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# Person Search Procedure

**Corporate Spokesperson for Police Powers**

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## **Essential Summary**

This is the principal document for the carrying out of person searches under LEPR. It provides guidance as to when and how person searches must be carried out, as informed by legislation, the common law, and NSWPF policy. All local standard operating procedures (SOPs) no longer apply.

All police should familiarise themselves with the procedures detailed within this policy.

This policy compliments the Police Handbook and Charge Room and Custody Management SOPs

## Document Control Sheet

*Document Properties*

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V1	August 2019	Office of the General Counsel and Police Prosecutions Command	Development of the Person Search Manual
V2	September 2021	Office of the General Counsel and Police Prosecutions Command	Amendments in response to the Law Enforcement Conduct Commissioner report: Inquiry into NSW Police Force Strip Search Practices (D/2021/894428)
V3	January 2023	Corporate Spokesperson for Police Powers	Amendments to include instructions on searching transgender and gender diverse persons (D/2022/1317159)
V4	February 2024	Operational Legal Services Command	Amendments to ensure compliance with the new NSWPF Procedure for Corporate Policy Documents (F/2024/5821)

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## 1. Purpose

This document provides instruction for police on the requirements of the person search provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002* and the expectations of the NSW Police Force when police are exercising those powers.

## 2. Person Searches under LEPR

### 2.1. LEPR powers

There are several powers to search people under the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPR). Examples include powers to:

- stop, search and detain (s.21)
- search on arrest (s.27)
- search in lawful custody (s.28A)
- search pursuant to a warrant (s.50).

### 2.2. LEPR requirements

Whenever police exercise a power to search a person, the searching police must:

- hold the **state of mind** required by LEPR,
- comply with the rules for searching in s32 and s33,
- comply with the safeguard requirements in Part 15, and
- make a contemporaneous record of the search.

## 3. State of Mind

- 3.1. Any officer who searches a person **must** hold the state of mind required by LEPR. For example, where a male officer asks a female officer to search a female, the male officer must give the female officer enough information for her to independently form the required state of mind. As the searching officer, she must have that state of mind.
- 3.2. Where a power requires the searching officer to hold a reasonable suspicion, there must be some factual basis for the suspicion. The courts have provided the following guidance:
  - a. A reasonable suspicion involves less than a reasonable belief but more than a possibility. A reason to suspect that a fact exists is more than a reason to look into the possibility that a fact exists.
  - b. Some factual basis for the suspicion must be shown. A suspicion may be based on hearsay material or materials which may be inadmissible in evidence, but the materials must have some probative value.
  - c. What is important is the information in the mind of the searching officer at the time of the search. The next question is whether that information afforded reasonable grounds for the suspicion the police officer formed. The source of the information and its content, seen in the light of the whole of the surrounding circumstances, will be relevant.
  - d. To form a reasonable suspicion police may rely on their observations of the person, and any information they have access to, such as recent warnings on COPS. However, police cannot rely solely on a person's criminal history – they may consider this alongside other factors, but it is not enough on its own.
- 3.3. Police should consider if there has been a previous search, the type of search that was carried out and the result of that search, when determining whether a search is necessary.
- 3.4. It may be appropriate to rely on fresh, specific intelligence (for example, police are told a specific person is armed with a knife). Courts will not accept police relying solely on intelligence that is older and more general; however, older more general intelligence can be taken into consideration along with other factors.

## 4. Privacy and Dignity Rules

- 4.1. Searching police must remember that strip searching can be a confronting experience for many people. The rules in s.32 of LEPR apply to all person searches and must be complied with as far as is reasonably practicable in the circumstances. These requirements are all about preserving the person's privacy and dignity. The rules are set out in Appendix 1 and 2 (see pages 14 and 15).
- 4.2. Searching police must conduct the **least invasive** search practicable in the circumstances, and must conduct the search in a way that provides reasonable **privacy** for the person being searched, as far as practicable in the circumstances.
- 4.3. Searching police **must** be of the same sex as the person being searched. If this is not reasonably practicable in the circumstances, the reason for not complying **must** be recorded by the searching police.
- 4.4. Respecting the privacy and dignity of transgender and gender diverse people is important. A member of the same sex as a person means, if the person is a transgender person, a member of the same sex as the sex with which the transgender person identifies. Police should consult with transgender or gender diverse people respectfully to ask them how they identify to inform the decision of whether a male or female officer will be selected to perform the search. If there is any uncertainty a supervisor should be consulted.
- 4.5. If a police officer of the same sex as the person to be searched is not immediately available, police may use an agent (a nurse, ambulance officer, correctives services officer, or juvenile justices officer) to carry out the search, in accordance with s.32(7A)(b) of LEPR. The agent is not required to form a reasonable suspicion, as long as the police officer instructing them does.
- 4.6. If the search is a strip search, the rules in s.33 also apply. While some of these rules must be complied with as far as is reasonably practicable in the circumstances, most of them are compulsory. (see Appendix 2)

## 5. Safeguards

- 5.1. When exercising a power to search a person, searching police must comply with the safeguard requirements in Part 15 of LEPR. These include providing the following information to the person being searched:
  - a. evidence that the police officer is a police officer (unless the officer is in uniform),
  - b. the name of the officer and his or her place of duty,
  - c. the reason for the exercise of the power.
- 5.2. Searching police must provide this information as soon as it is reasonably practicable to do so. However, where the search involves imposing a requirement (such as requiring the person to remove an item of clothing, or to open their mouth to enable it to be searched), the information must be given **before** imposing the requirement.

## 6. Records

- 6.1. Searching police must make a contemporaneous record of all person searches. The record should clearly set out:
  - a. the type of search carried out
  - b. the reason for the search (including facts supporting suspicion)<sup>1</sup>
  - c. the officer/s who carried out the search and any officer present, and
  - d. whether force was used, and if so, record details.
  - e. the reasons for any search conducted by an officer of the opposite sex

<sup>1</sup> Amended as a result of *LECC Inquiry into the NSW Police Force strip search practices* (D/2021/894428) - records should be kept of reasons for suspicion.

In the case of a strip search, the following should also be recorded:

- if carried out in the field, the *seriousness* and *urgency* of the circumstances that made the strip search necessary<sup>2</sup>
  - details of any clothing removed and/or rearranged
  - if s.33(3) applies, the reasons for not conducting the search in the presence of a parent or guardian, or other person capable of representing the interests, of the person being searched.
  - whether the persons genital area or breasts were searched, and if so, why<sup>3</sup>.
- 6.2. These requirements apply whenever a person is searched, even if nothing is found as a result of the search. Police have no power to demand a person's identification for the purpose of completing this record. Police can, however, request ID and receive it by consent.
- 6.3. Police may be required to justify their decision to carry out a search weeks, months, or sometimes years later, which makes proper record keeping essential.

## 7. Types of Searches

- 7.1. There are two types of searches:
- a. a person search (a person search not involving a strip search – s.30), and
  - b. a strip search (a person search involving a strip search – s.31).
- 7.2. There is no need to start with a person search before moving to the strip search, provided a strip search is justified in the circumstances. Likewise, a person search may turn into a strip search. For example, an officer may locate something in the person search that gives them reasonable grounds to suspect that a strip search is necessary. If that occurs, police must then comply with the requirements set out in s.33 of LEPR.

## 8. Person Search

- 8.1. For a person search, an officer may examine the person by touching their outer clothing, taking no more time than is reasonably necessary to safely carry out the search. This can include police examining the edges of the outer clothing by running their fingertips around the inside of the waistband, collar or sleeves of that clothing, but no more.
- NOTE: Police will sometimes be confronted with persons wearing swimwear or underwear (including bras) as a single layer of clothing. In those circumstances, police are not allowed to run their fingers around the seams in a way that causes the fingers to come into contact with, or reveal, the person's breasts, genital area or buttocks. This goes beyond a person search, and strip searches must not be conducted by touch.
- 8.2. Police can require the person to remove their coat or jacket or similar article of clothing and any gloves, shoes, socks and hat (but not all of their clothes). Police must warn the person that they are required by law to comply with the requirement to remove the identified articles of clothing.
- 8.3. The warning should be given as soon as practicable after imposing the requirement. However, no warning is required if the person has already complied or is in the process of complying with the requirement.
- 8.4. If the person refuses to comply with the requirement, police may use such force as is reasonably necessary to carry out the search.
- 8.5. Police can also move a person's clothing to permit a visual inspection of the body, but not of the persons genital area, or the breasts of a female or transgender person who identifies as female (this would constitute a strip search – see paragraph 9.8).

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<sup>2</sup> Amended as a result of *LECC Inquiry into the NSW Police Force strip search practices* (D/2021/894428) - records should be kept of reasons for not completing a general search.

<sup>3</sup> Amended as a result of *LECC Inquiry into the NSW Police Force strip search practices* (D/2021/894428) - records should be kept of reasons for searching genitals and or breasts.

- 8.6. Police can examine anything in the possession of the person. They can also pass an electronic metal detection device over or in close proximity to the person's outer clothing or anything removed from the person.

## **9. Strip Searches**

### ***What is a strip search?***

- 9.1. Anything that goes beyond what is permitted by a person search (as described above) is a strip search. Strip searches may or may not involve the removal of clothing.
- 9.2. There are special rules for strip searching a child over 10 and under 18 and people with impaired intellectual functioning (see paragraphs 10.13 and 10.14).

### ***Strip Search with clothing removed***

- 9.3. A strip search can include requiring the person to remove all their clothing, but it must never involve the removal of more clothing than is *reasonably necessary* for the search.
- 9.4. If a person is required to remove anything more than their coat or jacket (or similar item of outer clothing) or their gloves, shoes, socks or hat, it is a strip search.
- 9.5. If a strip search is to require the removal of all clothing, it should be done in stages. For example, police should, where practicable, allow the person to remove their top and then replace it before asking the person to remove pants.
- 9.6. Searching police must warn the person that they are required by law to comply with the requirement to remove the identified articles of clothing.
- 9.7. The warning should be given as soon as practicable after imposing the requirement. However, no warning is required if the person has already complied or is in the process of complying with the requirement.

### ***Strip Search with no clothing removed***

- 9.8. A search can go beyond a person search without the removal of any clothing at all. Requiring a person to move clothing to allow a visual examination of the person's genitals, buttocks, breasts (in the case of a female or transgender person who identifies as female) or underwear (underpants or bra) is a strip search. For example, requiring a person to pull out the waistband of their jeans to allow a visual inspection inside the jeans is a strip search.

### ***When can a person be strip searched?***

- 9.9. Police can never undertake strip searches as a matter of course. Searching police must always be able to justify each decision to strip search.
- 9.10. Police can only conduct a strip search in the following circumstances:
- a. *at a police station or other place of detention* – if the officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search, or
  - b. *in any other place* – the 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 at that place.

### ***What constitutes 'serious and urgent' for the purpose of strip searching in the field?***

- 9.11. If the person will not be conveyed to a police station, do police have reasonable grounds to suspect that the consequences of not strip searching the person would be serious? For example:
- Do police have reasonable grounds to suspect that the person has an item on them, unable to be located through a pat-down search or metal detector, which may cause a serious risk to their welfare or the welfare of someone else (eg: police, public) in the immediate future?



- Do police have reasonable grounds to suspect that the person may have evidence of a serious offence on them, unable to be located through a pat-down search or metal detector, which they may dispose of once they are no longer in police presence?

9.12. If an arrested person is to be conveyed to a police station, can the strip search wait until the person is at the police station? For example:

- Do police have reasonable grounds to suspect that the person has an item on them, unable to be located through a pat-down search or metal detector, which may cause a serious risk to their welfare or the welfare of someone else (eg: police, public) in the immediate future?
- Do police have reasonable grounds to suspect that the person may have evidence of a serious offence on them, unable to be located through a pat-down search or metal detector, which they may dispose of once they are no longer in police presence?
- Is there any other reason that the person must be strip searched now?

9.13. . A suspicion that a person has ingested or internally secreted a drug does not, on its own, justify a strip search (see paragraphs 10.22 to 10.26).<sup>4</sup>

## 10. Strip Search Practices

### *Can a police officer ask a person to move a part of their body for the purpose of the search?*

10.1. Searching police must ask for the person's cooperation.

10.2. However, the requirement to ask a person for their cooperation applies only as far as is reasonably practicable in the circumstances. It is not necessary to ask a person to cooperate if this would be unsafe. For example, if police suspect a person is carrying a firearm, it would not be safe to ask them to cooperate by producing it. Instead, police should do what is necessary to safely search for and secure the firearm.

10.3. Officers can ask a person to do things to allow visual inspection such as, for example:

- a. lift testicles
- b. part buttock cheeks
- c. spread fingers and toes
- d. lift breasts
- e. turn their body to face a different direction
- f. open their mouth and shake their hair, or
- g. squat.

10.4. However, searching police must not search the genital area of the person, or the breasts of a female or a transgender person who identifies as a female, unless the police officer suspects on reasonable grounds that it is necessary to do so for the purposes of the search.

10.5. Searching police must not examine the person's body by touch when strip searching. This does not mean police cannot touch the person at all. If officers are required to use force to carry out the search or restrain a violent person, it will be necessary to incidentally touch the person's body to allow a visual inspection.

### *Where can police conduct a strip search?*

10.6. As far as is reasonably practicable, searching police must ensure a strip search be conducted in a private area. Ideally, no one should be able to observe the search except officers engaged in the search. However, every search is unique and safety is paramount. For example, if police are in a shopping centre and they reasonably suspect that a person may have a firearm down their pants, police would be justified in carrying out a strip search even though others will observe the search. Police will need to justify their decision. This is why proper record keeping is important.

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<sup>4</sup> Amended as a result of *LECC Inquiry into the NSW Police Force strip search practices* (D/2021/894428) - clarification that concerns about serious risks to welfare based on suspicion of ingestion or internal concealment of drugs alone cannot justify a strip search.

***Can police ask someone to remove their tampon?***

10.7. **No.** This practice is not to occur.

***Can police use force to carry out a search?***

- 10.8. Searching police must always ask for the person's co-operation when carrying out a search.
- 10.9. Where a person is resisting the lawful exercise of a search, police can use such force as is reasonably necessary to allow them to carry out the visual inspection necessary for the purpose of the search (see s.230 of LEPR).
- 10.10. The force searching police use must not involve or amount to an examination of the body by touch. However, moving a person's body to facilitate a visual inspection does not constitute an examination of the body by touch. In such cases, it is the visualisation, not the touching, that constitutes the examination.
- 10.11. However, searching police must not forcibly open a person's mouth to enable it to be searched.

***How many police can be present while a person is being strip searched?***

- 10.12. Searching police must ensure a strip search must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search. This does not prevent other police from being present during the search for safety reasons. The number of officers present for safety reasons will depend on the circumstances and the risk posed to officer safety.

***When is a support person required?***

- 10.13. Searching police must ensure a strip search of a child who is **at least 10** years of age but under 18 years of age, or of a person who has impaired intellectual functioning, must be conducted:
- a. in the presence of a parent or guardian of the person being searched, or
  - b. if that is not acceptable to the person, in the presence of another person who is not a police officer and who is capable of representing the interests of the person being searched, and whose presence is acceptable to that person.
- 10.14. Paragraph 10.13 does not apply if a police officer suspects on reasonable grounds that:
- a. delaying the search is likely to result in evidence being concealed or destroyed, or
  - b. an immediate search is necessary to protect the safety of a person.

In such a case, the searching police officer must make a record of the reasons for not conducting the search in the presence of a parent or guardian, or other person capable of representing the interests, of the person being searched.

***Can a person over 18 have a support person present?***

- 10.15. A parent, guardian or personal representative (regardless of their sex) may be present during the strip search if:
- a. it is reasonably practicable in the circumstances, and
  - b. the person being searched does not object to that person being present.

Ask the person whether they would like someone to be present and allow for that to happen if it is reasonably practicable to do so.

***Can a strip search continue if the person voluntarily produces something, or if police find something?***

- 10.16. Any person search will be justified if police hold the relevant **state of mind** – while that state of mind exists, the search can continue. The fact that police find something on a person (or have something produced to

them) does not, of itself, mean that the search should be terminated. The issue is whether police continue to hold a reasonable suspicion. For example, if a person produces bullets police may continue to hold a reasonable suspicion that the person also has a gun. If police continue to search after something has been located or voluntarily produced, the searching police must record reasons for doing so.

### Can a strip search be filmed?

- 10.17. The NSW Court of Criminal Appeal has been critical of police not filming a strip search. Ideally, all strip searches should be filmed as evidence of the integrity of the search.
- 10.18. Police should capture a strip search on BWV (or a hand-held video at a search warrant) where possible. This should be done in accordance with the BWV SOPs, the relevant section of which is extracted below at para 10.21.
- 10.19. At a police station, police should also conduct a strip search where it can be captured on CCTV, where practicable.
- 10.20. Be mindful of CCTV cameras in public places. As far as is reasonably practicable in the circumstances, searching police must ensure a strip search must be conducted in a private area. An area captured on public CCTV is not a private area.
- 10.21. The following is an extract from the BWV SOPs relating to the filming of strip searches:

#### *Filming of Strip Searches*

Police must provide the best possible evidence available, including BWV footage of police actions. However, LEPR dictates the need for police to ensure the protection of rights and dignity of people with whom they interact.

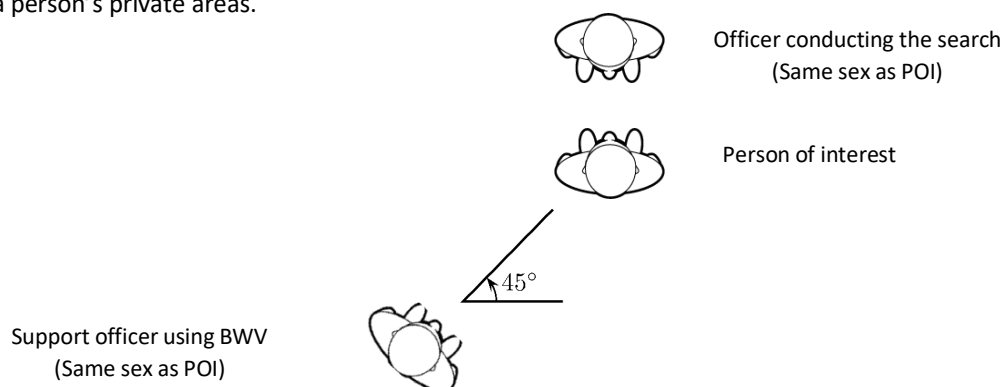
A person's privacy is not a sufficient reason to cease filming a strip search conducted in the lawful execution of an officer's duty. Particular care is required to ensure the person's privacy is adequately protected by ensuring the footage cannot be viewed by people without a lawful reason to do so.

Searching police must be certain of their powers regarding strip searches before commencing any strip search.

All police must familiarise themselves with the rules pertaining to strip searches contained in section 33 of LEPR.

The searching officer is to ensure, if they are wearing a BWV camera, that it is **turned off** during the conduct of a strip search. The support officer is to record the search using a BWV camera. During the strip search, compliance is required with all relevant provisions of LEPR.

The support officer should position themselves to the rear and side of the subject as shown in the diagram below. The 45-degree angle ensures integrity of the search without unnecessary recording of a person's private areas.



### ***Can police search body cavities if they suspect something is secreted internally?***

- 10.22. Searching police must never conduct a strip search by searching the person's body cavities.
- 10.23. If police suspect a person has drugs secreted in a body cavity, they can ask them to remove the drugs. There is no power to require them to do so. If the person refuses to do so, consider whether it is necessary to arrange for them to receive medical attention. Searching police must not attempt to remove internally secreted drugs.<sup>5</sup>
- 10.24. Where police observe a person attempting to swallow drugs or anything else that may be harmful to ingest, they should take all necessary steps to prevent the person from doing so. This is done to prevent self-harm – it is not a search.
- 10.25. Where police suspect that a person has swallowed drugs or anything else that may be harmful to ingest, they should immediately arrange for the person to receive medical attention.
- 10.26. Police have no power to detain a person solely to ensure they receive medical attention. However, if the person has been arrested or is in custody at a police station, all police are responsible for their welfare and must arrange for them to receive medical attention where necessary.<sup>6</sup>

### ***What is the role of the custody manager?***

- 10.27. The custody manager has responsibility for the care, control and safety of a person detained at a police station. Consequently, a custody manager may view a search on CCTV wherever necessary to ensure safety is maintained in the custody area. The CCTV should not be viewed by any more police officers than necessary to ensure safety. It should never be viewed by the public.
- 10.28. This may mean it is not always reasonably practicable to comply with the requirement that a strip search not be conducted in the presence or view of a person who is of the opposite sex to the person being searched. When recording the search in the custody management record, the custody manager should note whether they viewed it on CCTV.
- 10.29. Searching police must not carry out a strip search at a police station without first advising the custody manager of their intention to carry out the strip search. Remember, it is the searching officer who must hold the state of mind required by LEPR to search.

### ***Can police carry out a search of any person in custody at a police station?***

- 10.30. Section 28A of LEPR allows police to search a person in lawful custody after arrest and seize and detain anything found on the person. This may occur to ensure the safety of police, the person in custody and other people in custody at the time. If a police officer suspects on reasonable grounds that it is necessary to conduct a strip search for the purpose of the search (that purpose being to ensure the safety of police and people in custody), they can carry out a strip search.
- 10.31. However, police should ensure that the type of search carried out, and the extent to which it is carried out, is proportionate to the risk posed. For example, a person with no criminal history who is in custody having been arrested for the purpose of a breath analysis is unlikely to pose the same threat as a person known to be violent.

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<sup>5</sup> Amended as a result of *LECC Inquiry into the NSW Police Force strip search practices* (D/2021/894428) - guidance on internally secreted drugs.

<sup>6</sup> Amended as a result of *LECC Inquiry into the NSW Police Force strip search practices* (D/2021/894428) - guidance on internally secreted drugs..

***Can police carry out a strip search just because a person is being transferred to Correctives?***

- 10.32. **NO.** Police can search a person before they are transferred to Correctives, but they must rely on their powers under LEPR to do so. This means searching police must hold the state of mind required by LEPR and must be able to justify their decision to carry out the search.
- 10.33. Police do not have a power under the *Crimes (Administration of Sentences) Act 1999* to assist Corrective Services to search a person in correctives custody, or during the transfer process. Further, Corrective Services officers cannot delegate their search powers to police.
- 10.34. This does not mean that police cannot assist the correctional officers at all. For example, if the person being searched became violent towards correctional officers, police could render assistance. But this is different to assisting in the sense of participating in the search.

***Can I strip search a person who is handcuffed?***

- 10.35. Yes, in some cases it may be necessary to strip search a person who is handcuffed. The decision to handcuff rests with police. Police are justified in handcuffing people in custody in circumstances where it is necessary to prevent them from escaping or causing injury to themselves or others. However, police should remove the handcuffs as soon as the need to use them no longer exists.
- 10.36. Safety is paramount, but police should always consider whether the person needs to remain handcuffed while being strip searched.

***Can a medical practitioner examine a person in lawful custody to obtain evidence?***

- 10.37. Yes. Under s.138 of LEPR, a medical practitioner acting at the request of a police officer of the rank of sergeant or above, and any person acting in good faith in aid of the medical practitioner and under his or her direction, may examine a person in lawful custody for the purpose of obtaining evidence as to the commission of an offence if:
- a. the person in custody has been charged with an offence, and
  - b. there are reasonable grounds for believing that an examination of the person may provide evidence as to the commission of the offence.

The consent of the person in lawful custody is not required.<sup>7</sup>

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<sup>7</sup> Amended as a result of *LECC Inquiry into the NSW Police Force strip search practices* (D/2021/894428) - guidance on s.138 of LEPR.

## Appendix 1

**PRIVACY AND DIGNITY RULES FOR ALL PERSON SEARCHES**

**IN ADDITION to the requirements above, police MUST also comply with the following rules *as far as is reasonably practicable in the circumstances.***

***Police must:***

1. inform the person whether they will be required to remove clothing during the search
2. inform the person why it is necessary to remove the clothing
3. ask for the person's cooperation
4. conduct the search in a way that provides reasonable privacy for the person searched
5. conduct the search as quickly as is reasonably practicable
6. conduct the least invasive search practicable in the circumstances<sup>8</sup>
7. allow the person to dress as soon as the search is finished, and
8. ensure the person searched is left with or given reasonably appropriate clothing, if clothing is seized because of the search.

***Police must not:***

9. search the genital area of the person searched, or the breasts of a female or a transgender person\* who identifies as a female, unless the police officer suspects on reasonable grounds that it is necessary to do so for the purposes of the search<sup>9</sup>, or
10. carry out the search while questioning the person (police must suspend questioning while the search is carried out, but this does not prevent the asking of questions that only relate to issues of personal safety associated with the search).

***Same sex searching***

11. The search must be conducted by a police officer of the same sex as the person searched. If this is not reasonably practicable in the circumstances, the reason for not complying must be recorded.
12. A member of the same sex as a person means, if the person is a transgender person, a member of the same sex as the sex with which the transgender person identifies. Police should consult with transgender or gender diverse people respectfully to ask them how they identify to inform the decision of whether a male or female officer will be selected to perform the search. If there is any uncertainty a supervisor should be consulted.
13. If a police officer of the same sex as the person who is to be searched is not immediately available, a police officer may delegate the power to conduct the search to another person who is:
  - a. of the same sex as the person to be searched, and
  - b. of a class of persons prescribed by the regulations for this purpose (eg: nurses, corrective services officers, juvenile justice officers, and ambulance officers).
14. The search by that other person is to be conducted under the direction of the police officer and in accordance with provisions of LEPR applying to searches conducted by police officers.

\**Transgender* is defined in s.3 of LEPR:

<sup>8</sup> Amended as a result of *LECC Inquiry into the NSW Police Force strip search practices* (D/2021/894428) – account for the requirements set out in s32(5) *LEPR*.

<sup>9</sup> Amended as a result of *LECC Inquiry into the NSW Police Force strip search practices* (D/2021/894428) – account for the requirements set out in s32(6) *LEPR*.

## Appendix 2

### ADDITIONAL PRIVACY AND DIGNITY RULES FOR STRIP SEARCHES

***A strip search must not be conducted on a person under 10***

***The strip search must:***

1. be conducted in a private area, as far as is reasonably practicable in the circumstances.

***The strip search must not:***

2. be conducted in the presence or view of a person who is of the opposite sex to the person being searched (police must comply as far as is reasonably practicable in the circumstances)
3. be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search (police must comply as far as is reasonably practicable in the circumstances)
4. involve a search of a person's body cavities or an examination of the body by touch
5. involve the removal of more clothes than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search<sup>10</sup>, or
6. involve more visual inspection than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.<sup>11</sup>

***Presence of other people during search***

7. A parent, guardian or personal representative may, if it is reasonably practicable in the circumstances, be present during a search if the person being searched does not object to that person being present (even if the person is of the opposite sex to the person being searched).
8. A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if the person being searched has no objection to that person being present.

***Children aged between 10 and 18 OR people with impaired intellectual functioning***

9. A strip search of a child who is at least 10 but under 18, or of a person who has impaired intellectual functioning\*, must be conducted:
  - a. in the presence of a parent or guardian of the person being searched, or
  - b. if that is not acceptable to the person, in the presence of another person who is not a police officer and who is capable of representing the interests of the person being searched and whose presence is acceptable to that person.

If the person could be under 18, police must ask them how old they are.

10. This does not apply if a police officer suspects on reasonable grounds that:
  - a. delaying the search is likely to result in evidence being concealed or destroyed, or
  - b. an immediate search is necessary to protect the safety of a person.
11. In this case, the officer must make a record of the reasons for not conducting the search in the presence of a parent or guardian, or other person capable of representing the interests, of the person being searched.

\*Impaired intellectual functioning is defined in s33(9) of LEPR

<sup>10</sup> Amended as a result of *LECC Inquiry into the NSW Police Force strip search practices* (D/2021/894428) – account for the requirements set out in s33(5) *LEPR*.

<sup>11</sup> Amended as a result of *LECC Inquiry into the NSW Police Force strip search practices* (D/2021/894428) – account for the requirements set out in s33(6) *LEPR*.