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*Teaching police powers  
through strip searches*

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# Teaching police powers through strip search laws

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# Teaching students about police search powers

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- One of the most visible powers associated with the policing of public places – central to concerns about racial profiling and over-policing.
- Highlights ways in which police ‘make law’
- Acts involved would constitute an assault if not authorised by law

## Current debates

- Calls for law reform, particularly in relation to strip searches
- LECC Inquiry into strip search practices, Redfern Legal Centre Safe and Sound Campaign, UNSW Strip search report, David Shoebridge MP, Sniff Off
- debates over the policing of music festivals, eg NSW Coroners findings into deaths at music festivals, calls for introduction of pill testing, NSW government Ice Inquiry calls for drug law reform



**Help us change strip search laws**

-  **Stop unnecessary strip searches**
-  **Fairness and dignity**
-  **Safe festivals for all**

# Police power to stop and search without a warrant

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- S21 LEPR: power to stop, search and detain a person without a warrant if the officer *suspects on reasonable grounds* that specified circumstances exist, e.g. the person is in possession of prohibited drugs or a dangerous article.
- S30: What kind of search can police do; **'general search'** eg running hands over the person's outer clothing, or requiring a person to remove outer clothing such as a coat or jacket

Image: <https://theindustryobserver.thebrag.com/police-strip-searches-festival-teens-unlawful-inquiry-lecc/>



# Drug detection dogs

- SS146-148 LEPPR: authority to use drug detection dogs.
- 'You must understand that the indication of the DDD alone does not constitute 'reasonable grounds' - to conduct a search upon an individual. You must conduct further-investigations,-such as asking questions as well as observing their appearance and demeanour prior to determining that 'reasonable grounds' exists to conduct a search.' (NSW Police Drug Detection Dog Deployment Standard Operating Procedures, p.10)

- Image:  
<https://musicfeeds.com.au/news/heres-much-nsw-spends-sniffer-dogs/>



# What is a strip search?

**LEPRA s3:**

...means a search of person or articles in possession of person that may include:

- Requiring person to remove some or all of their clothes and
- Examination of persons body by touch (but not of persons body cavities) and of those clothes

**S 33 Rules include that a strip search...**

(4) ..must not involve search of persons body cavities or examination of body by touch

(5)...must not involve removal of more clothes than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search

(6)...must not involve more visual inspection that person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search

# When can a strip search be carried out?

## LEPRA s31

A police officer may carry out a strip search of a person if-

(a) in the case where the search is carried out at a police station or other place of detention--the police officer **suspects on reasonable grounds** that the strip search is **necessary for the purposes of the search**, or

(b) in the case where the search is carried out in any other place--the police officer **suspects on reasonable grounds** that the strip search is **necessary for the purposes of the search** and that the **seriousness and urgency** of the circumstances make the strip search **necessary**.

# Rules for a strip search

LEPRA s32 & 33;

Police **must**:

- inform the person if they will be required to take off their clothes
- inform why it is necessary to take off their clothes
- ask the person being searched for their cooperation
- conduct the search in a private area (as far as reasonably practicable in the circumstances)
- conduct the search as quickly as possible
- officer conducting the search must be of the same sex as the person searched
- not conduct the search in the presence of a person of opposite sex to the person being searched
- only conduct the search in the presence or view of a person who is necessary for the purpose of the search



# Children

Can't strip search child under 10 (s34) – *recent civil action by family of 8 month baby strip searched by police at correctional centre visiting father.*

When conducting a strip search on a child aged between **10 and 18 years**, the search **must** be conducted in the presence of a parent or guardian. If none available, then another person who is not a police officer who can represent the interests of child being searched

police can override the above requirement if **suspect on reasonable grounds** that a **delay** with the search would **conceal or destroy evidence**, or an immediate search is **necessary to protect the safety** of a person (s.33(3A)).

# Nature and impact of Strip searches

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- “If you don’t tell me where the drugs are, I’m going to make this nice and slow.” (Evidence to NSW Deputy Coroner, from a young woman describing what was said to her as she stood naked during a strip search at a NSW music festival.)
- “He was asked to lift his shirt and show his armpits, then to remove his socks and shoes. Lastly, he was asked to pull his pants down and the officer told him to: ‘Hold your dick and lift your balls up and show me your gooch’.” (Evidence to Law Enforcement Conduct Commission regarding the strip search of a 15-year-old boy.)
- “I removed all my clothing ... I had a panty liner on my underwear and the police officer asked me to remove it so that she could look at it ... she told me to squat on the ground ... she then squatted down and looked underneath me.” (Evidence of 16-year-old girl to Law Enforcement Conduct Commission.)
- Image:  
<https://www.sydneycriminallawyers.com.au/blog/aboriginal-elder-strip-searched-on-busy-sydney-road/> Click on link for video footage



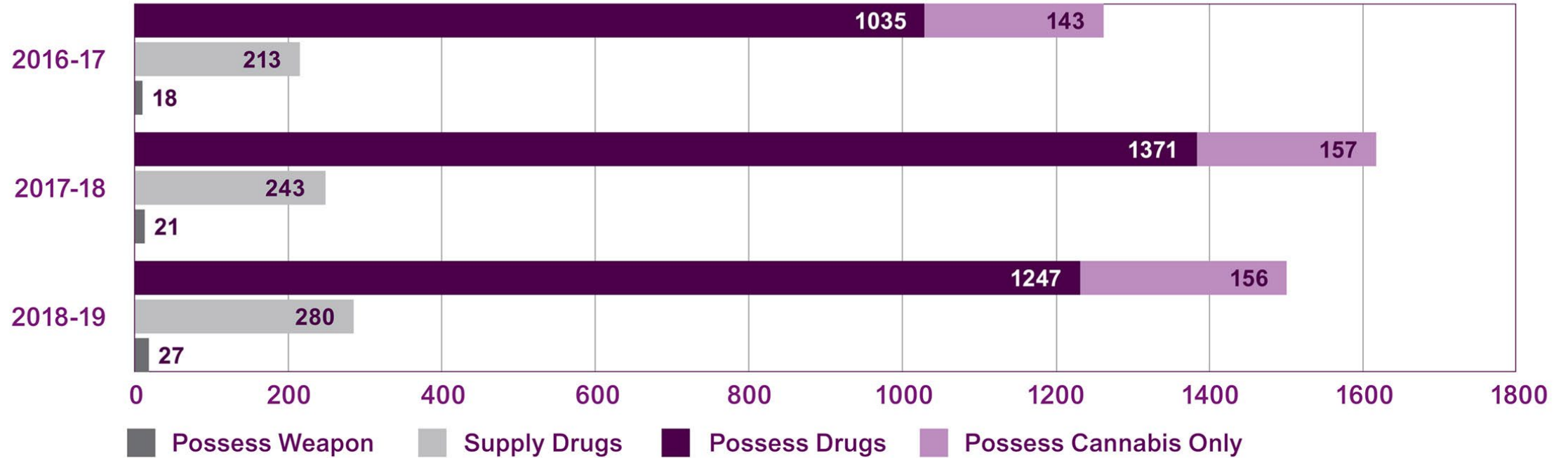
# Strip searches: key data

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- 20-fold increase in the use of strip searches ‘in the field’ between 2006 and 2018. Currently over 5,500 per annum
- 10% of those strip searched are Indigenous
- Approximately 45-50% are age 25 or under
- Over 90% of strip searches based on suspicion of possession of prohibited drugs
- Approximately one third of strip searches result in find of illegal item
- Over 80% of charges arising from strip searches are for possession of a prohibited drug. 15-20% of these are for cannabis.
- Approximately 75% of personal and strip searches following a drug dog indication find nothing
- Less than 1% of searches following drug dog detection resulting in successful prosecutions for indictable (supply) offences



**Figure 1: Strip searches in the field resulting in charges**



The data for possession of “cannabis only” excludes charges for multiple drug types. Over the three year period this category consists of 456 searches where other non-drug related possession charges may also have been laid, and 311 searches where no charges other than possession of cannabis were laid.



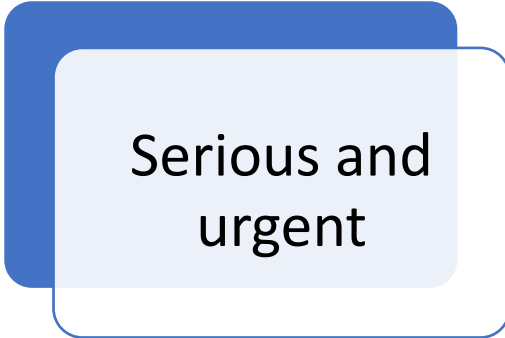
# Are current strip search practices systemically unlawful?



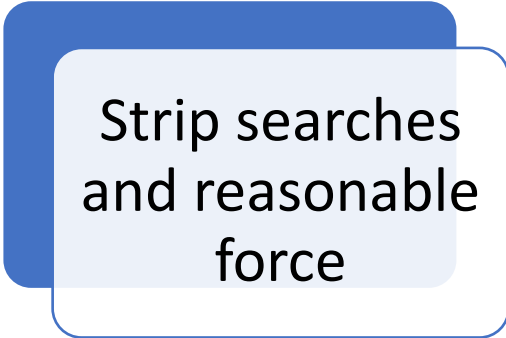
Definitional  
issues



Reasonable  
suspicion



Serious and  
urgent



Strip searches  
and reasonable  
force

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# Definitional issues

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- Lack of clarity in S3 definition
- NSW Police Person Search Manual (August 2019) advises police they can ask a person to do the following to aid a visual examination: lift testicles, part buttock cheeks, spread fingers and toes, lift breasts, turn their body to face a different direction, open their mouth and shake their hair, or squat.
- Raises issue of whether these are means of conducting cavity searches. UNSW report argued for specific exclusion of squat and cough. LECC also questioned whether there was power to force someone to squat and cough. UNSW Report also argues that practices such as pulling away clothing should be included in definition of strip search as they enable visual inspection of the body.
- Image: <https://www.thebigsmoke.com.au/2019/08/06/nsw-police-partially-strip-search-13-year-old-boy-in-public/>



## Police interpretations of “reasonable suspicion”.

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- Caselaw emphasizes that reasonable suspicion cannot be founded on everyday innocent acts, eg *Attalla*
- LECC Inquiries indicate police have little regard for this – or clear guidance. Routinely rely on sniffer dog reactions or personal assumptions.
- NSW Police settle most civil actions before public court hearings
- Image: <https://www.abc.net.au/news/2020-02-13/nsw-police-strip-search-quota-revealed-in-foi-documents/11960682>



# *Attalla v State of NSW* [2018] NSWDC 190

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- Civil case against police
- Attalla sitting on wall, texting at 3am
- Approach by PO, refused to submit to search – arrested for hindering police
- Handcuffed, searched, no drugs found
- Taken to police station, where strip searched (nothing found), given CAN for hindering police
- Discussion of whether reasonable grounds for suspicion of possession
  - No evidence of connection between time of day and possession of drugs or offences generally at that location
  - Facial expressions/demeanour not grounds for reasonable suspicion because didn't change until he was told he was to be searched
  - Focusing attention on the police vehicle no grounds
  - If answers to questions dishonest, content not suggestive of criminal offence
  - Sitting on stone wall can't support suspicion of possession
  - Image: <https://www.smh.com.au/national/nsw/these-experiences-ruin-people-20191128-p53f7u.html>



took the government to court after being illegally strip searched by police



# What constitutes reasonable suspicion for a strip search and ‘serious and urgent’?



- No statutory criteria or judicial guidance on this.
  - Strip searches primarily instigated on suspicion of drug possession. Is this “serious and urgent”?
  - NSWPF say that general intelligence that young people secrete drugs on their person at festivals makes it “serious and urgent”
  - LECC doesn’t support this interpretation
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- Image: <https://www.buzzfeed.com/hannahryan/strip-searching-festivals-australia-campaign>

# Key recommendations for law reform

[UNSW report:  
Rethinking strip  
searches by NSW  
Police]

Clearer definitions: *include* range of practices; *exclude* contortions of body that amount to cavity search

Limit s31 (b) grounds to: suspect dangerous weapon or supply of indictable quantity of drugs AND immediate risk to personal safety

No strip search of child unless court order (unless exceptional circs to protect child from immediate harm)

Tighten rules to be mandatory

Accountability, record keeping and external review.

# Key findings from LECC investigations

## NSWPF officers:

- don't know what a strip search is; often don't record strip searches or reasons
- don't turn minds to the legal thresholds;
- Think reasonable suspicion = Drug Dog indication plus observations of equivocal behaviour
- Conduct SS's in circumstances where not necessary for the purpose of the search (i.e general search adequate)
- Think serious + urgent = general belief festival goers internally conceal drugs inside their bodies/ingested drugs
- Routinely direct people to squat, cough, contort body in way that subvert LEPR
- Routinely strip search children without parent/guardian
- Incorrect operational instructions/lack of guidance from senior police

# LECC: outcomes of serious misconduct investigations into Strip Searches 2020

Operation	Unlawful	Serious misconduct
Brugge: 16yo girl, music festival	✓	✗
Gennaker: 3 teen boys, music festival	✓	✗
Mainz: 16yo Aboriginal boy, on street & in police dock	✓	✗
Sandbridge: <i>Atalla</i> civil action, Adult on street.	✓	✓
Karuka: Aboriginal adult, police station	✓	✗


Common approach: onus on NSWPF to revise, develop internal guidelines/procedures

LECC Report:  
Inquiry into  
NSW police  
strip search  
practices  
(Dec 2020)

Key recommendations include:

- improved police training and manuals
- LECC and NSWPF Audit of police conduct at festivals 12 months after report
- Law reform including clearer definition of strip searches; parliament should decide if squat and cough allowed; guidance on the meaning of “serious and urgent” in the law.

NSW govt responded:

- Accepting improvements to training
  - Not accepting law reform
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# Resources

- [\*Rethinking strip searches by NSW Police\*](#) – review of law, case studies and statistics
- [Safe and Sound](#) – campaign materials
- [Redfern Legal Centre](#) – media releases, fact sheets
- [Law Enforcement Conduct Commission \(LECC\)](#) – Inquiries and recommendations
- [\*Law Enforcement \(Powers and Responsibilities\) Act 2002 \(NSW\) \(LEPRA\)\*](#)