called to this particular
36 location to provide some advice to GEN8, I believe it is,
37 who had requested my attendance.
38
39 THE CHIEF COMMISSIONER: Q. What was the advice he asked
40 you for?
41 A. Well, because - the advice centred around the
42 involvement of security in, let's just say, the purchasing
43 of prohibited drugs.
44
45 Q. Because that was a potential embarrassment.
46 A. Yes.
47

1 Q. And he needed a senior officer to tell him how he
2 should deal with it?
3 A. Well, I don't think he knew how to deal with that
4 component. Therefore, this is the difficulty I have,
5 ma'am, is that my focus --
6
7 Q. Was on the transaction which the security officer had
8 undertaken?
9 A. Correct, and the potential --
10
11 Q. By the way, what was the outcome?
12 A. Yes, so - and the potential implications, obviously,
13 sir, of what that meant to the festival. So basically it
14 was about obtaining all of the information that had
15 occurred to see whether or not there was any evidence on
16 the best way to proceed with it.
17
18 I consulted the commander, GEN1. I consulted GEN1 and
19 briefed him on the circumstances by which the alleged
20 purchase had occurred, and between us we arrived at the
21 conclusion - I will rephrase that. He indicated he would
22 make some inquiries with the festival, the promoter, the
23 Royal Agricultural Society, et cetera. Subsequently as
24 a result of that, we agreed that, for a whole range of
25 factors, the best way to deal with that was to take no
26 action.
27
28 Q. I suppose you would have warned the security officer
29 not to do it again?
30 A. I think my notebook says that, yes, sir
31
32 MS DWYER: Q. In relation to the young person, GEN15C,
33 do you recall being informed that he was subject to a strip
34 search?
35 A. I don't recall 15C at all.
36
37 Q. Do you recall being informed that any members of that
38 group were subjected to strip searches?
39 A. No, but that doesn't mean that it didn't happen,
40 I just don't recall it.
41
42 Q. Do you recall being told at any time about
43 arrangements for a parent, guardian or independent person
44 to come to any stripsearching for young people?
45 A. No.
46
47 Q. Did you anticipate at the beginning of that day being

1 involved as an arresting or escorting officer in the strip
2 search, when there was a strip search of an
3 under-18-year-old?
4 A. No.
5
6 Q. That wasn't part of your duties plan?
7 A. No.
8
9 Q. Might I just direct you back, please, to exhibit 7C
10 which is still in front of you. There are various officers
11 listed as the arresting or escorting police. Without
12 saying any of their names, do you know whether they were
13 involved in searching GEN15C?
14 A. The honest answer is no because I don't remember 15C.
15 I don't recall that many young people being present when
16 I arrived.
17
18 Q. Are you aware of who the officers were who were
19 involved in searching any of the young people who were
20 detained as part of that incident?
21 A. Well, GEN8 would have been.
22
23 Q. What allows you to say that GEN8 would have been?
24 A. Well, GEN8 had carriage of the matter when I arrived
25 and it was GEN8 who had requested my attendance.
26
27 Q. Did you have any discussion with GEN8 about parent,
28 guardian or support persons who might be present for those
29 young people?
30 A. Again, no, because the genuine focus on my concern at
31 that point was the ramifications to the entire music
32 festival as a result of what had occurred.
33
34 MS DWYER: Nothing further. Thank you, Chief
35 Commissioner.
36
37 THE CHIEF COMMISSIONER: First of all, Mr White, do you
38 have any questions?
39
40 MR WHITE: No questions.
41
42 THE CHIEF COMMISSIONER: Does anyone --
43
44 MS CHAPMAN: Just one, if I might, Chief Commissioner.
45
46 THE CHIEF COMMISSIONER: Certainly. It is open to the Bar
47 table - anyone is entitled to ask a question. I will rule

1 on it, but I shouldn't imagine I would prevent any
2 questioning.
3
4 <EXAMINATION BY MS CHAPMAN:
5
6 MS CHAPMAN: Q. Is it accurate to say that the user-pay
7 police were not involved in any stripsearching?
8 A. I couldn't say that with certainty ma'am, no.
9
10 THE CHIEF COMMISSIONER: Are there any other questions?
11
12 <EXAMINATION BY MR MCGIRR:
13
14 MR MCGIRR: Q. In relation to the - there is a document
15 prepared, the original writing instructions prepared for
16 the Good Life festival dated 23 February 2019, I think it
17 is --
18
19 THE CHIEF COMMISSIONER: This is the operational order?
20
21 MR MCGIRR: Yes, the short one.
22
23 THE CHIEF COMMISSIONER: That's 1C, I think.
24
25 Q. Do you have it there?
26 A. Yes, sir.
27
28 MR MCGIRR: Q. Are you aware if it refers to compliance
29 with the LEpra provisions so far as conduct of searches
30 required?
31
32 THE CHIEF COMMISSIONER: We can all read the document.
33 You don't need to ask this witness.
34
35 MR MCGIRR: I'm asking him if he has read it.
36
37 Q. Have you read that document?
38 A. The answer to your question, sir, is yes.
39
40 Q. Could I draw your attention to page 11 of 14, 4.2.8?
41 A. Yes.
42
43 Q. At dot point three, under "Task", it has:
44
45 Conduct person searches in accordance with
46 the provisions of LEpra.
47

1 A. Yes.
2
3 Q. Is that a generally known section of the police
4 requirements as to what happens when they carry out those
5 sorts of searches?
6 A. Well, police are required to carry out searches under
7 LEPRAs as part of their daily duties, not just at music
8 festivals, so the answer to that would be yes.
9
10 Q. So it is generally well known --
11
12 THE CHIEF COMMISSIONER: No, no, you can't say "is
13 generally well known". I think you can fairly say that it
14 ought to be generally well known.
15
16 MR MCGIRR: Q. In your experience, is the constabulary
17 given lectures as to their obligations under that
18 legislation?
19 A. Police undergo mandatory training. There are a range
20 of factors that support and educate policing the
21 application of LEPRAs, yes.
22
23 Q. In particular, in relation to searching and
24 stripsearching?
25 A. In relation to searching, yes. I wouldn't want to --
26
27 Q. And stripsearching?
28 A. I wouldn't want to give a definitive answer here today
29 on stripsearching, but in the application of searching
30 powers, yes.
31
32 Q. So are you telling this Commission that you don't
33 think there is special attention drawn to stripsearching?
34 A. No, I'm not saying that, sir. I just don't want to
35 make a false claim that we undergo regular, routine
36 training on all of the sections of LEPRAs. What I would say
37 is that the searching generally, which generally does
38 include stripsearching - there is mandatory training, there
39 are screensavers available to police. Obviously it is part
40 of annual competencies, they do incremental checks each
41 time to be promoted to a new level, and all of the powers
42 of LEPRAs, all LEPRAs powers, are testable in those
43 examinations.
44
45 MR MCGIRR: May it please the Commission.
46
47 MS CHAPMAN: Chief Commissioner, may I, with leave, just

1 ask one more question?

2

3 <EXAMINATION BY MS CHAPMAN:

4

5 MS CHAPMAN: Q. Officer, it is correct to say, though,
6 that the user-pay officers were not involved in the drug
7 dog operation?

8 A. Yes.

9

10 THE CHIEF COMMISSIONER: Does it follow from your
11 question, am I to infer that the drug dog team - that was
12 the team that was doing such searches as needed to be
13 performed? Is that what you were intending to imply?

14

15 MS CHAPMAN: Yes.

16

17 THE CHIEF COMMISSIONER: Q. I might as well ask you
18 directly: is that right, it was the drug dog team that
19 were doing any searches that needed to be done? Was that
20 the plan?

21 A. I think in fairness to answer your question fully and
22 frankly, what I think needs to be differentiated is the
23 drug detection dog operation are the police who stand at
24 the entrance, so they are the ones with the drug - with the
25 dog handlers. In terms of the likelihood of those people
26 encountering any persons that may require strip searching,
27 there is a higher likelihood that anybody involved in the
28 drug detection dog operation would be doing that. That's
29 not to say, however, that the user-pays police may not
30 become involved, as was the case referred to me earlier.

31

32 Q. For example, if there was some suspicious conduct
33 elsewhere --

34 A. Correct.

35

36 Q. -- they might be brought - obviously you have to bring
37 them to a private place. You bring them to the same place,
38 but that would then not involve the drug dog teams. That
39 would involve the officers who had the relevant suspicion;
40 is that what you are saying?

41 A. That is correct, sir.

42

43 THE CHIEF COMMISSIONER: Thank you. Yes, Mr Willis?

44

45 <EXAMINATION BY MR WILLIS:

46

47 MR WILLIS: Q. Officer, are you aware of the Red Frog

1 organisation?
2 A. Only from the festival, but, yes.
3
4 Q. I assume from your answer that you are aware that the
5 Red Frog organisation was involved in some way with the
6 music festival?
7 A. Yes.
8
9 Q. What was your understanding of that?
10 A. My understanding was that the Red Frog personnel were
11 there to provide sustenance, for want of a better term, to
12 patrons inside and sustenance - when I say "sustenance", in
13 the form of sugar lollies and Red Frogs - to patrons.
14
15 Q. Were you aware of any role that they might have played
16 in terms of being independent persons for the purposes of
17 searching?
18 A. I am aware that occurred, yes,
19
20 <EXAMINATION BY MS DWYER:
21
22 MS DWYER: Q. Just following from that, you said you are
23 aware that occurred. Are you aware that occurred as
24 a result of the opening in this matter, or were you aware
25 at the time that that was the plan, that they would be part
26 of the personnel available?
27 A. I don't think I was aware that it was part of any
28 plan. I was certainly aware of the plan to use SES
29 volunteers to act as those persons. I believe, so I can't
30 say with certainty, that the Red Frogs personnel were
31 chosen on the day simply because of the numbers of people
32 being searched.
33
34 THE CHIEF COMMISSIONER: Q. So ad hoc, as it were?
35 A. Correct.
36
37 MS DWYER: Q. How did you become aware that the plan was
38 to use the SES volunteers?
39 A. I don't know, but I would have been briefed on that on
40 the day.
41
42 Q. Did you attend a formal briefing where you were told
43 that or you would have just been told that as part of your
44 communication?
45 A. Yeah, look, the difficulty with an earlier answer
46 I gave was because it was to answer your question, but in
47 terms of not being aware of another briefing, I was there

1 when the custody manager provided his briefing, of which
2 the SES personnel were also mentioned. The challenge
3 I have is that I was also referring to my own notes and my
4 own briefing, so there was no need for me to listen to it.
5
6 Q. Is the custody manager's name on the schedule of
7 codenames?
8 A. Yes.
9
10 Q. Who is that?
11 A. GEN6. GEN6 is the briefing I refer to.
12
13 Q. In terms of the use of the Red Frog volunteers, do you
14 know who made that decision?
15 A. No.
16
17 MS DWYER: Thank you. Nothing further.
18
19 THE CHIEF COMMISSIONER: Thank you very much. Yes, you
20 are free to go.
21
22 THE WITNESS: Thank you, Chief Commissioner.
23
24 <THE WITNESS WITHDREW
25
26 THE CHIEF COMMISSIONER: Ms Chapman, I must say that
27 I have only just assumed it, but I would have thought that
28 an independent person for the purpose of LEPR, you would
29 expect to be an adult, in the context --
30
31 MS CHAPMAN: Mmm.
32
33 THE CHIEF COMMISSIONER: -- wouldn't you? I mean, maybe
34 that's not a nicety that some senior constable who is
35 trying to do his job would be aware of, but that must be
36 right, surely. Would you make some inquiries to see if
37 there is some corporate position on that, but it may be
38 just a commonsense matter.
39
40 MS CHAPMAN: Yes, certainly I will.
41
42 THE CHIEF COMMISSIONER: It is sometimes a bit
43 complicated, when you go to a festival, for example,
44 a 13-year-old or 14-year-old might prefer to have their
45 older brother or sister, but if they are only 17 or 18,
46 say, 17 anyway --
47

1 MS CHAPMAN: Yes, I see the predicament.
2
3 THE CHIEF COMMISSIONER: The point is, though, it should
4 be clear. That's the point
5
6 MS CHAPMAN: Yes.
7
8 THE CHIEF COMMISSIONER: All right. We will take the
9 luncheon adjournment. 2 o'clock.
10
11 LUNCHEON ADJOURNMENT
12
13 MR COFFEY: Could I mention my appearance for Officer GEN4.
14 Coffey, C-O-F-F-E-Y. I seek your leave to appear.
15
16 THE CHIEF COMMISSIONER: You are seeking leave?
17
18 MR COFFEY: Yes, thank you.
19
20 THE CHIEF COMMISSIONER: Yes, that leave is granted.
21
22 MS DWYER: My learned friend Ms Chapman has kindly
23 provided the updated field processing form. Might I hand
24 a copy to you, Chief Commissioner, and we will tender
25 that document. I have multiple copies here. In my
26 respectful submission, it doesn't require the recalling of
27 Officer GEN1.
28
29 THE CHIEF COMMISSIONER: Very well.
30
31 MS DWYER: In those circumstances, might officer GEN1 be
32 excused?
33
34 THE CHIEF COMMISSIONER: Yes. Except - it is just if
35 something arises, because this is a long process - we may
36 need to have you back, but subject to that you are excused,
37 yes, thank you, officer.
38
39 Very well. The field processing form, current
40 edition, will be exhibit 9C.
41
42 EXHIBIT #9C CURRENT EDITION OF FIELD PROCESSING FORM,
43 BARCODED 7603223
44
45 MS DWYER: Chief Commissioner, I call Officer GEN3.
46
47 THE CHIEF COMMISSIONER: Ms Chapman, may I point out to

1 you the difficulty with this form, or a difficulty with
2 this form, which proposes mandatory questions, or without
3 surrounding it with qualifying language.

4
5 MS CHAPMAN: Yes, I will take some instructions about
6 that, if I might. I heard what you had to say earlier,
7 Chief Commissioner.

8
9 THE CHIEF COMMISSIONER: Obviously, this whole form needs
10 to be - what has happened here, I think, is this has been
11 drafted by operational officers without the input of
12 appropriate legal advice. That's my guess. You could
13 understand, therefore - because this is what they are
14 interested in.

15
16 MS CHAPMAN: Yes, possibly that's what has occurred.

17
18 THE CHIEF COMMISSIONER: It needs a bit more
19 sophistication.

20
21 MS CHAPMAN: Understood.

22
23 <OFFICER GEN3, sworn: [2.13pm]

24
25 MR McGIRR: Chief Commissioner, as you know, I'm acting
26 for GEN3, and we seek the section 75 --

27
28 THE CHIEF COMMISSIONER: Certainly. I will get to that.

29
30 I have no doubt your lawyer has already told you these
31 things, but I need to repeat them.

32
33 THE WITNESS: Sure.

34
35 THE CHIEF COMMISSIONER: The first thing is that you must
36 answer all questions that you are asked, unless I tell you
37 you don't have to, and you must produce anything you are
38 asked to produce, again, unless I tell you you don't have
39 to.

40
41 You can object to answering a question, or producing
42 something, but you must still answer it and you must still
43 produce the document, nevertheless, the effect of your
44 objection means that neither your answer nor what you
45 produce can be used against you in any proceedings, except
46 proceedings under the Police Act or, of course, for breach
47 of the LECC legislation, contempt or perjury.

1
2
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Now, to avoid the necessity for you objecting on each occasion, I can make a declaration that has the effect of all your answers being taken to have been given under objection or any request for a production also being taken as having been made under objection, and I understand from your counsel that that's what you want me to do.

THE WITNESS: Yes.

THE CHIEF COMMISSIONER: Very well. Pursuant to section 75 of the Act, all the answers given by this witness and anything produced by this witness on request is to be taken to have been answered or produced under objection.

<EXAMINATION BY MS DWYER:

MS DWYER: Q. Sir, you understand that you are to be known as GEN3, by that pseudonym, in these proceedings; is that right?

A. I didn't know that I was, no.

Q. If you can take it from me that that is how you are to be referred to.

A. Okay, yes, thanks.

Q. There is a schedule of codenames which presents pseudonyms for other witnesses. Do you have a copy of that? Otherwise I will provide it to you now.

A. Here you go, yes, yes.

Q. Could you just take a minute to familiarise yourself with the names on that list. When asked to refer to one of those persons, you will be asked to use their codename, please.

A. Okay.

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

A. That's correct.

Q. That's the rank that you held in February 2019 when you were involved in this music festival operation for the Lost City; is that right?

A. That's correct.

Q. What was your role for the music festival?

1 A. I'm a planning unit, we're called an event
2 coordinator.
3
4 Q. So planning unit recorder, did you say?
5 A. No, event coordinator.
6
7 THE CHIEF COMMISSIONER: Q. Who were you answerable to?
8 Who was your first --
9 A. At that time, my direct, actually --
10
11 Q. No, just check the name.
12 A. Yes. GEN1.
13
14 Q. So you reported to GEN1?
15 A. That's correct.
16
17 MS DWYER: Q. I will ask that you be provided with
18 a copy of what is exhibit 1C and also exhibit 2C. These
19 are operational orders for the Lost City Music Festival?
20 A. Yes.
21
22 Q. It looks like you might have something in front of you
23 to that effect. Have you familiarised yourself with the
24 operational orders for the Lost City?
25 A. Yes.
26
27 Q. I will just make sure that we are talking about the
28 same document. I will show you this document, which is
29 exhibit 1C. This is the shorter version of operational
30 orders. You will see that your name appears on the front
31 of that document as having prepared those operational
32 orders; is that right?
33 A. Yes, that's correct.
34
35 Q. Was it the first time that you had prepared
36 operational orders when you did so in February 2019?
37 A. Can you repeat that?
38
39 Q. Had you prepared operational orders for a music
40 festival prior to this time?
41 A. I have.
42
43 Q. Had you been, then, an event coordinator for other
44 music festivals prior to Lost City?
45 A. I have.
46
47 Q. On how many occasions?

1 A. Maybe three or four.
2
3 Q. And did any of those other occasions involve underage
4 music festivals?
5 A. No, not in my memory, no.
6
7 Q. In relation to preparing these operation guidelines,
8 were they similar to ones that you had previously prepared
9 for all-ages music festivals or under-18s?
10 A. Yes, I think it is similar to that that was used, yes.
11
12 Q. Do you recall whether or not the music festivals you
13 had previously prepared operational orders for, before Lost
14 City, were for all-ages gigs, or over 18?
15 A. I think they were all over 18.
16
17 Q. Was there any change at all in these Lost City
18 operational orders for under-18s?
19 A. Yes, there were some changes, yes.
20
21 Q. So referring, firstly, to exhibit 1C, what was
22 different for this under-18s festival than had been used by
23 you for over-18 gigs?
24 A. Obviously the difference is because we actually focus
25 on their age, they're underage. I say under-18, rather
26 than say underage anyway. So we obviously, you know,
27 expand actually the background, actually, of this music
28 festival, actually the focus is on the under-18.
29
30 Q. I will ask you something specific then.
31 A. Yes.
32
33 Q. Is there anything in this document in relation to the
34 LEPRAs guidelines that is specific to under-18s?
35 A. Not specifically under-18s, but the LEPRAs actually
36 obviously has been mentioned actually a number of times.
37
38 Q. On page 11 of 14 there is reference to the fact that
39 the drug detection dog support officers should conduct
40 person searches in accordance with the provisions of LEPRAs;
41 correct?
42 A. That's correct, yes.
43
44 Q. But there is nothing in that document at exhibit 1C
45 which is specific for searching under-18s, is there?
46 A. No.
47

1 THE CHIEF COMMISSIONER: Q. Are there provisions in
2 LEPRa which relate specifically to young people, are you
3 aware?

4 A. No.

5

6 MS DWYER: Q. Exhibit 2C. Similarly there is nothing
7 specific in relation to requirements in LEPRa for young
8 people; do you agree?

9 A. Yes.

10

11 THE CHIEF COMMISSIONER: Q. I'm sorry, I might have
12 misunderstood. What counsel is putting to you is that
13 these orders refer to LEPRa generally, so they don't refer
14 to any provisions that relate to young people - that is,
15 people who are under the age of 18. What I'm asking you is
16 are you aware whether LEPRa does have specific provisions
17 relating to people who are under the age of 18?

18 A. Are you talking about, like, in terms of a search
19 or --

20

21 Q. Well, yes, in terms of a search?

22 A. I don't believe so, no. I haven't read it, LEPRa, for
23 a little while, but I'm not quite sure, yes.

24

25 Q. As you sit there, you don't think there are provisions
26 relating to underage - that is, under-18 - young people in
27 relation to searches?

28 A. I'm not a hundred per cent sure. As I say, I haven't
29 read LEPRa for a little while, but - yeah.

30

31 Q. So you didn't reacquaint yourself with LEPRa when you
32 were drafting these operational orders, I take it because
33 you just assumed the same thing applied for adults as
34 applied to young people; am I correct?

35 A. No, no, at the time I read it, actually, and obviously
36 we tried to actually - but in my memory actually or
37 actually my knowledge, LEPRa actually can use actually for
38 the adults and the 18 anyway - over 18, yeah.

39

40 Q. So as you sit there, you thought they were the same
41 arrangements - the same things applied to adults as to
42 under-18s; am I correct?

43 A. Yes, sir.

44

45 MS DWYER: Q. Are you currently an operational police
46 officer?

47 A. I am, actually, but not street policing anymore.

1
2 Q. You are not street policing anymore?
3 A. No, no.
4
5 Q. What does your day-to-day role involve?
6 A. I just look up the planning part of it and, like,
7 event planning sort of stuff, yeah.
8
9 Q. You do different event planning for NSW Police; is
10 that right?
11 A. Yes, yes. So we've got different kind of, like, music
12 events, sports events, sort of stuff, yeah.
13
14 Q. You are still involved in event planning for music
15 festivals?
16 A. Yes.
17
18 Q. Does that include event planning for music festivals
19 for under-18s?
20 A. Yes, but I think that the under-18s, this is the only
21 one, I think, so far.
22
23 THE CHIEF COMMISSIONER: Q. So can you just tell me, are
24 you currently involved in any particular event planning?
25 A. I'm on annual leave at the moment.
26
27 Q. Sorry, you are on leave?
28 A. Yeah, I'm on annual leave at the moment. One event
29 happened actually last Saturday, and so I had an
30 involvement of that one for - just for one night, just to
31 help out. But other than that, for three weeks I haven't
32 had any.
33
34 Q. When you are on holidays, you don't want to know about
35 it, do you?
36 A. No.
37
38 Q. But are you expecting, when you get back, that there
39 will be events that you will be needing to help with?
40 A. I would say so, yes.
41
42 Q. Where are you actually stationed physically? Where is
43 your office?
44 A. In Liverpool.
45
46 Q. In Liverpool?
47 A. Yes.

1
2 Q. In what - in the police station? Where?
3 A. It is not the police station; it's an office building.
4
5 Q. So they're offices of the NSW Police Force?
6 A. Yes.
7
8 Q. What is the command?
9 A. It is called south-west metropolitan.
10
11 Q. Regional command?
12 A. Yes, regional command.
13
14 MS DWYER: Q. When did you attest for the NSW Police
15 Force?
16 A. When?
17
18 Q. Yes. What year?
19 A. 2003.
20
21 Q. You, of course, have to undertake mandatory training
22 in various areas?
23 A. Yes.
24
25 Q. While you are a police officer?
26 A. Yes.
27
28 Q. What training have you had in relation to the LEPR
29 provisions?
30 A. When I attended college in 2003, it wasn't LEPR
31 at the time, so LEPR was introduced after 2003 --
32
33 Q. But you had some --
34 A. We had - yeah, later on we had actually --
35
36 Q. Just wait for the question, if you will, if you don't
37 mind. You had some training in search procedures, is that
38 right, when you were doing your original training in 2003?
39 A. Yes, yes.
40
41 Q. Have you subsequently had training in search
42 procedures?
43 A. Yes.
44
45 Q. So have you had training since LEPR was introduced
46 about the legal requirements for searching?
47 A. Yes, yes, yes.

1
2 Q. What did that consist of?
3 A. Obviously, as you learn the legislation. And then you
4 use that legislation in your everyday police life.
5
6 Q. What sort of learning was it? Was it face to face or
7 online?
8 A. Multiple methods, actually. Online, face to face.
9 Yes, obviously actually they give you material to read as
10 well and - yeah.
11
12 Q. When was the last time you did any training in
13 relation to the LEPR requirements?
14 A. See, they go - if we are talking about training, what
15 are you trying to refer - you are referring to --
16
17 THE CHIEF COMMISSIONER: Q. Any specific information,
18 either by a seminar or a lecture or getting a brief
19 computer lesson, they have those - that sort of thing?
20 When was the last piece of training information on LEPR
21 that you received, however it was received?
22 A. It would have been probably a couple of years ago at
23 least, yeah.
24
25 MS DWYER: Q. Can you remember it or are you just
26 guessing in relation to when you received it?
27 A. Oh, because it wouldn't - at the time I was working in
28 the station, which was at Burwood police station, and
29 I think we had a little training every now and then, run by
30 education officer, yes.
31
32 Q. When was the last time you would have been expected to
33 search someone yourself, as part of your duties?
34 A. Last I searched someone?
35
36 Q. The last time you would have been in a role where
37 you --
38
39 THE CHIEF COMMISSIONER: Q. The last time - before you
40 took your present role --
41 A. Mmm-hmm.
42
43 Q. -- where were you working?
44 A. I was working in Ashfield for a little while.
45
46 Q. With general duties?
47 A. Yes, yes.

1
2 Q. And general duties involved interactions with members
3 of the public?
4 A. Yes.
5
6 Q. And so that could involve arrests, search and things
7 of that kind?
8 A. Mmm-hmm.
9
10 Q. Is that right?
11 A. Yes, that's correct.
12
13 Q. So in some cases, did you actually do field - searches
14 in the field; sometimes searches when they were brought
15 back to the police station and you had to search them when
16 they were in custody? Did you do that or not?
17 A. Yeah, yeah, yeah. Quite often, yeah.
18
19 Q. Quite often?
20 A. Yeah, yeah. That's everyday policing, I guess, yeah.
21
22 Q. Do you remember ever having to search an under-18?
23 A. I can't remember those, no.
24
25 Q. You can't remember now?
26 A. Yeah.
27
28 Q. So are you saying that maybe you did, but you now have
29 no recollection of it, or your best recollection is that
30 you didn't?
31 A. Probably I didn't have, like - I don't remember I deal
32 with young people very much anyway, yeah.
33
34 MS DWYER: Q. Have you had any training in the
35 preparation of planning documents?
36 A. Training is - we have training just obviously actually
37 the senior officer actually kind of actually guides you
38 actually what to do, how do you prepare that certain
39 documents, when I first started, it would be, I don't know,
40 probably 12 months ago.
41
42 Q. Are you provided with a list of documents which you
43 use as a template or a pro forma?
44 A. Yes.
45
46 Q. For operational guidelines?
47 A. Yes.

1
2 Q. And do you prepare a new document for each event?
3 A. Yes.
4
5 Q. But it is largely based on the pro forma document; is
6 that fair?
7 A. Yeah, that's fair.
8
9 Q. Was it the person who supervised you when you started
10 in the job 12 months ago that provided you with a pro forma
11 document which is similar to the one I have put in front of
12 you that is exhibit 1C?
13 A. Yes.
14
15 Q. And you have continued to use that for each of the
16 events you told the Commissioner about earlier - the three
17 or four music events you have been involved in?
18 A. Yes, yes.
19
20 Q. Were you involved in any briefing that was given to
21 police officers on the morning of the Lost City Music
22 Festival?
23 A. No.
24
25 Q. Did you attend any briefing yourself?
26 A. No, I didn't.
27
28 Q. Did you have any role to play on Saturday, 23 February
29 at the festival?
30 A. Not at all.
31
32 Q. So were you present at all at the festival?
33 A. I was there.
34
35 Q. What was your role, then?
36 A. After all this, whatever, necessary paperwork and on
37 that night, on the specific event night, so my job is more
38 like a logistic part of it, like, running around to make
39 sure whatever things are needed --
40
41 Q. What's an example of that?
42 A. I give you an example of, say, like the food, like
43 water, like contact certain person. If a person actually
44 is running late for work, so my job is actually try to make
45 sure they turn up or whatever reason they didn't turn up.
46
47 Q. Do you have any role at all in respect of the search

1 procedures that are conducted on that day?
2 A. No, not at all.
3
4 Q. Any role in relation to the drug detection arm of the
5 event?
6 A. No, no.
7
8 Q. Did you have any role in the preparation of field
9 processing forms?
10 A. Yes, I have my input too, yeah.
11
12 Q. What was your input for the field processing forms for
13 Lost City?
14 A. I don't think we actually have that actually for that
15 one, but in general actually the field processing forms,
16 like, it has been updated actually, you know, from time to
17 time, just based on the, obviously - the different
18 circumstances.
19
20 THE CHIEF COMMISSIONER: Q. So we understand they have
21 been updated. Did you play a role in recommending some
22 changes or looking at some changes?
23 A. I did play a little bit of role there too, yeah.
24
25 Q. And what was your role? What did you do?
26 A. I can't tell you exactly what, but I - like, we -
27 sometimes we sit down with my supervisor or we sit down, we
28 have a look at the form, see if there's any information we
29 need added to the form or some information actually we need
30 to take out, you know. Yeah. So I can't really tell you
31 exactly what information I had, had the input at the time,
32 so - yeah.
33
34 MS DWYER: Q. What about after February 2019 - did you
35 recommend, yourself, any changes to the field processing
36 form?
37 A. I don't remember that part of it, no.
38
39 MS DWYER: Chief Commissioner, I have no further questions
40 for the officer.
41
42 THE COURT OFFICER: Do you have any questions, Mr McGirr?
43
44 MR MCGIRR: Yes, I do.
45
46
47

1 <EXAMINATION BY MR MCGIRR:

2

3 MR MCGIRR: Q. Would you have a look at document 1C,
4 please. The would you go to page 3 of that document. In
5 the third-last paragraph, it states:

6

7 The event is for children aged 13 to 17
8 years.

9

10 A. Yes.

11

12 Q. Do you have that?

13 A. Yes, I do.

14

15 Q. This is your report?

16 A. Yes.

17

18 Q. And you have drawn that attention to whoever is going
19 to read this report?

20 A. Yes.

21

22 Q. This manual, it's actually an operation manual,
23 really, the first draft or the first - this is actually the
24 first system operation manual that is going to be added to
25 and acted upon; is that what this document is?

26 A. Yes.

27

28 Q. So you saw your role as preparing this document,
29 highlighting the important features of something, and
30 particularly something that is unique. So the reason you
31 put that 13 to 17 years in is because that was something of
32 great importance --

33

34 THE CHIEF COMMISSIONER: Mr McGirr, if you wish to give
35 evidence, I'm altogether happy that you should, but you
36 must put up then, with the risk of cross-examination by
37 counsel assisting.

38

39 MR MCGIRR: Yes, Commissioner.

40

41 THE CHIEF COMMISSIONER: Perhaps you might ask the
42 question in a more open-ended way.

43

44 MR MCGIRR: Q. Why did you put that 13-17 year reference
45 in there at page 3 of the document?

46 A. Because the principle of this concert is for under-18.

47

1 Q. Later on, if you go to page 11 of that document, under
2 4.2.8, in your report you put in that one of the duties of
3 the officers is to conduct person searches in accordance
4 with the provisions of LEPR. Why did you put that in?
5 A. Because all the person searches should be use of the
6 police power under the LEPR.
7
8 Q. You have told the Commission that you haven't looked
9 at the LEPR recently; did you mean a reference to the Law
10 Enforcement (Powers and Responsibilities) Act?
11 A. Yes, that's correct.
12
13 Q. You have read the relevant sections of that Act in the
14 past?
15 A. Oh, yes.
16
17 Q. You have a general knowledge of it?
18 A. I have.
19
20 Q. But you are not actually on the beat, as we say, at
21 the present time, so consequently you have had little to do
22 with the enforcement or the use of that Act so far as
23 searches are concerned?
24 A. Yes.
25
26 Q. And so far as strip searches are concerned?
27 A. Yes.
28
29 Q. But when you prepared this report, did you have an
30 expectation that the persons reading this report, from
31 constables upwards, would have either as good as or
32 a better knowledge than you of the requirements for
33 stripsearching and searching?
34 A. Yes.
35
36 Q. Did you not put any further in about stripsearching or
37 LEPR --
38
39 THE CHIEF COMMISSIONER: Mr McGirr, I really don't get
40 much help from leading questions of that kind, frankly.
41 I have already suggested they are not helpful.
42
43 MR MCGIRR: Q. You have made no further mention of LEPR
44 other than the matters to which I have drawn your
45 attention. I will ask you again - was that on some
46 expectation you had?
47 A. Yes.

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Q. What was that expectation?
A. I expect, obviously, the individual officer will use their power under the LEPR. That's my expectation.

MR MCGIRR: No further questions.

MS CHAPMAN: No questions.

THE CHIEF COMMISSIONER: Any other questions?

Thank you very much, officer. You are free to go. I won't excuse you just yet, because it's quite a long-running investigation, and we might need to have you back. But I think that is going to be unlikely. If we do, we will let your legal adviser know and we can make appropriate arrangements. Thank you very much.

THE WITNESS: Thank you.

<THE WITNESS WITHDREW

MS DWYER: Chief Commissioner, I call GEN4.

<OFFICER GEN4, sworn: [2.37pm]

THE CHIEF COMMISSIONER: You may be seated. Thank you, officer.

MR COFFEY: Chief Commissioner, GEN4 will seek a declaration pursuant to section 75.

THE CHIEF COMMISSIONER: I have no doubt that you have already been advised of these matters but there are some things I need to tell you. The first is you must answer all questions you are asked except those I tell you you don't have to answer. You must, secondly, produce anything you are asked to produce, except when I tell you you don't have to produce it.

You may object to either the question or the request. But you must nevertheless answer and you must nevertheless produce the documents. But the effect of your evidence is that your evidence cannot be used against you in any proceedings except under the Police Act or effectively under the Law Enforcement Conduct Commission Act for perjury or contempt. Do you understand that?



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THE WITNESS: Yes, Commissioner.

THE CHIEF COMMISSIONER: Now, I can make a declaration that obviates the necessity for you to object to each question or each request, and I understand from your counsel that you wish me to make such declaration; is that right?

THE WITNESS: Yes, Commissioner.

THE CHIEF COMMISSIONER: Very well. I make a declaration under section 75 of the Act that all answers given by this officer and any provision of any documents by this officer are to be taken to have been answered or provided under objection.

<EXAMINATION BY MS DWYER:

MS DWYER: Q. Sir, do you understand that, in these proceedings, you are to be known by the codename of GEN4?
A. Yes.

Q. In front of you I hope that there is a schedule of codenames where you will see the names of other officers and the pseudonyms that they have been given; do you see that?
A. I do.

Q. When you refer to any of those officers, would you mind please using their codename?
A. Certainly.

Q. You hold the rank of chief inspector; is that right?
A. Yes.

Q. In relation to the Good Life Presents Lost City event in 2019, what role did you hold?
A. I didn't hold any.

Q. I see. You were not event commander or anything like that?
A. No.

Q. Were you present at the event?
A. No.



1 Q. Is it correct that you had a hand in the operational
2 orders for that event?
3 A. Yes.
4
5 Q. Can I ask that you be provided, please, with
6 exhibit 2C. I'll hand you a copy of those orders --
7
8 THE CHIEF COMMISSIONER: Q. Had you performed
9 a responsible role, whatever it was, in relation to earlier
10 festivals?
11 A. For under-18s or just in general?
12
13 Q. No, just generally?
14 A. Yes, sir.
15
16 Q. About how many?
17 A. Probably in excess of 20.
18
19 Q. Perhaps your role changed over time, but say the last
20 half dozen, what was your role?
21 A. Either event commander or drug dog commander.
22
23 Q. But you were neither on this particular occasion?
24 A. That's right, I was not.
25
26 Q. Was that accidental? Were you on leave or it just
27 happened that some other officer was selected or --
28 A. I was on leave, Commissioner.
29
30 Q. Had you not been on leave, you would have been
31 involved, I take it?
32 A. Most likely.
33
34 MS DWYER: Q. If you look down the list of codenames,
35 sir, you will see Officer GEN1. Do you recognise that
36 name?
37 A. Yes.
38
39 Q. Did you have a discussion with Officer GEN1 prior to
40 the event in February 2019 proceeding?
41 A. I don't remember if I did.
42
43 Q. You are aware that Officer GEN1 was in fact the event
44 commander; is that right?
45 A. Yes, I know that.
46
47 Q. Would you look, please, at exhibit 2C. They are the

1 operational orders or the lengthier operational orders for
2 this event. Have you familiarised yourself with them
3 before coming today?

4 A. No.

5

6 Q. If you have a look at that front page, you will see
7 that the operational orders appear to be recommended by
8 yourself and Officer GEN1?

9 A. Yes.

10

11 Q. Having been prepared some time earlier by two other
12 officers; do you see that?

13 A. Yes.

14

15 Q. Do you recall having a hand in the preparation of
16 these operational orders?

17 A. Checking them, yes.

18

19 THE CHIEF COMMISSIONER: Q. I must say, when I read
20 them, they smacked to me - not surprisingly, because this
21 is not the only festival the police had to deal with - as
22 rather generic, and I presume it was because,
23 overwhelmingly, what applied to previously operated or
24 supervised festivals applied to this one; is that right?
25 So you used previous iterations of this document as your
26 basic plan and unless there was a good reason to change it,
27 you kept the wording because everyone was used to it.
28 Would that be a fair --

29 A. Yes.

30

31 Q. -- description of what happened?

32 A. It is.

33

34 MS DWYER: Q. I think you gave evidence earlier that you
35 had not been involved in the preparation of operational
36 orders for under-18 events prior to this one; is that
37 right?

38 A. I don't remember if I had, but I could have.

39

40 Q. But you had been involved in the preparation of or
41 checking of operational orders where children under the age
42 of 18 were present; is that correct?

43 A. I would have, yes.

44

45 Q. Can you recall any operational orders that you either
46 prepared or checked which gave specific instructions in
47 relation to the searching of under-18s?

1 A. I can't, no.
2
3 Q. Do you see that in this document there is reference,
4 at page 5, for example, that the task of drug detection dog
5 support officers was to conduct person searches in
6 accordance with the provisions of LEPRAs? So it is page 5
7 of 10 or page 21 is also marked on the bottom right-hand
8 corner.
9 A. I've got 21, but I don't have 5, yes.
10
11 Q. Would you just look at page 21, then, do you see that
12 there's a bullet point which refers to abiding by the
13 provisions of LEPRAs?
14 A. Yes.
15
16 Q. But there are no specific instructions in that
17 document, are there, with respect to searching children
18 under the age of 18?
19 A. No.
20
21 Q. When you read that document, do you recall thinking
22 about the searching of under-18-year-olds?
23 A. I do now.
24
25 Q. When you were actually checking the documentation, did
26 it occur to you that police would be searching
27 under-18-year-olds?
28 A. Yes.
29
30 Q. Did it occur to you that there should be specific
31 instructions there about how to search under-18-year-olds?
32 A. Yes, I do now.
33
34 Q. But is it fair to say that when you checked it, it
35 didn't occur to you that that's something that needed to be
36 there?
37 A. That's right.
38
39 THE CHIEF COMMISSIONER: Q. So in hindsight, it seemed
40 a sensible thing to do, to bring to their attention the
41 specific provisions relating to the searches of young
42 people; is that what you are saying?
43 A. Yes.
44
45 MS DWYER: Q. As at February 2019, were you familiar
46 with the specific provisions in LEPRAs that related to
47 searching children?

1 A. Yes.

2

3 Q. Were you familiar with the fact that when
4 stripsearching children, a parent, guardian or otherwise
5 a support person needed to be present?

6 A. Yes.

7

8 Q. And following on from the Chief Commissioner's
9 question, do you agree it would be prudent to have in the
10 operational orders what the specific requirements are in
11 relation to stripsearching children?

12 A. Absolutely.

13

14 THE CHIEF COMMISSIONER: Q. Aside from anything, you
15 don't want these - basically, they will probably be fairly
16 young constables trying to make up processes as they are
17 going along. What you want to have is almost a tick-box.
18 Make sure you get their parent or guardian, or do you know
19 who the - because we're going to have SES officers or
20 whatever it is available, make sure you have got their
21 numbers and give them a call. As I say, it's one thing to
22 have it; it's another thing if you have got to make it up
23 on the run. Do you agree that these kinds of operational
24 orders are to try to help these officers get through their
25 day's work? Is that a fair description of what ideally
26 would be placed in these orders?

27 A. Yes, Commissioner, it is.

28

29 MS DWYER: Q. Inspector, do you recall seeing at any
30 time prior to 23 February the field processing forms that
31 were to be used for that Lost City event?

32 A. No.

33

34 Q. Was it part of your role to determine what should be
35 on that field processing form?

36 A. That's right.

37

38 Q. Have you had any hand, after February 2019, in changes
39 to that form?

40 A. I would probably make suggestions, but it's not up to
41 me to make those changes.

42

43 Q. But do you recall actually having made any suggestions
44 in relation to the field processing form?

45 A. Possibly, yes.

46

47 Q. Can you --

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THE CHIEF COMMISSIONER: Q. But as you sit there, you don't recall. Is that what you are saying?

A. Which, the specific changes.

Q. Don't recall specifics?

A. No.

Q. Can I just ask you this: in relation to young people, one of the protections is the independent person, however categorised, and one thing that seems to have become evident throughout - as you know, we have been conducting a general investigation into stripsearching now, focused on juveniles - and one of the things that I have never seen is something that gives either police or the independent person some idea of the role they are expected to play. They could just be witnesses there to make sure that nothing indecent or untoward happens. That's one level of oversight.

The other level of oversight - and I rather think this is implicit because the Act talks about being able to help them with their rights - is, for example, at one level you might say, "Why are you stripsearching this kid? What's the reasonable suspicion? Obviously he doesn't have anything on him." Or you might say, "Look, if you are going to make him take his trousers off, at least let him put his T-shirt back on."

There are a whole range of things that an independent person might have, might be able to say. Amongst other things they might be able to do - and I'm not sure what the attitude of police is; I'll to ask you the question in a moment - is give the independent person a chance to have a chat, a confidential chat, with the child, ask them how they are feeling, how they are going, you know, do they have any problems. They are likely to be nervous and upset, "Don't worry", calm them down - you know, a whole lot of things. A father might say, "Listen, I'm with you, don't worry. Nothing bad is going to happen. They are just going to search you", so calming.

There are a whole lot of ways in which an independent person might actually help the process as distinct from hinder it. But there is no guidance whatever. So if a father comes in and says, "Listen, can I have a talk to Jack", they don't know whether to say, "Yes, that's right",



1 or "No, that's wrong", or what they can do or can't do. So
2 it seems to me that that is a real issue that has never
3 been adequately faced or looked at in a corporate sense.
4 I mean, I rather think what I am saying is not much more
5 than commonsense. When you point it out you think, "Oh,
6 yeah, that's a good idea"; do you agree?

7 A. I do, Commissioner.

8

9 Q. But have you ever been party to discussions about what
10 is this independent person supposed to do?

11 A. That's actually a good point because I've tried to
12 look amongst our standard operating procedures to see if
13 there was such parameters, and I wasn't able to find one.
14 Yet we do have guidelines for a supporting person, for
15 someone in custody, for, say, a vulnerable person.

16

17 Q. That's right, or an Aboriginal, for example. So it is
18 not only young people. That's quite right.

19 A. No. So that is missing and that's something that we
20 are already starting to address within my region.

21

22 Q. But you are doing it on a regional level; it's not
23 being addressed - you know the issue that we have had,
24 I think it is now probably widespread knowledge, when we
25 asked for all the standard operating procedures across
26 New South Wales, we got a different one for each police
27 station?

28 A. Yes.

29

30 Q. That is obviously not desirable?

31 A. No.

32

33 Q. It needs to be a corporate position. But would you
34 see yourselves approaching the problem, coming to
35 a solution and then suggesting a corporate approach along
36 the lines that you thought might be useful? How would you
37 progress it, in other words?

38 A. Well, I would like to think that our region, which is
39 south-west metro, is a fairly progressive type of region
40 and we are at the forefront of identifying issues such as
41 this. So once that is addressed and identified, I think it
42 definitely would go to the corporate level.

43

44 Q. Because it is not rocket science. Once you sit down
45 to think about it, the answers become fairly clear, don't
46 they?

47 A. They do. But they are not there.

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Q. No, quite. And as I say, the police officers who are conducting these searches are junior police officers?

A. Definitely.

Q. It is a bit rough to ask them to make up the rules on the run?

A. Yes.

MS DWYER: Q. Chief Inspector, did you have any role prior to 23 February in organising persons who might act as support people in the absence of parents or guardians for strip searches?

A. Yes, yes.

Q. Did you go to various briefings with stakeholders prior to 23 February?

A. I usually do. I can't remember if I did for this one.

Q. But was it part of your role generally to organise support persons to be present?

A. No.

Q. Why did you do it on this occasion?

A. Mainly because I had a contact with the SES close to a police station that we use and I believed that through that contact I could obtain some SES personnel for this operation.

Q. Did somebody ask you to obtain the presence of an independent support person or did you take that upon yourself?

A. I think I volunteered that.

Q. You understand that the Chief Commissioner has had a response from the Assistant Commissioner in relation to certain questions asked - are you aware of that?

A. No.

Q. What this Commission is told by him is this: the SES volunteers were organised by yourself --

A. Mmm-hmm.

Q. -- that is you as GEN4, who is the commander - and he nominates a particular region. He says that you have a working relationship with the SES and you specifically requested their assistance for this event; is that correct



1 so far?
2 A. Yes.
3
4 Q. He goes on to say:
5
6 The volunteers already held the appropriate
7 working with children clearance based on
8 their primary employment in a New South
9 Wales Health hospital, one of whom was
10 a registered nurse and the other was
11 a wardsperson.
12
13 Were you aware of that?
14 A. I was later.
15
16 Q. So at the time that you arranged for the SES
17 volunteers, were you aware of whether or not they had
18 a working with children check?
19 A. No.
20
21 Q. Are you aware generally as to whether or not SES
22 volunteers do have a working with children check?
23 A. I don't know, no.
24
25 Q. Is it fair to say from your answers so far that that
26 was not something that you thought qualified them for that
27 role?
28 A. Yes.
29
30 THE CHIEF COMMISSIONER: Q. I think it is fair to say,
31 because I did do a bit of research on this myself, that if
32 the volunteers are otherwise in work that requires
33 a working with children permit, then, of course, they would
34 have it, but many SES volunteers - they come from all walks
35 of life?
36 A. Definitely.
37
38 Q. They might or might not have that, and they are not
39 required - indeed, even permanent employees of SES are not
40 required to have working with children checks. I think
41 that is the position. I'm not asking you for expert
42 opinion, but is that broadly what you understand the
43 position to be?
44 A. I do, but, see, that's the difficulty, Commissioner,
45 with the independent person for under-aged events such as
46 this.
47

1 Q. Indeed.
2 A. It doesn't matter who we get from what field, they are
3 never going to be able to stand in for a parent or
4 a sibling. It's not going to be enough.
5
6 Q. Because there won't be confidence?
7 A. Never.
8
9 Q. You might trust your dad or your mum - or not, but you
10 are more likely to than some complete stranger?
11 A. Exactly.
12
13 Q. And that may be why it's sensible to allow them to
14 have a bit of confidential discussion beforehand, you know?
15 A. It wouldn't hurt.
16
17 Q. Someone could say, "Listen, I've got a son your age,
18 mate. I know what it's like", something that might just
19 help give that extra bit of support?
20 A. Definitely, yeah.
21
22 Q. I notice that these are volunteer SES and they are not
23 full-time SES workers. Was that just happenstance?
24 A. I think the majority of SES are volunteers.
25
26 MS DWYER: Q. At that time, in February 2019 when you
27 organised the SES, do you recall turning your mind to
28 whether or not they would be capable of representing the
29 interests of a young person in a search environment?
30 A. Doctor, the way I saw it, the SES are a respected
31 volunteer organisation, and that's the - hence they were my
32 first point of call.
33
34 Q. Did you actually have a think, though, about what were
35 the interests of the child in that environment?
36 A. Yes.
37
38 Q. What did you think the interests of the child were?
39 A. Probably their safety, their rights.
40
41 Q. Did you then have an expectation that somebody from
42 the SES would tell the child what their rights were?
43 A. Yes, but then we would have to brief them first.
44
45 Q. So does that underscore the need, really, to have
46 a briefing for the person who is going to be the
47 independent person standing in for a parent or guardian?

1 A. Most definitely.
2
3 Q. Did you understand --
4
5 THE CHIEF COMMISSIONER: Q. Indeed, the extent to which
6 it is practical or not, I mean, the parent needs to know as
7 well. Depending in particular, I think, on what
8 socioeconomic group or community they come from, they may
9 well be totally ignorant --
10 A. To what is going on.
11
12 Q. -- of what's going on and their rights, which rather
13 suggests some screed or other should be given to them and
14 they should have a few minutes to try to absorb it. It is
15 pretty shocking, I should think, if your kid suddenly - if
16 you get a phone call in the middle of the night and you
17 need to go somewhere because your kid is going to be
18 searched.
19 A. Yes.
20
21 Q. It actually does require - I mean, commonsense
22 suggests what ought to be told, but then it does require
23 some care as to how one gets that information across and
24 what is involved. It's not altogether straightforward?
25 A. It's not.
26
27 Q. And then if you have problems with language in
28 addition, that complicates - that's another level of
29 complication?
30 A. Yes. And also with these festivals, Commissioner,
31 people come from fairly far away and their parents aren't
32 available on short notice.
33
34 Q. Quite. That's certainly true. But another aspect
35 that I can find nothing on is what makes a search necessary
36 and urgent. That's another test in the Act?
37 A. The seriousness and the urgency.
38
39 Q. The seriousness and the urgency. There is nothing
40 that gives a hint about what that might mean and, again,
41 you've got young officers just trying to do their best on
42 the run, which is not a very good process?
43 A. No. But, Commissioner, that's why - why are we even
44 speaking about ambiguity with the legislation? It
45 shouldn't even be there. It should be spelt out what
46 seriousness and urgency is, because I'm sure everyone in
47 this room would have a different opinion.

1
2 Q. I can assure you, much better minds than mine have
3 attempted that. But the essential problem is the infinite
4 variety of circumstances and trying to think of language.
5 Let me tell you what I think about one approach, but I'm
6 not a police officer, I'm a layperson. Let's leave the
7 festival experience, although what I'm about to say could
8 apply to that, but let's - well, no, let's take the
9 festival experience. What happens is, or what I suggest
10 should happen is, no names, no pack drill. Who did the
11 searches, you meet in a room, you had a cup of coffee and
12 a biscuit and you talk about, "Why did you do the search?
13 How did you do the search? What was the response to the
14 search? Could you have done it this way or that way?" You
15 debrief people, and you give guidance - because they are
16 experienced officers - in the context of a particular
17 circumstance, which is much more powerful learning than
18 hypotheticals and just learning what the law is. I mean,
19 what is a reasonable suspicion? Courts continuously quote
20 a particular judgment, which, when you look at it, does not
21 in fact advance knowledge very far. And that is because,
22 in a way, how long is a piece of string? There is no
23 bright line here.

24
25 In the end, what is important is the police get to do
26 their job without silly limits, but on the other hand,
27 people's rights are respected without unnecessary
28 intrusion. So between those two conflicting points of
29 view, one has to try to find balance, and it can only be
30 done really in a way of practical negotiation and working
31 things out.

32 A. Certainly.

33
34 Q. That's my own view. That's why we are never going to
35 get to a formula. But what I think we can do is develop
36 practical ways of working through the issues. My problem -
37 I will be perfectly candid with you - as I've been going
38 through this process, is that I can't see any real evidence
39 of willingness to go further than the language of the
40 statute itself where, it's true, you are going into
41 uncertainties and perhaps somewhat risky areas, but
42 I think, frankly, that voyage has to be undertaken or else
43 we're going to have just continuous complaints --

44 A. Yes.

45
46 Q. -- complaints by police, "You are not letting us do
47 our job", and complaints by the public, "You are far too

1 intrusive and you shouldn't have done that to my son".
2 A. Yes.
3
4 Q. Anyway, everyone knows my view now. I have expressed
5 it before. It strikes me that one has to, more candidly
6 acknowledge the difficulties and then try to confront them
7 by ways which engage the police who are actually doing the
8 work in the context of their actual experiences of the
9 work?
10 A. Yes.
11
12 Q. Now, bodyworn video is going to be, I think, a great
13 help there, because you will actually get more than a
14 thousand words; you are going to get a picture that you can
15 look at and which you can then analyse and learn from.
16 A. Quite.
17
18 Q. All right. That's not really a question. It was more
19 a speech. But thank you for listening patiently.
20
21 MS DWYER: Q. Chief Inspector, I am nearly finished, but
22 just in relation to section 33 of LEPR, where it is not
23 a parent or guardian but is in fact an independent person,
24 you appreciate that that presence has to be acceptable to
25 the young person being searched?
26 A. Of course.
27
28 Q. Did you turn your mind to the fact that if the SES
29 personnel was not acceptable to the young person, you would
30 need a plan B?
31 A. Yes.
32
33 Q. Was there anybody else other than the SES available
34 for that person?
35 A. Most of these festivals you would probably have people
36 from Red Frogs, and we have relied on them in the past.
37
38 Q. So prior to February 2019, you had had an experience
39 of relying on Red Frogs?
40 A. Yes.
41
42 Q. In that circumstance, would you check the credentials
43 of the Red Frogs personnel or would you assume that they
44 were suitable?
45 A. Again, that's fraught with danger because I'm not sure
46 if we could do those checks on the spot.
47

1 Q. Are you aware of whether or not Red Frogs volunteers
2 have to have a working with children check clearance?
3 A. I can only assume that they would.
4
5 Q. But it is not something that you would have checked
6 prior to the event; is that right?
7 A. That's right.
8
9 Q. And are you aware of whether or not Red Frogs
10 volunteers had to be over the age of 18?
11 A. I don't know.
12
13 Q. Would you have an expectation that the person who was
14 going to be an independent person acceptable to the young
15 person for the purposes of section 33 would have to be over
16 the age of 18?
17 A. Yes.
18
19 Q. Are you aware of whether or not that's written down
20 anywhere?
21 A. I couldn't tell you if it is, but also, for example,
22 if they had a sibling that was, say, 17, and it was
23 acceptable to the young person, we would probably still
24 allow that.
25
26 Q. You probably would still allow that?
27 A. Yes.
28
29 Q. What about if they were 16?
30
31 THE CHIEF COMMISSIONER: Let's not slice the salami.
32
33 Q. The fact is each circumstance is so variable. The
34 answer is, 16 is probably too young, but it depends - isn't
35 it, really?
36 A. And a lot of young people might not want their
37 parents there.
38
39 Q. Oh, no, that's true. But then they have to cop
40 a stranger?
41 A. Yes.
42
43 Q. Sorry, I didn't, by "cop", mean anything by it.
44
45 MS DWYER: Q. Do you think it would be helpful, Chief
46 Inspector, to have guidelines as to who that independent
47 person should be in terms of the age range, or at least

1 provide some guidelines?
2 A. Yes, it would be very helpful.
3
4 MS DWYER: I have no further questions, Chief
5 Commissioner.
6
7 THE CHIEF COMMISSIONER: Are there any other questions?
8
9 MR COFFEY: Nothing.
10
11 <EXAMINATION BY MS CHAPMAN:
12
13 MS CHAPMAN: Q. Did you expect that at the drug dog
14 briefing that would include information about the LEPRAs
15 requirements in relation to stripsearching
16 under-18-year-olds?
17 A. Yes.
18
19 Q. And to that end, are operational guidelines more about
20 resource allocation than an explanation of the law?
21 A. Possibly.
22
23 Q. Are you aware that some time after this event,
24 a one-page "Stripsearching briefing document" was created
25 by the training and education department?
26 A. Yes.
27
28 Q. And it is a guideline in relation to strip searches?
29 A. Yes.
30
31 MS CHAPMAN: Chief Commissioner, could I ask whether this
32 document forms part of the brief or whether it can be
33 identified.
34
35 MS DWYER: It doesn't and I would call for it and ask for
36 it to be provided.
37
38 THE CHIEF COMMISSIONER: Thank you. I wonder if you would
39 show it to me, though. Yes, all right. That will be
40 exhibit 10C.
41
42 EXHIBIT #10C ONE-PAGE DOCUMENT ENTITLED "STRIPSEARCHING
43 BRIEFING DOCUMENT" BARCODED 7603224
44
45 MS CHAPMAN: Could exhibit 10C be shown to the witness?
46
47 THE CHIEF COMMISSIONER: Certainly.

1
2 MS CHAPMAN: Q. Is that the document that you were
3 referring to when you answered in the affirmative to my
4 last question?
5 A. Yes.
6
7 MS CHAPMAN: Nothing further.
8
9 THE CHIEF COMMISSIONER: Q. I have a question though.
10 The officers conducting the searches have to make, at
11 least, amongst other things, a COPS entry, an event record?
12 A. Yes.
13
14 Q. Because it is the exercise of powers, they need to
15 show how they complied with the powers - am I right?
16 A. Yes.
17
18 Q. Merely saying "LEPRA complied with" doesn't reach that
19 standard, obviously; do you agree.
20 A. No.
21
22 Q. If, for example, there is no independent person, as
23 the Act itself requires, quite apart from police
24 requirements, a note must be made as to why, how that came
25 about, in effect?
26 A. You would think so, yes.
27
28 Q. In this particular case, we have a large number of
29 COPS records that relate to young people which simply do
30 not contain that information. What troubles me is I just
31 wonder how it wasn't picked up by the supervising sergeant
32 or other relevant officer who should be monitoring for
33 exactly that kind of thing. Do you have any explanation,
34 aside from everyone's too busy to do their job?
35 A. I don't, Commissioner, no.
36
37 Q. But it is not acceptable, is it?
38 A. No.
39
40 THE CHIEF COMMISSIONER: Anything arising out of my
41 questions?
42
43 MS CHAPMAN: No.
44
45 MS DWYER: No, thank you.
46
47 THE CHIEF COMMISSIONER: You are free to go. It's

1 possible, because this is an ongoing investigation, that we
2 might want you back, but I think that is unlikely. I'm not
3 entirely going to release you from your summons at this
4 stage, but we will let Mr Coffey know if we need you to
5 come back and we will make appropriate arrangements.

6
7 THE WITNESS: Thank you, Commissioner.

8
9 <THE WITNESS WITHDREW

10
11 MS DWYER: Your Honour, that completes the witnesses for
12 today. I apologise for the early mark, but if we might
13 start again tomorrow morning.

14
15 THE CHIEF COMMISSIONER: Very well. I will adjourn.

16
17 AT 3.10PM THE COMMISSION WAS ADJOURNED
18 TO TUESDAY, 3 DECEMBER 2019 AT 10AM

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