

Appendices

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Appendix 1: Findings from the NSW Ombudsman's survey of people facing charges in the NSW Local and Children's Court

Summary

Introduction

As part of our review of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) provisions relating to 'searches of persons on arrest or while in custody', we sought information about the perceptions and experiences of people who were searched.

In late 2007, we surveyed people due to appear before the NSW Local and Children's Courts about the arrests and searches related to the charge or charges they were facing that day. Ombudsman interviewers approached people waiting in the foyers of Local and Children's Courts to ask whether they were facing charges and, if so, whether they would be willing to participate in an anonymous survey. Participation was voluntary and respondents were assured of confidentiality.

Most responses related to searches that occurred after arrests in 2007. Any searches prior to the provisions taking effect in December 2005 were excluded.

Local Court

Of the 571 eligible people we approached, 358 completed surveys, 42 partially completed surveys and 171 declined to participate.¹ Our 18 interviewers visited Local Courts at Bankstown, Blacktown, Burwood, Campbelltown, the Downing Centre, Dubbo, Mount Druitt, Parramatta, Penrith, Wollongong and the Weekend Bail Court at Parramatta. Most surveys (39%) were conducted at the Downing Centre in Sydney — the busiest Local Court in NSW.

Children's Court

The Children's Court survey was based on the survey used in the Local Court, but modified to reflect differences in legal processes and other factors specific to this group of respondents. Of the 128 eligible young people approached, 103 completed surveys, six partially completed surveys and 19 chose not to participate. Most surveys (80%) were conducted at Parramatta Children's Court, the main Children's Court in NSW. The rest were at Bidura Children's Court in Glebe.

Characteristics of respondents

Local Court

Of the 358 Local Court respondents:

- 84% (301 people) were male
- 83% (299) were between 18 and 39 years old
- 17% (62) were Aboriginal or Torres Strait Islander
- 27% (97) were from non-English speaking backgrounds

¹ Surveys were discontinued if the person was called into court.

- 49% (176) reported their 'highest level of education' as Year 10 or below and 38 % (135) were in part-time or full-time employment
- 61% (218) reported having prior convictions, 46% of whom (101 of 218) had served a prior custodial sentence
- 42% (151) admitted to having used drugs and/or alcohol immediately prior to arrest.

The most common charges faced by the Local Court respondents related to allegations of assault, driving offences, offences against justice procedures, illicit drugs and theft.

Children's Court

Of the 103 Children's Court respondents:

- 87% (90 young people) were male
- 67% (69) were between 15 to 17 years old
- 33% (34) were Aboriginal or Torres Strait Islander
- 3% (3) did not speak English at home
- 59% (61) were no longer at school, 51% of whom (31 of 61) were in part-time or full-time employment
- 64% (66) reported having previously 'been in trouble' with police, 55% (36 of 66) of whom had spent time in Department of Juvenile Justice custody²
- 33% (34) reported using drugs and/or alcohol immediately prior to arrest.

The most common charges faced by the Children's Court respondents related to allegations of assault, unlawful entry, theft, property damage and robbery.

Searches on arrest in the field and at a police station

Local Court

Of the 358 Local Court respondents:

- 78% (278 people) said that they were searched at least once
- 49% (174) said they were searched 'on arrest in the field',³ including 26 people who described a search amounting to a 'strip search'⁴
- 49% (177) said they were searched at a police station, including 81 people who described a strip search.

Children's Court

Of the 103 Children's Court respondents:

- 83% (86 young people) said that they were searched at least once
- 58% (60) said they were searched 'on arrest in the field' including 11 young people who described a strip search
- 50% (52) described being searched at a police station, including 18 young people who described a strip search.

The most common search practices described by both the Local and Children's Court respondents involved patting down of their arms, upper body and legs. It was also common for people to report that police searched their pockets.

2 Young people were asked about previous trouble with police rather than prior convictions as this was considered a more appropriate question for children.

3 For the purposes of this analysis the term 'in the field' is used to describe locations that were away from a police station, this includes public places such as footpaths, parks, roads as well as residences, shopping centres and schools.

4 For the purposes of this analysis 'strip searches' are defined as any search in which the person reported they were required to remove any or all of the following items: pants, shirt, skirt, dress, bra or underwear.

Personal search safeguards

Respondents were asked questions that related to the application of the LEPPRA safeguards in relation to searches they described. The following provides a brief summary of these issues from the perspective of people facing charges in Local and Children's Courts.⁵

Identification of police

Respondents in both courts reported little confusion about the identity of arresting officers as members of the NSW Police Force. The overwhelming majority said they recognised police because they were in uniform. The next most common way they identified police was they were shown their badges.

Police provision of name and place of duty to the person being searched

Local Court respondents who described a search on arrest in the field were more likely to report that police provided their name and/or place of duty in comparison to Children's Court respondents. While more than half (57%) of Local Court respondents said they were provided with the officer's name and/or place of duty, only a third (33%) of Children's Court respondents said they were provided with this information.

Sex of searching officer

Respondents in both courts generally described being searched by an officer of the same sex — in particular, none of the respondents who described a strip search at a police station reported being searched by an officer of the opposite sex.

Speed of search

In general, more than half of respondents in both courts described searches that took five minutes or less, regardless of whether they were describing a frisk, ordinary or strip search on arrest or at a police station. It was relatively rare for respondents to describe searches taking longer than 10 minutes.

Searching and asking questions

Respondents who described a frisk or ordinary search on arrest were the most likely to report being asked questions during the search.⁶ Respondents who described a frisk or ordinary search at a police station were the least likely to report being asked questions during the search.⁷

Support for young people during strip searches

Young people between 10 and 17 years of age in both courts described a total of 29 strip searches. In five instances, the young person reported that a parent, guardian or other person (capable of representing the interests of the child who is not a police officer) was present, including one instance where the young person's father waited outside while the search was conducted.

Further issues

The survey also gave us the opportunity to obtain comments on related issues such as other aspects of respondent's interactions with police, their understanding of the arrest process and conditions associated with their detention.

Aspects of the search identified as being uncomfortable

Respondents were more likely to comment that there were aspects of the search that made them feel uncomfortable in relation to strip searches and included concerns at being searched in public or in view of other people, comments or behaviour of police during the search, or specific aspects of the search.

5 It is important to note that recall and perceptions of individual respondents may be affected by factors such as the length of time between the arrest and the survey, the consumption of drugs or alcohol prior to their interaction with police and other such variables. For a full discussion of survey limitations, see Chapter 2 of Appendix 1.

6 47% (23 of 49) of Children's Court respondents and 32% (47 of 148) of Local Court respondents who described a frisk or ordinary search on arrest in the field.

7 9% (3 of 34) of Children's Court respondents and 13% (12 of 96) of Local Court respondents who described a frisk or ordinary search at a police station.

Amount of time spent at the police station

Respondents were asked to estimate the length of time they spent at the police station. Of those who reported attending a police station after their arrest, 29% of Local Court respondents and 12% of Children's Court respondents said they were released within three hours. At the other end of the scale, 25% of Local Court respondents and 31% of Children's Court respondents estimated spending more than seven hours at a station.

CCTV recording of strip searches

Respondents who described a strip search at a police station were asked if they would prefer to have the search recorded if the tape was kept securely. Views were fairly divided with less than half (46%) of the Local Court respondents and a third (33%) of Children's Court respondents who described a strip search at a police station saying they would like the search recorded on CCTV if the footage was kept secure.

Comments on 'anything police could have done better'

The survey concluded with open-ended questions inviting respondents to comment about their interactions with police and what, if anything, police 'could have done better'. A number of respondents were positive about their interactions with police. In particular, 103 Local Court respondents and 20 Children's Court respondents said there was nothing police could have done better.

Chapter 1.

Introduction

This report presents information gathered through our survey of people facing charges in the NSW Local and Children's Courts regarding their experiences of personal searches on arrest and in custody.

Ombudsman staff conducted the survey in late 2007, obtaining information relating to arrests and searches that occurred between December 2005 and December 2007. The survey was part of a broader strategy to review the police use of the personal search powers and safeguards in Part 4 and Part 15 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA). Our findings and a detailed discussion of these issues are set out in Part 2 of our report, *Review of certain functions conferred on police under the Law Enforcement (Powers and Responsibilities) Act 2002*.

Information from the Local and Children's Courts survey is presented in four parts:

- characteristics of survey respondents
- searches on arrest and at the police station
- personal search safeguards
- further issues.

Chapter 2. Methodology

We surveyed people facing charges in the NSW Local and Children's Courts as part of our wider review of the personal search provisions in LEPRA. The object of the survey was to obtain information about the perspectives and perceptions of people searched on arrest and in custody.⁸

The survey was conducted by Ombudsman staff between September and December 2007. After conducting a pilot at the Downing Centre Local Court, the survey questions were refined and the scope of the survey extended to include a weekend Bail Court and the Children's Court.⁹

The survey used in the Local Court comprised 212 possible questions, including questions about the location, reason and manner in which any searches were conducted.¹⁰ People were first asked about the charges they were facing that day in order to focus discussion on the arrest leading to those charges. The survey distinguished between searches on arrest 'in the field', searches before being placed into a police vehicle in the field, and searches at a police station.¹¹ We made it clear to survey participants that any searches that occurred before the arrest were outside the scope of the review. The survey was designed to take respondents through their interactions with police step-by-step to help them recall the details of any searches they experienced in a chronological order. No personal identifying information was recorded to ensure the anonymity of respondents.

The survey used in the Children's Court was based on the survey used in the Local Court. It simplified some questions (for example, where the Local Court survey asked whether the person had a previous criminal conviction, the Children's Court survey asked whether the young person had ever been in trouble with police before) and asked more detailed questions in relation to issues that are of particular relevance to young people such as the provision of a support person for a strip search.¹²

We trained 18 Ombudsman staff to conduct the survey and Aboriginal interviewers were included in the teams that conducted surveys in areas with high numbers of Aboriginal residents.

In conjunction with the Ombudsman's Youth Liaison Officer, we created protocols for surveying young people in the Children's Court. Wherever possible the young person's legal representative was informed about the survey, and the verbal consent of the young person's parent/guardian was obtained.

Notes on survey limitations

Aspects of the survey that may limit the conclusions that can be drawn from the data obtained include:

- The method of approaching people in the waiting areas of courts excludes people who were arrested but not charged, people whose charges were withdrawn prior to the matter progressing to court, people facing more serious charges before higher courts and people dealt with through court diversionary schemes. Consequently, this sample may not be representative of all people arrested.
- The Local and Children's Court samples were largely obtained at metropolitan courts.¹³ There may, therefore, be regional differences that this survey has failed to capture.
- The information gathered by the survey reflects the respondent's recollection of the event. Factors affecting a person's recall and perceptions may include the length of time between the search and our survey, any trauma the person experienced at the time of the arrest and search, and the use of drugs or alcohol immediately prior to their interaction with police.¹⁴

8 In developing this survey we referred to the then Criminal Justice Commission's report, *Police Powers in Queensland: Findings from the 1999 Defendants Survey*, May 2000 which used a similar research strategy when it undertook a survey of defendants in 1996 and 1999 in relation to the *Police Powers and Responsibilities Act 1997* (Qld).

9 Permission for the pilot was obtained in a meeting between the Deputy Chief Magistrate and Ombudsman officers on 13 February 2007. Changes to the scope of the survey required additional permission from the Commissioner of Corrective Services and the Children's Court Magistrate. Approval to conduct the survey at the Parramatta Bail Court was granted by letter from the NSW Department of Corrective Services, dated 4 September 2007. Approval from the Children's Court Magistrate was received in a letter from the Manager of the Children's Court of NSW on behalf of the Senior Children's Magistrate, dated 25 October 2007.

10 Based on the information obtained we categorised each incident as a frisk/ordinary or a strip search. For the purposes of this analysis frisk and ordinary searches have not been distinguished as the safeguards and guidelines that apply to both are the same.

11 For the purposes of this analysis the term 'in the field' is used to describe locations that were away from a police station, this includes public places such as footpaths, parks, roads as well as residences, shopping centres and schools.

12 The term 'young people' is used throughout this analysis to refer to Children's Court respondents and generally includes people between 10 and 17 years of age.

13 See Appendix 1 (3.2).

14 See Appendix 1 (3.8).

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- Many of the Children's Court respondents were surveyed in the presence of their parents, guardian or carer. This may have affected their willingness to disclose aspects of their experience such as drug or alcohol consumption prior to their interaction with police.

In addition, many of the safeguards apply to the extent that it is 'reasonably practicable in the circumstances' and many of the standards required are subjective. These include the safeguard limiting the removal of more clothes than necessary and the safeguard prohibiting searches of genital areas unless police suspect on reasonable grounds that it is necessary.¹⁵ Nor could the survey test police compliance with requirements such as the prohibition on strip searching children under 10 years of age.¹⁶ Although police have contact with offenders in this age group, they cannot be charged with criminal offences and therefore would not be attending court as a defendant.¹⁷

As this is the first time this office has conducted a survey of perceptions and experiences of personal searches on arrest, it cannot provide a measure of any *changes* in defendants' perceptions of policing practices brought about by the introduction of LEPPRA. However it may provide baseline measures for future comparison.

¹⁵ *Law Enforcement (Powers and Responsibilities) Act 2002*, ss.33(5) and 32(6) respectively.

¹⁶ *Law Enforcement (Powers and Responsibilities) Act 2002*, s.34.

¹⁷ *Children (Criminal Proceedings) Act 1987*, s.5.

Chapter 3.

Characteristics of survey respondents

The survey included questions about the characteristics of respondents. Where relevant, the answers are compared with information from other sources such as the NSW Bureau of Crime Statistics and Research and the Australian Bureau of Statistics.

3.1. Participation rate

3.1.1. Local Court

We approached 571 eligible people at Local Courts in NSW. A person was eligible to participate in the survey if he or she was facing charges on the day and was arrested by a member of the NSW Police Force some time between December 2005 and December 2007.

The participation rate for the Local Court survey was 70% (400 of 571), which included 358 respondents who completed surveys and 42 respondents who partially completed surveys.¹⁸ Of the remaining 171 people who chose not to participate, the main reasons stated included anxiety about the court proceedings, awaiting legal advice, feeling too stressed or lack of interest in the survey. Our analysis of Local Court responses is based on the 358 completed surveys.

3.1.2. Children's Court

We approached 128 eligible young people in the Children's Court at Parramatta and Glebe, Sydney. Only young people facing charges that day and arrested by NSW Police some time between December 2005 and December 2007 were eligible to participate.

The participation rate for the Children's Court survey was 85% (109 of 128), which included 103 respondents who completed surveys and six respondents who partially completed surveys. The remaining 19 young people we approached chose not to participate. The main reasons for declining to participate were the same as for the Local Court survey. Compared with Local Court respondents, the support of family or carers was found to increase the likelihood of a young person participating in the survey. This may have been a factor in the higher participation rate for the Children's Court survey. Our Children's Court analysis is based on the 103 completed surveys.

3.2. Courts attended

3.2.1. Local Court

Most criminal charges against adult defendants are dealt with in the Local Court.¹⁹ Although more serious offences are generally dealt with by the District and/or Supreme Court, initial committal hearings occur in the Local Court.

The NSW Local Court has 135 Magistrates presiding at 148 locations.²⁰ Metropolitan courts were mainly chosen for our survey because of the high volume of matters dealt with at those courts and accessibility for our interviewers. As table 1 shows, 93% of Local Court respondents (332 of 358) were surveyed at courts in the Sydney metropolitan area. The rest were surveyed at Dubbo and Wollongong.

18 Surveys were discontinued if the person was called into court.

19 Brown, Farrier, Neal and Weisbrot, *Criminal Laws: Materials and Commentary on Criminal Law and Process of New South Wales*, The Federation Press, 2006, p.146. In NSW, an estimated 98% of all criminal and civil cases are finalised in the Local Court, ref <http://www.lawlink.nsw.gov.au> accessed 14 November 2008.

20 Chief Magistrate's Office, *Annual Review 2007*, p.5.

Table 1. Local Court sample — surveys by location

Local Court	Number of respondents	Proportion of sample
Drug and Alcohol Court (Parramatta)	1	<1%
Dubbo	9	<3%
Weekend Bail Court (Parramatta)	9	<3%
Blacktown	12	3%
Bankstown	17	5%
Wollongong	17	5%
Penrith	20	6%
Mt Druitt	26	7%
Parramatta	28	8%
Campbelltown	29	8%
Burwood	49	14%
Downing Centre	141	39%
Total	358	100%

Source: NSW Ombudsman, Local Court survey 2007. n=358.

3.2.2. Children's Court

The Children's Court mainly deals with defendants between 10 and 17 years of age. However, charges against defendants aged 18 or over but less than 21 can also be heard in the Children's Court in certain circumstances.²¹ Most criminal charges against young defendants are dealt with in the Children's Court with the exception of serious children's indictable offences and traffic offences.²²

There are eight specialist Children's Courts in NSW.²³ The Parramatta Children's Court and Bidura Children's Court in Glebe were chosen as the most appropriate and readily accessible of the Children's Courts for this survey. Bidura Children's Court hears criminal matters arising in central Sydney, the Eastern Suburbs, North Shore and Northern Beaches. All other Sydney matters and some country matters are heard before the Parramatta Children's Court — the busiest Children's Court in NSW. In the Children's Court, 81% of respondents (83 of 103) were surveyed at Parramatta and the remaining 19% of surveys (20 of 103) were surveyed at Bidura.

3.3. Charges faced by survey respondents

People were asked about the charge or charges they were facing at court that day.

3.3.1. Local Court

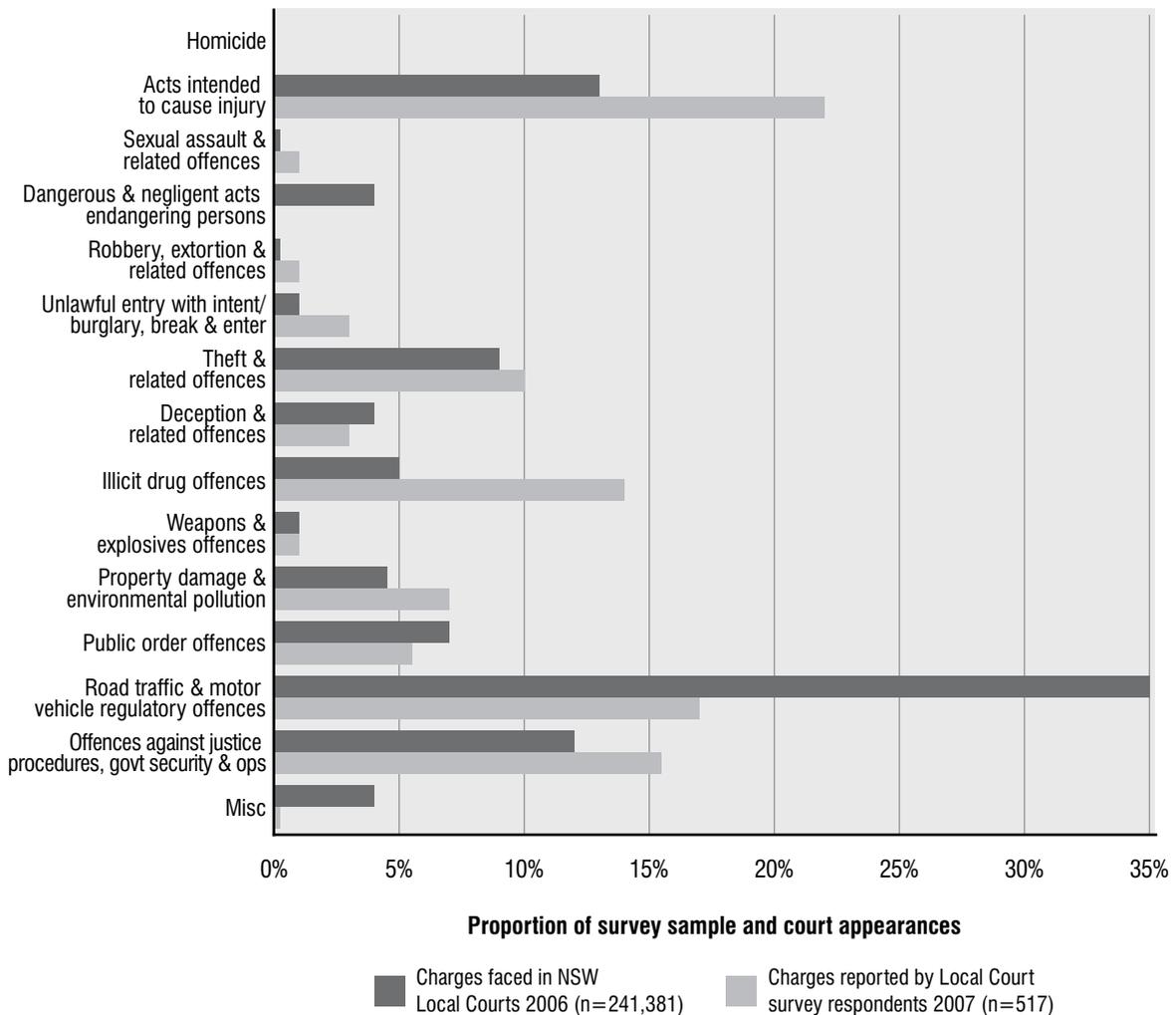
The 358 Local Court respondents reported they were facing a total of 517 charges. Figure 1 compares the responses provided by Local Court respondents with data on all charges brought before the Local Court in NSW in 2006.

21 Section 20 of the *Children (Criminal Proceedings) Act 1987* outlines the circumstances in which remission of persons to the Children's Court for punishment is appropriate.

22 The *Children (Criminal Proceedings) Act 1987* establishes the jurisdiction of the Children's Court.

23 Children's Courts in NSW, <http://www.lawlink.nsw.gov.au/childrenscourt>, accessed 14 February 2008.

Figure 1. Charges faced — comparison of Local Court sample with NSW Local Court Statistics 2006



Source: NSW Ombudsman, Local Court survey 2007 and NSW Bureau of Crime Statistics and Research, New South Wales Criminal Courts Statistics 2006, 'Persons charged and charges in Local Court Appearances Finalised: Type of Offence Charged', table 1.1, pp.16–20, Attorney General's Department, 2007.

This shows that the types of charges reported by our Local Court respondents are broadly similar to those faced by Local Court defendants generally. The main differences were that people in our survey sample were more likely to be facing charges for 'acts intended to cause injury' and 'illicit drug offences', and much less likely to be facing charges for road traffic offences.²⁴

The most common charges (78% of all charges) reported by Local Court respondents fell within five categories, namely:

- 'acts intended to cause injury' which includes assault charges
- 'road traffic and motor vehicle regulatory offences' which includes driving licence offences and regulatory offences such as driving under the influence and exceeding the legal speed limit
- 'offences against justice procedures, government security and government operations' which includes charges for escape custody, resist or hinder police officer and offences against government security
- 'illicit drug offences' which includes use, possession, dealing and trafficking charges
- 'theft and related offences' which includes theft from motor vehicle, theft from person and receiving or handling proceeds of crime.²⁵

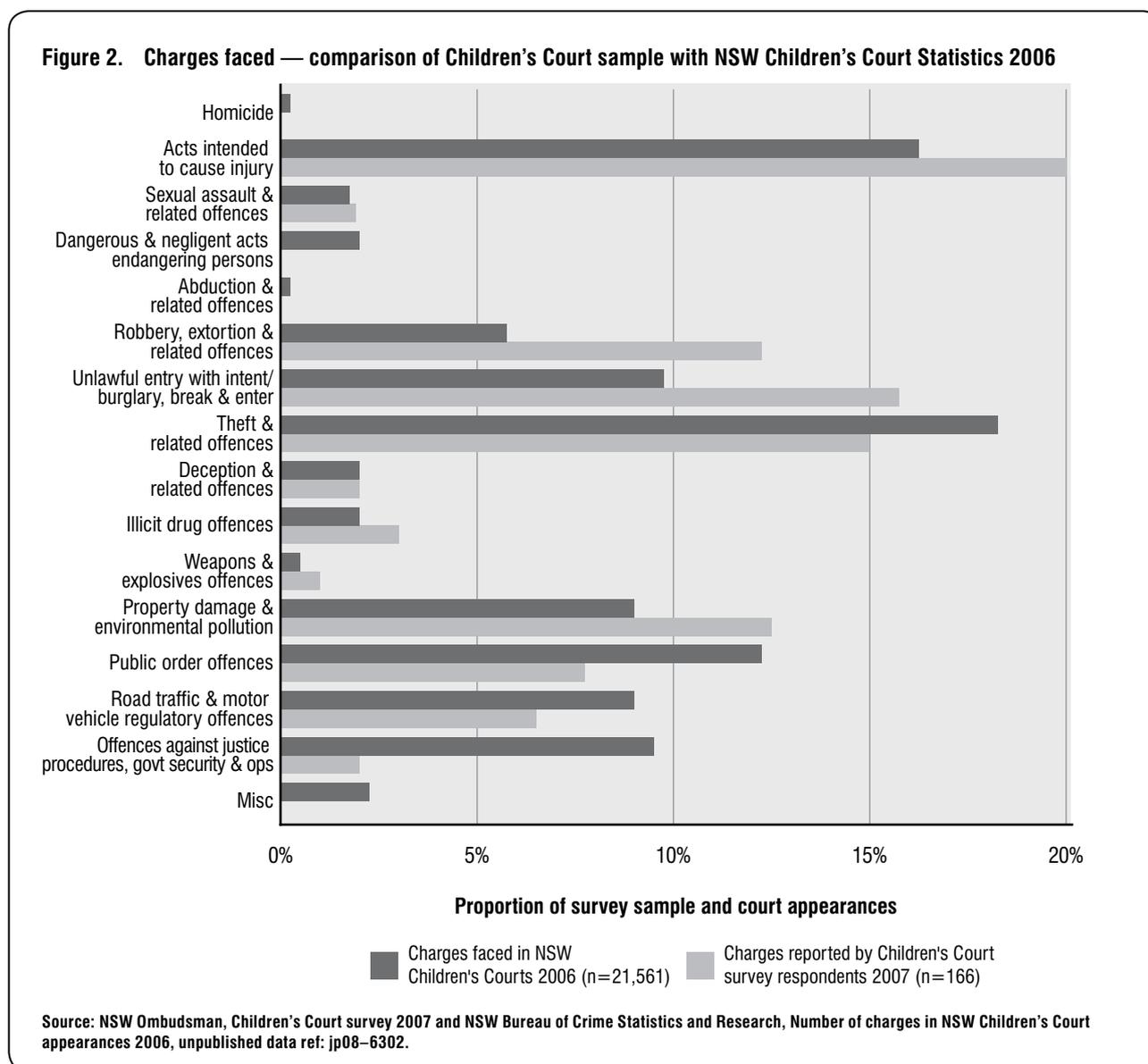
²⁴ No respondents reported charges for homicide or dangerous and negligent acts.

²⁵ The remaining charge types each accounted for less than 10% of the Local Court sample.

In terms of the number of charges, we anticipated that our lengthy face-to-face survey might lead to some under-reporting if defendants facing multiple charges skipped over details, played down the seriousness of their charges or could not recall all of the charges. However, the 517 charges listed by the 358 Local Court respondents represent an average of 1.4 charges per person. By comparison, the court data for 2006 shows that 135,574 people and corporate bodies appeared before the Local Court on 241,381 charges — an average of 1.8 charges per person or corporate body.²⁶

3.3.2. Children’s Court

The 103 Children’s Court respondents reported they were facing a total of 166 charges. Figure 2 compares the responses provided by Children’s Court respondents with data on all charges brought before the Children’s Court in NSW in 2006.



This shows that the types of charges reported by Children’s Court respondents are broadly similar to those faced by Children’s Court defendants generally. The main differences were that the young people in our survey sample were more likely to be facing charges for ‘robbery, extortion and related offences’ and ‘unlawful entry with intent/burglary,

²⁶ See NSW Bureau of Crime Statistics and Research, *New South Wales Criminal Courts Statistics 2006*, table 1.1, pp.16–20. The data sets are comparable, but not equivalent. Our survey listed all charges nominated by respondents. In the reported court data published by the NSW Bureau of Crime Statistics and Research, ‘person’s charged’ counts the number of people and corporate bodies charged with the specific offence. For instance, a person charged with both theft of a motor vehicle and theft from retail premises would be counted only once in the offence division total.

break & enter' offences, and less likely to be facing charges relating to 'offences against justice procedures, government security and government operations'.²⁷

The most common charges (76% of all charges) reported by Children's Court respondents fell within five categories, namely:

- 'acts intended to cause injury'
- 'unlawful entry with intent/burglary, break and enter'
- 'theft and related offences'
- 'property damage and environmental pollution' which includes graffiti
- 'robbery, extortion and related offences' which includes aggravated and non-aggravated robbery.²⁸

Young people in the Children's Court survey sample reported an average of 1.6 charges per person, less than the Children's Court average of 2.4 charges per young person.²⁹

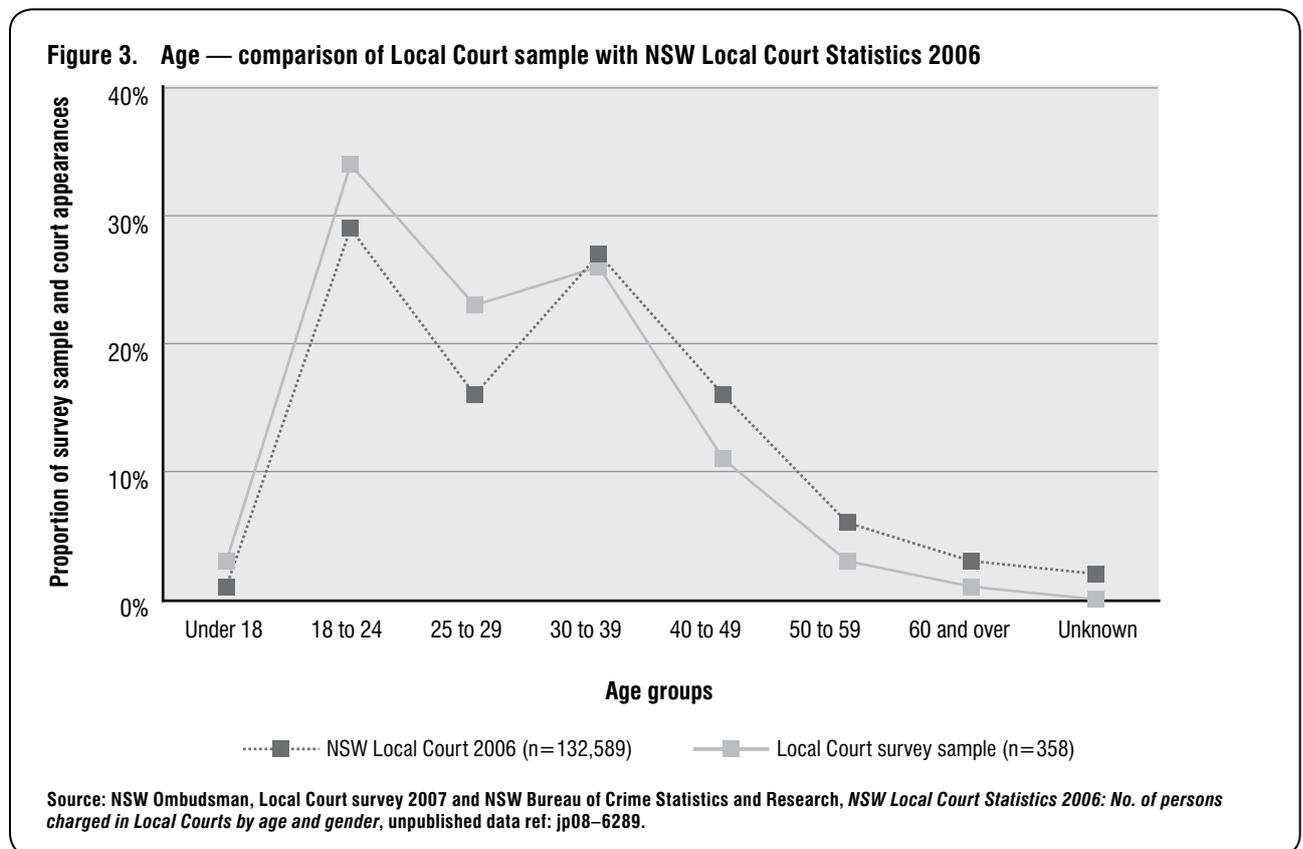
3.4. Age and gender

Our survey noted the person's gender and age.

3.4.1. Local Court

The majority of Local Court respondents were male — accounting for 84% of the survey sample (301 of 358), the other 16% (57 people) were female. This is comparable to the NSW Local Court figures for 2006 which indicate that 81% of people facing charges in the Local Court were male (107,475 of 132,589).³⁰

Figure 3 compares the ages of Local Court respondents with the ages of all people facing charges in the NSW Local Court in 2006.



27 No respondents reported charges of homicide, dangerous and negligent acts endangering persons or abduction and related offences.

28 The remaining charge types each accounted for less than 10% of the Children's Court sample.

29 The 166 charges listed by the 103 Children's Court respondents represent an average of 2.4 charges per young person. By comparison, the court data for 2006 shows that 8,874 young people appeared before Children's Courts on 21,561 charges. See NSW Bureau of Crime Statistics and Research, *Number of charges in NSW Children's Court appearances 2006*, unpublished data ref: jp08-6302 and NSW Bureau of Crime Statistics and Research, *New South Wales Criminal Court Statistics 2006 — Annual Report*, Table 2.1, pp.58-61.

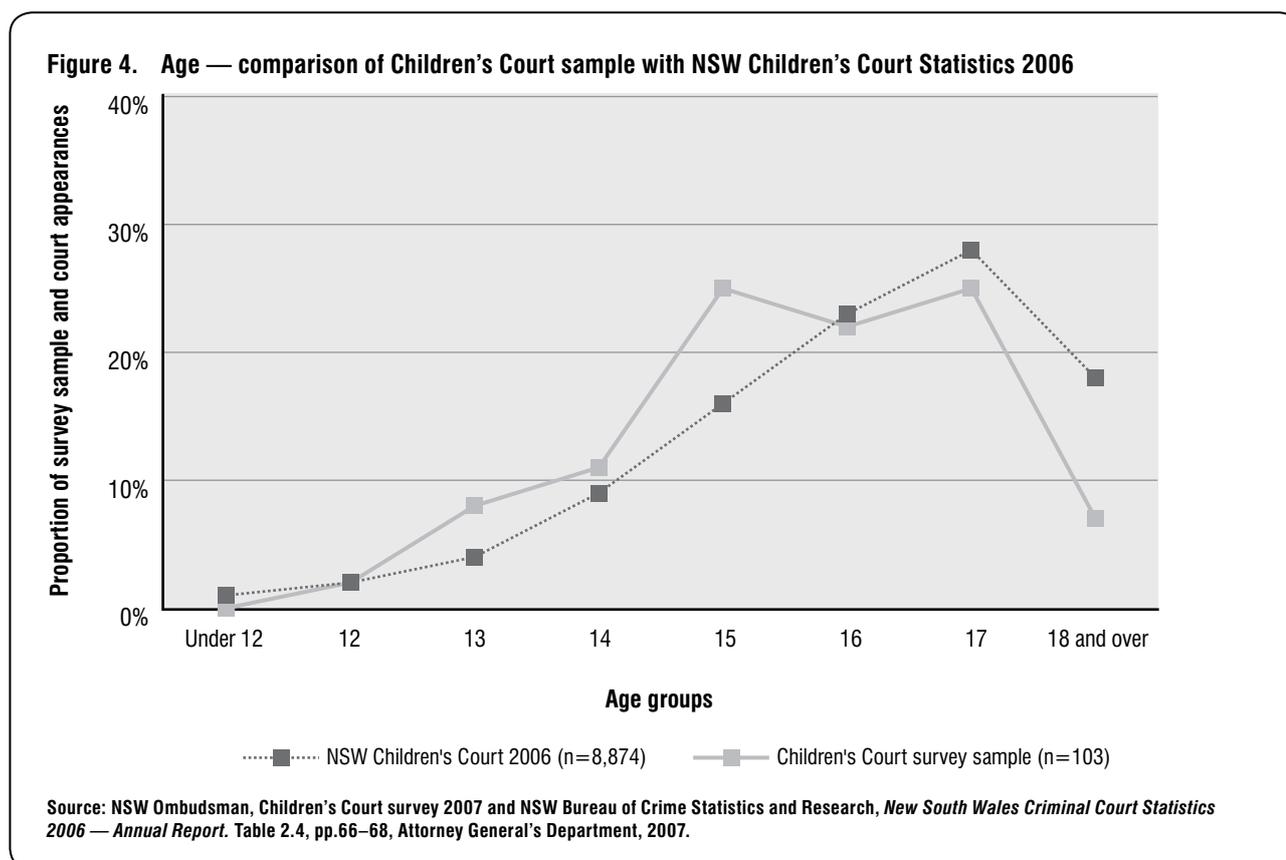
30 NSW Bureau of Crime Statistics and Research, *New South Wales Local Court Statistics 2006: No. of persons charged in Local Courts by age and gender*, unpublished data ref: jp08-6289. This does not include any data for corporate bodies charged in Local Courts.

The data indicates that the age profile of our Local Court sample is similar to that for all people appearing before the NSW Local Court in 2006, albeit with a slightly higher representation of people aged under 30 years. The category 'under 18' includes surveys of 11 young people whose charges were brought before the Local Court rather than the Children's Court.³¹

3.4.2. Children's Court

The majority of Children's Court respondents were male — accounting for 87% of the survey sample (90 of 103), the other 13% (13 people) were female. This is similar to the NSW Children's Court figures for 2006 which indicate that 82% of young people facing charges in the Children's Court were male (7,300 of 8,874).³²

Figure 4 compares the ages of Children's Court respondents with the ages of all defendants appearing before the Children's Court in 2006.



These figures indicate that the age profile of our Children's Court sample is similar to that for all young people appearing before the Children's Court in 2006. The category '18 and over' includes seven young people who were 18 years or older facing charges in the Children's Court.

3.5. Living arrangements

We asked young people who they lived with. Of the 103 Children's Court respondents:

- 50% (52 young people) lived with one parent, most commonly their mother
- 26% (27) lived in foster care, supported accommodation, with friends or with a relative other than a parent
- 23% (24) lived with both parents.

31 The jurisdiction of the Children's Court is determined in part by the *Children (Criminal Proceedings) Act 1987* which provides that the Children's Court does not have jurisdiction over traffic offences except in certain circumstances. The Act also provides that serious children's indictable offences which include murder, certain firearms offences and offences punishable by life or 25 years imprisonment are outside the jurisdiction of the Children's Court.

32 The NSW Bureau of Crime Statistics and Research, *New South Wales Criminal Court Statistics 2006 — Annual Report*. Tables 2.4, 2.4a and 2.4b, pp.66–73.

3.6. Cultural background

We asked people if they were of Aboriginal or Torres Strait Islander background.

We also asked whether they were from a non-English speaking background and if so what language they spoke at home, and whether they had any difficulty understanding what the police said because of language.

3.6.1. Local Court

Of the 358 Local Court respondents, 17% (62 people) identified themselves as Aboriginal or Torres Strait Islander and 27% (97 people) reported that they were from a non-English speaking background.

Of the 97 people from non-English speaking backgrounds 78 people spoke a language other than English at home, with 37 different languages nominated, and 15 said they had difficulty understanding the police because of language barriers, including six who said police arranged for interpreters to be present at the time of the arrest and search.

A typical Local Court respondent from a non-English speaking background was someone who did not speak English at home, but spoke and understood English in other contexts and did not feel that they had language difficulties in their encounter with police.

3.6.2. Children's Court

The Children's Court responses to questions about their cultural backgrounds were quite different from the Local Court responses. Of the 103 Children's Court respondents, one-third (34 young people) identified themselves as Aboriginal or Torres Strait Islander.³³ Just three young people reported that they did not speak English at home.

3.7. Previous convictions and custodial sentences

3.7.1. Local Court

In the Local Court, people were asked if they had 'ever been convicted of a criminal offence' before the matter they were in court for that day. Those who answered 'yes' were then asked if they had previously served a custodial sentence.

Of the 358 Local Court respondents 61% (218 people) reported they had previously been convicted of a criminal offence, including 101 people who said they had served a previous custodial sentence, and 104 who said they had not. The remaining 13 did not provide an answer.

3.7.2. Children's Court

In the Children's Court we asked young people if, prior to the matter they were in court for on the day they were interviewed, they had ever been in trouble with the police. Those that answered 'yes' were then asked if they had spent time in juvenile detention.

Of the 103 Children's Court respondents 64% (66 young people) reported that they had previously been in trouble with the police, including 36 who said they had spent time in juvenile detention, and 26 who said they had not. Four did not provide an answer.

3.8. Drugs and alcohol

We asked people whether they had used drugs or alcohol immediately prior to their contact with police. If they had, they were also asked to describe the extent to which they thought they were affected by the drugs or alcohol.

³³ It should be noted that the Aboriginal population in NSW is younger than the non-Aboriginal population. Whereas about half (68,090) of the 138,506 Aboriginal and Torres Strait Islander residents of NSW are aged under 19 years, the proportion of non-Aboriginal NSW residents aged under 19 is just 26% of the non-Aboriginal total. Australian Bureau of Statistics, *Indigenous Status by Age — New South Wales*, 2006 Census Tables, Canberra, June 2007. Also, Aboriginal young people are less likely to be diverted, with figures showing they are half as likely to be cautioned under the *Young Offenders Act* than non-Aboriginal young people — see T. Calma, *Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues*, 2008, p.34.

3.8.1. Local Court

Of the 358 Local Court respondents, 42% (151 people) said they had consumed alcohol or drugs immediately prior to their interaction with police. Of these 151 people, 27% (41 people) described themselves as being seriously affected by alcohol or drugs at the time of their arrest, 49% (74 people) described themselves as being moderately affected, 23% (34 people) said they did not think they were affected at all and 1% (2 people) did not say whether their alcohol or drug consumption affected them.

3.8.2. Children's Court

Of the 103 Children's Court respondents, 33% (34 young people) said they had consumed alcohol or drugs immediately prior to their interaction with police. Of these 34 young people, three described themselves as being seriously affected by alcohol or drugs at the time of their arrest, seven described themselves as being moderately affected, and 22 said they did not think they were affected at all, and the other two young people did not say whether their alcohol or drug consumption affected them.

Chapter 4.

Searches on arrest and at the police station

This chapter provides an overview of the search practices described by respondents including when and where people reported being arrested, how many searches people described during their interaction with police on or after their arrest, the proportion of people in our sample who were searched on arrest in the field and/or at a police station, and the types of searches they described.

4.1. Arrest dates and locations

All of the people we surveyed were arrested within the two year review period (December 2005 — November 2007). As the majority of respondents reported being arrested in 2007, the responses are relevant to important amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* that commenced in late 2006.³⁴

4.1.1. Local Court

Of the 358 Local Court respondents, 87% (312 people) reported that they were in court that day in relation to an arrest that occurred in 2007. A further 11% (41 people) reported that they were in court that day in relation to an arrest that occurred in 2006, and 1% (5 people) reported that they were arrested in the two years prior to being surveyed but could not remember when.

With regard to the arrest location, 91% of people (327 of 358) reported that they were arrested in the field and 9% (31 people) reported that they were arrested at a police station.³⁵ One person did not disclose the location of his arrest.³⁶ Of the 327 people who reported being arrested in the field, 59% (194 people) reported that they were arrested in a public place such as a park, footpath, on a road or on public transport, 37% (101) reported that they were arrested on residential premises including their own home or another person's home, and 8% (27) reported that they were arrested on commercial premises such as a shopping centre, pub or club, or their work place.³⁷ Of those arrested in the field, 80% of people (262 of 327) reported that they were taken to a police station following their arrest.

4.1.2. Children's Court

Of the 103 Children's Court respondents, 92% (95 young people) reported that they were in court that day in relation to an arrest that occurred in 2007. Six young people said they were in court that day in relation to an arrest that occurred in 2006, and two young people said they were arrested in the two years prior to being surveyed but could not remember when.

With regard to the arrest location, 95% of young people (98 of 103) reported that they were arrested in the field and 6% of young people (5 of 103) reported that they were arrested at a police station. Of the 98 young people who reported being arrested in the field, 52 young people reported that they were arrested in a public place such as a park, footpath, on a road or on public transport, 27 young people reported that they were arrested on residential premises including their own home or another person's home, 14 young people reported that they were arrested on commercial premises such as a shopping centre, and 3 young people reported that they were arrested at school.³⁸ Of those arrested in the field, 94% of young people (92 of 98) reported that they were taken to a police station following their arrest. Of the six remaining young people who were not taken to a police station one was instead taken to his home in a police vehicle and was searched before being placed in the vehicle.³⁹

34 While LEPRA commenced on 1 December 2005 a number of amendments have been made since that time as discussed in Part 2 of the LEPRA Final Report. In particular, since December 2006 police are no longer required to warn the person that failure to follow their request or direction may be an offence unless the person is not complying, and since December 2007 police can request that a person open their mouth during a search on arrest if police suspect that something is concealed there.

35 For the purposes of this analysis 'in the field' is used to describe arrest and search locations that were away from a police station, this includes public places like footpaths, parks or on the road as well as residences, shopping centres, schools and other locations.

36 Local Court survey 208.

37 Of the remaining 1%, one person reported that he was arrested at a hospital and four people did not specify where they were arrested.

38 Of the remaining 2%, one young person reported that he was arrested at court and the other young person did not specify where she was arrested.

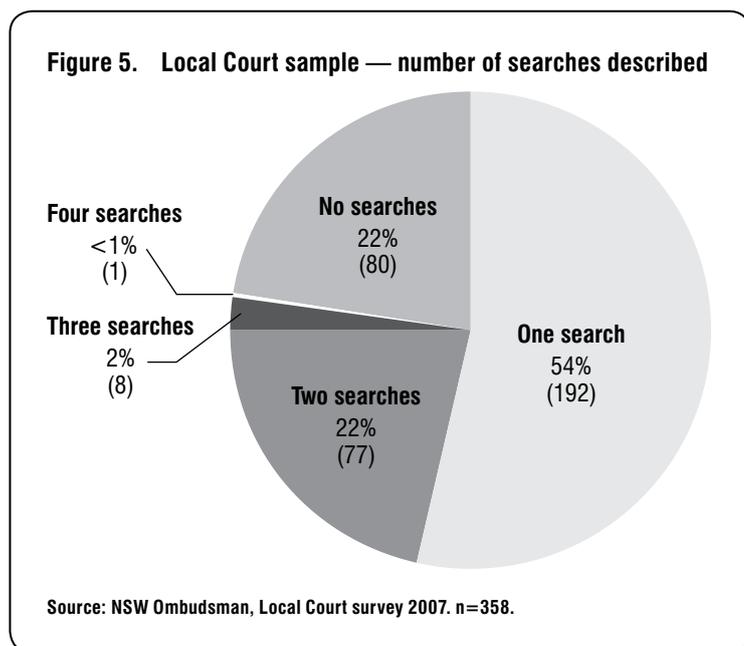
39 Children's Court survey 16.

4.2. Number of searches

Our survey asked people to describe any searches they experienced on arrest in the field, prior to being placed in a police vehicle, and at a police station — where we allowed for the description of up to three searches. This discussion considers all searches described by people during their interaction with police on or after their arrest.

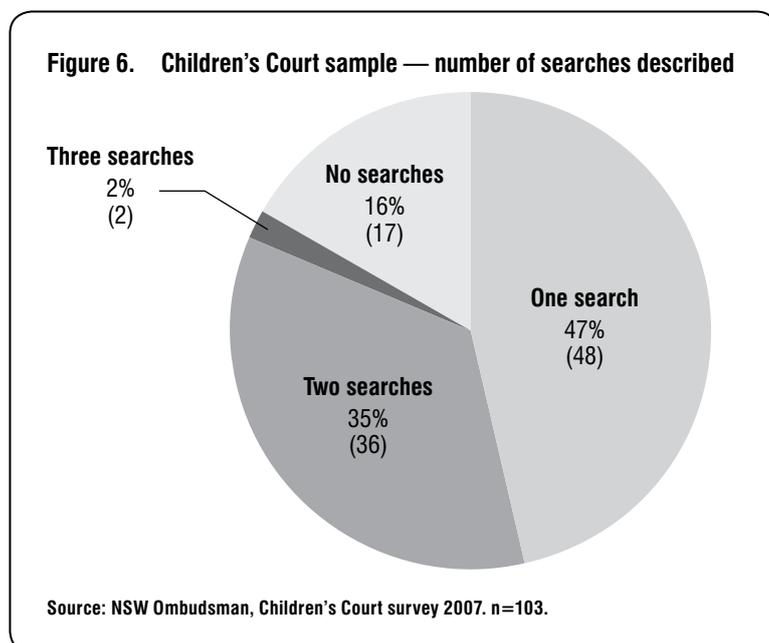
4.2.1. Local Court

The 358 Local Court respondents described a total 374 searches. Figure 5 shows that 54% (192 people) described one search during their interaction with police, 24% (86 people) described two or more, and the remaining 22% (80 people) did not describe any searches.



4.2.2. Children's Court

The 103 young people in the Children's Court sample described a total 126 searches. Figure 6 shows that 47% (48 young people) described one search relating to their interaction with police, 37% (38 young people) described two or more, and the remaining 17% (17 young people) did not describe any searches.

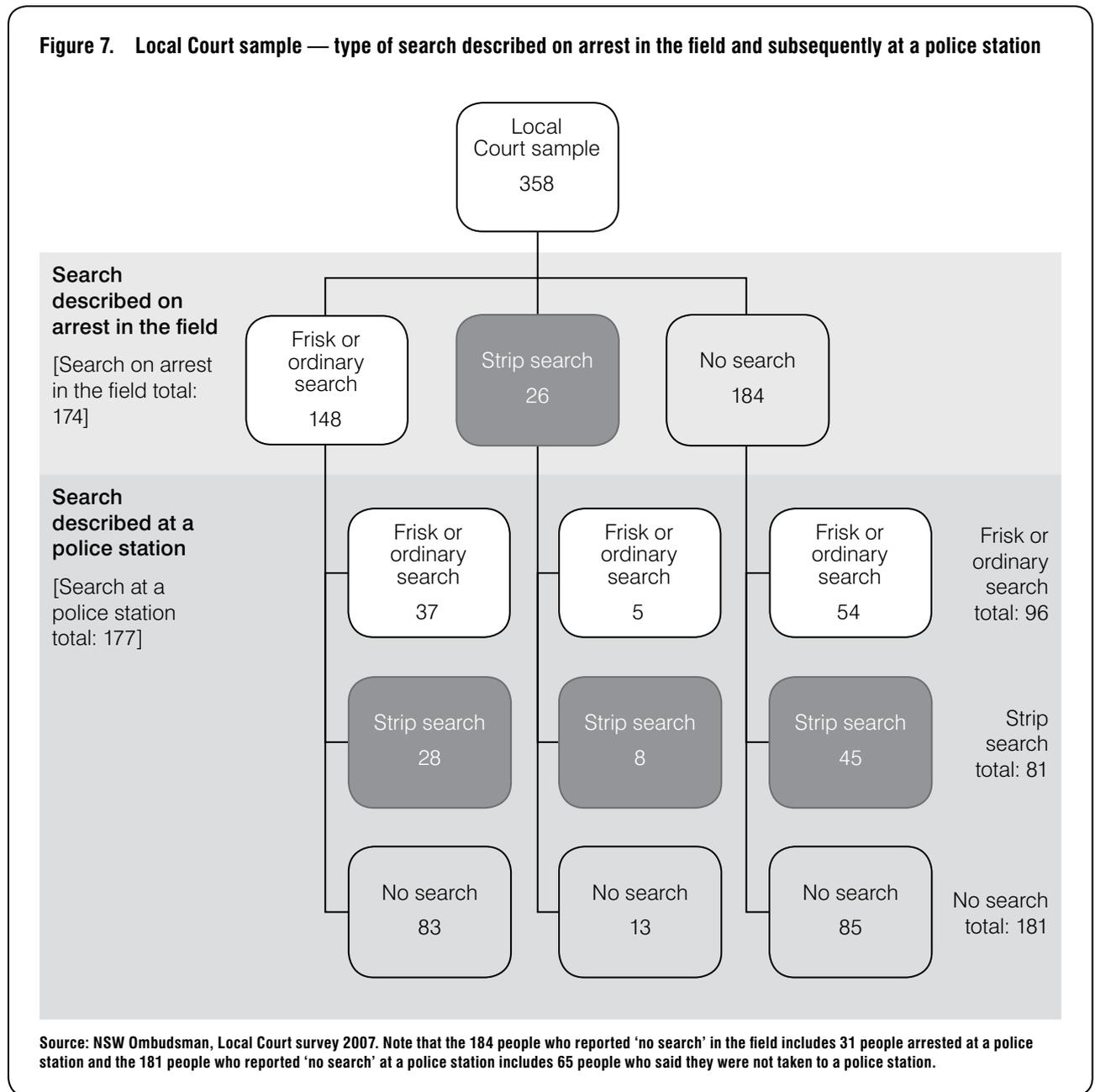


4.3. Searches on arrest in the field and at a police station

Although people were asked to describe all of the searches they experienced on or after their arrest, most people described a search on arrest in the field and/or one search at a police station. Our analysis of personal search safeguards focuses on the searches on arrest in the field and the first search described by people searched at police stations.⁴⁰

4.3.1. Local Court

Figure 7 illustrates where searches were reported as occurring, the type of search described and the sequence of search types. This analysis is based on the 174 searches on arrest in the field and 177 searches at a police station described by the Local Court respondents.

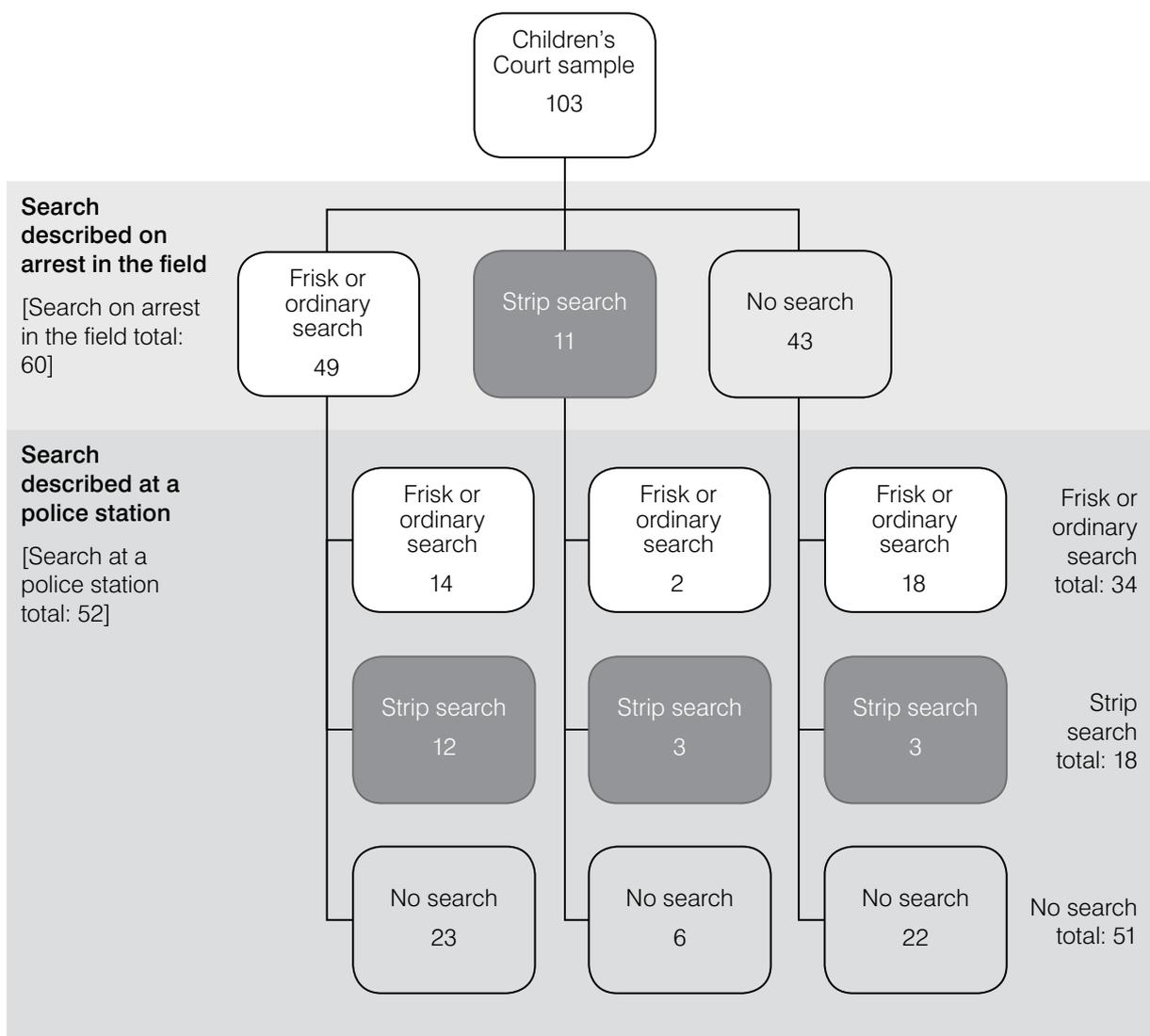


⁴⁰ Although we asked questions of people who were searched immediately before being placed into police vehicles and about subsequent searches at a police station, there were too few responses to provide separate analysis of those searches. Nor have they been included in our count of searches on arrest in the field or searches at a police station because of differences in the questions asked. The Local Court data included 20 searches before entering vehicles and three subsequent searches at a station. The Children's Court data included 14 searches before entering vehicles and no subsequent searches at a station.

4.3.2. Children's Court

Figure 8 illustrates where searches were reported as occurring, the type of search described and the sequence of search types where multiple searches were described. This analysis is based on the 60 searches on arrest in the field and 52 searches at a police station described by Children's Court respondents.

Figure 8. Children's Court sample — type of search described on arrest in the field and subsequently at a police station



Source: NSW Ombudsman, Children's Court survey 2007. Note that the 43 young people who reported 'no search' in the field includes five young people arrested at a police station and the 51 young people who reported 'no search' at a police station includes six young people who said they were not taken to a police station.

4.4. Frisk and ordinary searches

When people reported that they were searched we asked about police search practices. The list of search practices used in the survey was compiled after consulting with operational police and directly observing police operations that involved large numbers of personal searches.⁴¹

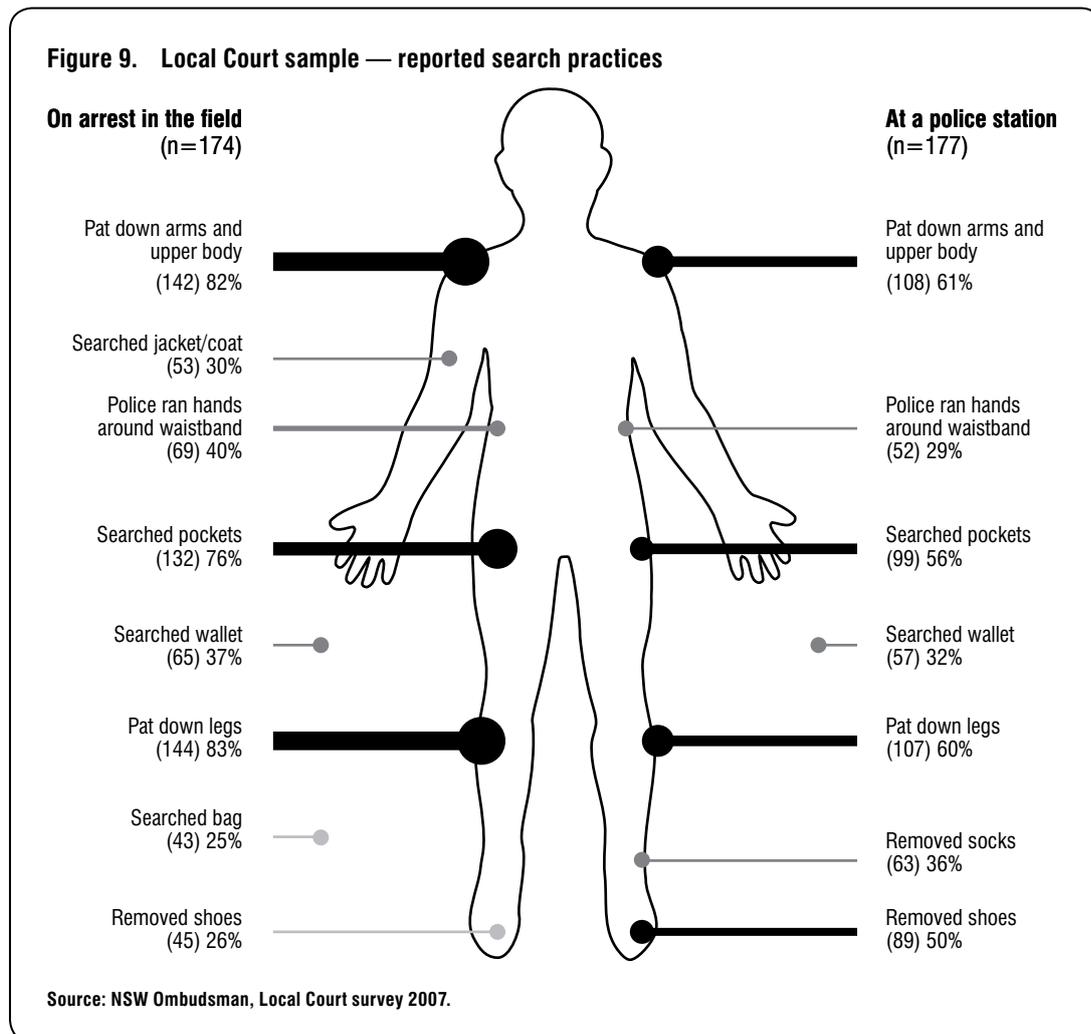
Outer clothing can be removed voluntarily as part of a frisk search, however the removal of outer clothing may be 'required' as part of an ordinary search. This can extend to the removal of shoes and socks.

⁴¹ For example, as part of the LEPR review we undertook direct observations of police activity including Vikings operations and Commuter Crime Unit beat patrols. Individual search practices are not detailed in the Act.

For the purposes of this report, frisk and ordinary searches are considered together because the same safeguards apply to both, and it was not always possible to differentiate between a frisk and ordinary search based on the descriptions provided by respondents.

4.4.1. Local Court

Figure 9 shows the frisk and ordinary search practices most commonly reported by Local Court respondents who described a search on arrest in the field and at a police station. Only those search practices reported by at least a quarter of the 174 people who described a search on arrest in the field and the 177 people who described a search at a police station are included.

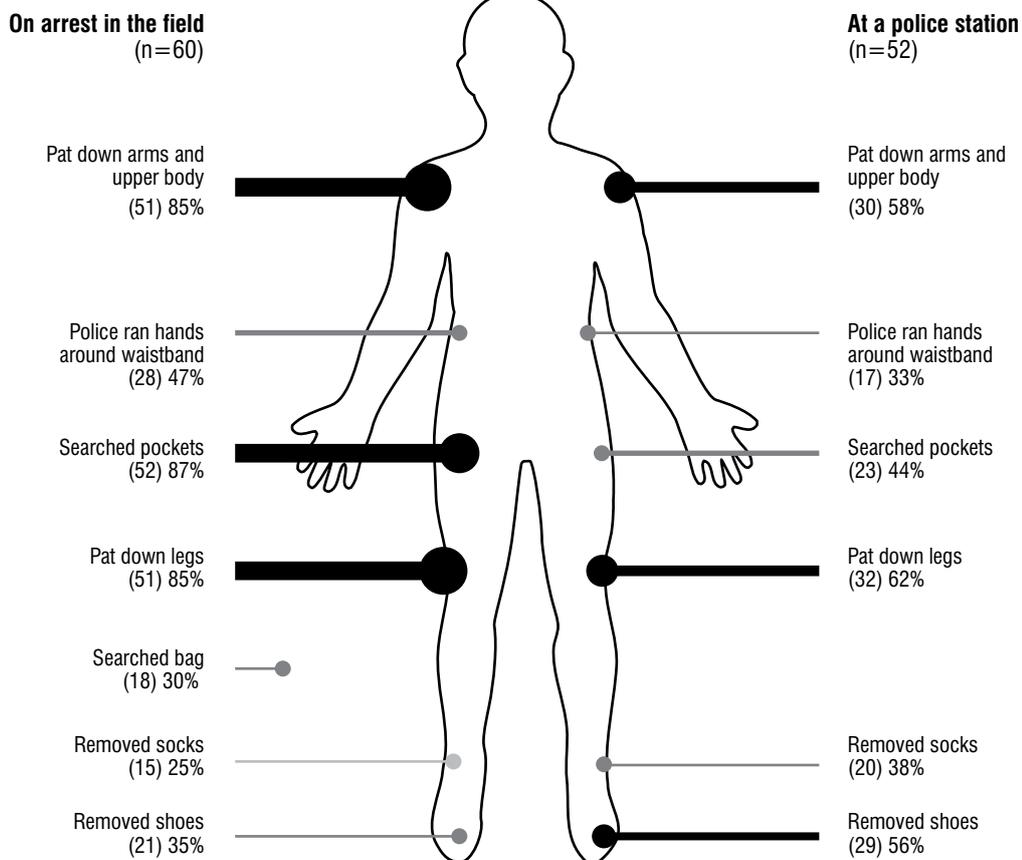


While pocket searches and full pat downs were commonly reported on arrest in the field and at a police station, the Local Court data indicates that larger proportions of people reported these search practices on arrest in the field. Respondents' descriptions of searches also suggest that police search jackets, coats, wallets and bags more frequently on arrest in the field but remove shoes and socks more frequently for searches at a police station.

4.4.2. Children's Court

Figure 10 shows the frisk and ordinary search practices most commonly reported by Children's Court respondents who described a search on arrest in the field and at a police station. Only those search practices reported by at least a quarter of the 60 young people who described a search on arrest in the field and the 52 young people who described a search at a police station are included.

Figure 10. Children's Court sample — reported search practices



Source: NSW Ombudsman, Children's Court survey 2007.

As with the Local Court sample, pocket searches and full pat downs were commonly reported both on arrest in the field and at a police station. However, the Children's Court data indicates that larger proportions of young people reported these search practices on arrest in the field. Although the numbers are small, young people's descriptions of searches also suggest that police search bags and waistbands more frequently on arrest in the field but remove shoes and socks more frequently for searches at a police station.

4.5. Strip searches

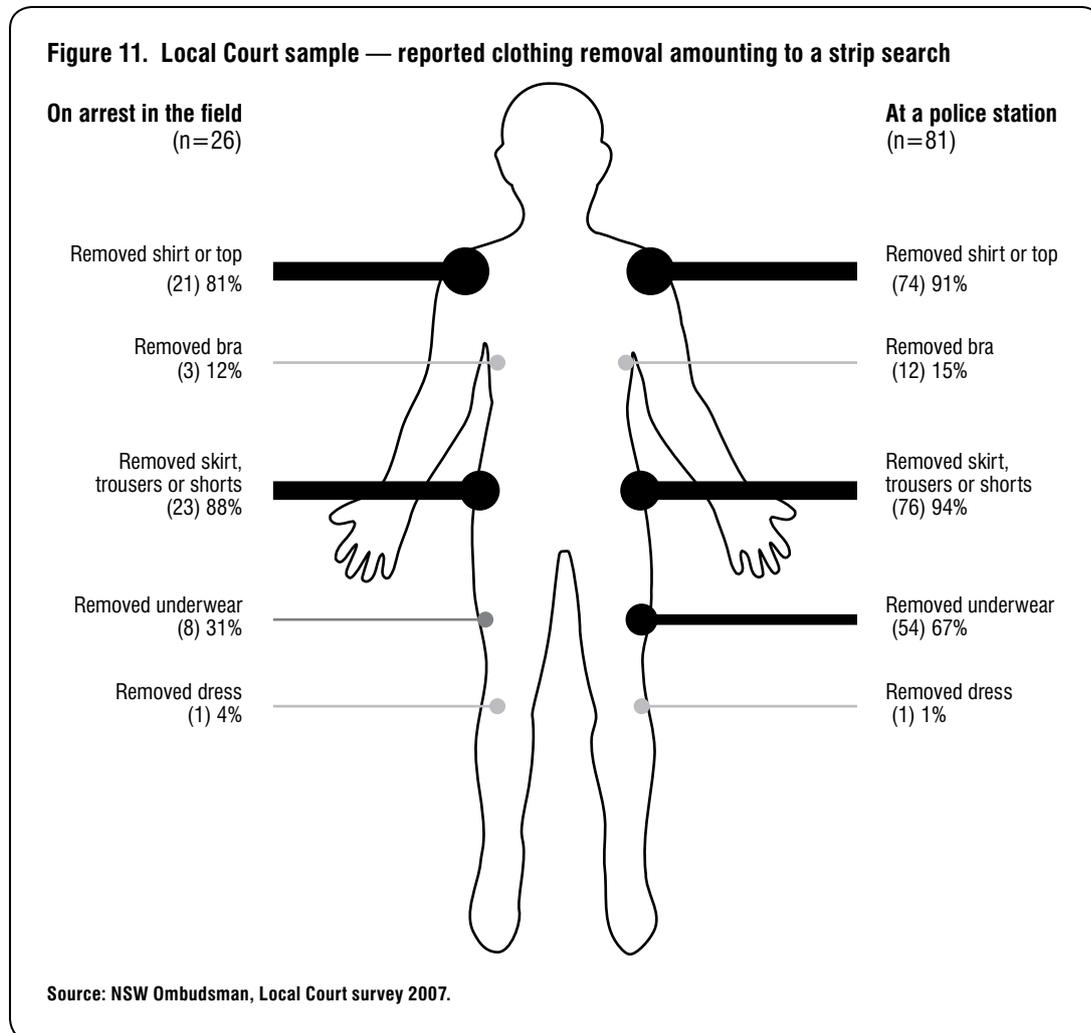
A strip search is defined in section 3 of LEPR as 'a search of a person or of articles in the possession of a person that may include requiring the person to remove all of his or her clothes, and an examination of the person's body (but not of the person's body cavities) and of those clothes'.

Rather than ask people whether they were subject to a frisk, ordinary or strip search, our survey asked if police requested that they remove any clothes and other items. Answers indicating the removal of trousers or shorts, skirts, dresses, underwear, bras, bikinis, shirts, tops and T-shirts were used to identify strip searches. While there are limitations to this classification system, it provides an objective means of differentiating 'frisk and ordinary' from 'strip' searches for the purpose of this analysis. In particular, we acknowledge that other search practices can constitute a strip search for the purpose of LEPR.⁴²

⁴² Although the search practice of police running their hands inside a person's shirt or trousers may constitute a possible strip search as the search was under clothing, this has not been treated as a strip search in the following analysis as it does not involve the 'removal' of clothing and did not therefore prompt the person to respond to the strip search questions. There were also two searches we identified in which the person was arrested whilst naked, or almost naked. These have not been included in the analysis of strip search safeguards as they were not required to remove clothing. Local Court surveys 237 and 280.

4.5.1. Local Court

Figure 11 shows the type of clothing people reported removing as part of a strip search on arrest in the field and at a police station. All items of clothing used to identify a strip search in this report have been included in this analysis.

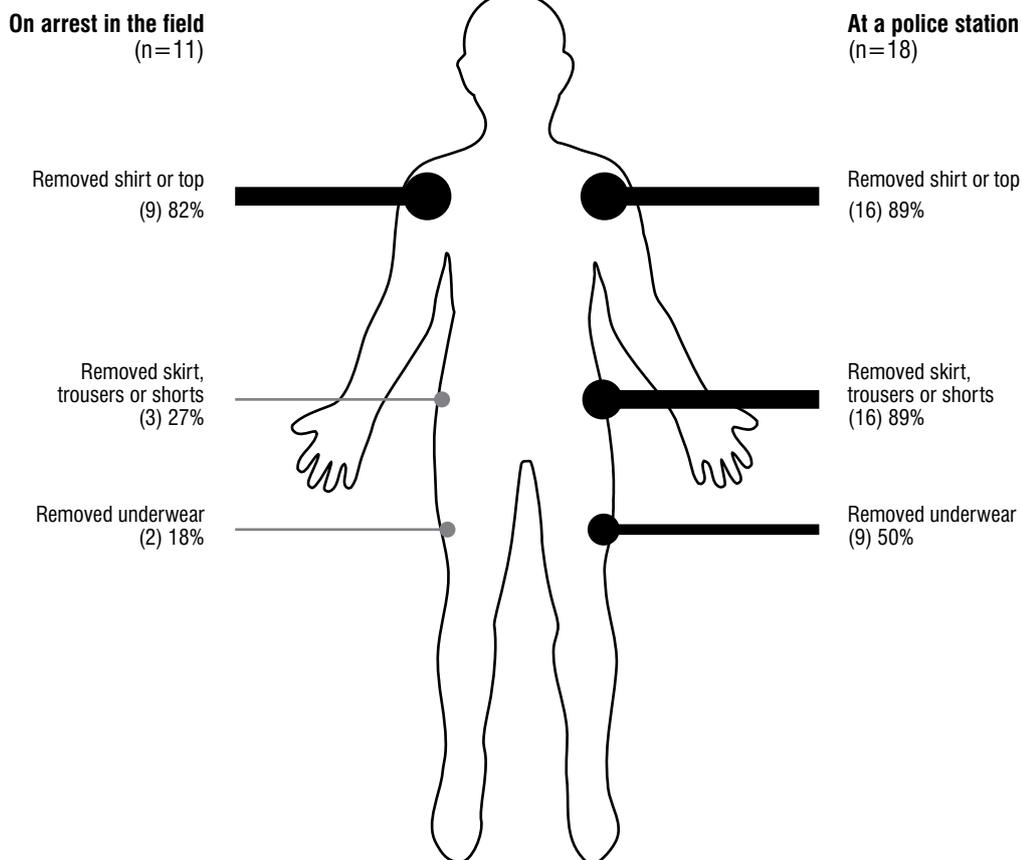


The removal of shirts or tops and skirts, trousers or shorts was frequently reported for strip searches on arrest in the field and at a police station. A number of people also described removing their underwear and/or bra as part of searches on arrest and at a police station, however, larger proportions of people reporting removing underwear as part of a search at a police station.

4.5.2. Children’s Court

Figure 12 shows the type of clothing young people reported removing as part of a strip search on arrest in the field and at a police station. All items of clothing used to identify a strip search in this report have been included in this analysis.

Figure 12. Children's Court sample — reported clothing removal amounting to a strip search



Source: NSW Ombudsman, Children's Court survey 2007.

As with the Local Court respondents, the removal of shirts or tops was commonly reported by young people who described strip searches on arrest in the field and at a police station. While the numbers are small, young people's descriptions of strip searches suggest that removal of skirts, trousers, shorts and underwear occur more frequently during searches at a police station.

4.6. Searches involving requests that a person open their mouth

In December 2007, a new section 23A was inserted in Part 4 of LEPRA which provides police with a specific power to request that a person open their mouth or move their hair if the officer suspects on reasonable grounds that a thing of a kind referred to in section 23 is concealed in those places. Subsection 23A(2) states that police are not authorised to forcibly open a person's mouth. All of the people surveyed reported being arrested before this provision commenced.

People who described being searched were asked whether police searched their mouth or hair and if so, what form this search took.⁴³

⁴³ People could nominate more than one factor in response to this question namely: looked inside your mouth without touching you; asked you to roll your tongue around; put anything in your mouth (fingers/paddle); or other.

4.6.1. Local Court

Of the 174 Local Court respondents who described being searched on arrest in the field, 13% (23 people) said that police searched their mouth including 11 people who reported that police looked inside their mouth, ten people who said that police asked them to roll their tongue, and two people who said that police physically searched their mouths saying that police 'pried teeth open with gloved hands',⁴⁴ and that they were 'asked by police to put own hands around every part of my mouth'.⁴⁵

Of the 177 Local Court respondents who described being searched at a police station, 25% (44 people) reported that police searched their mouth, including 23 people who reported that police looked inside their mouth, 30 people who said that police asked them to roll their tongue and eight people who said that police put something in their mouth.

4.6.2. Children's Court

Of the 60 young people who said they were searched in the field, 13% (8 young people) reported that police searched their mouth including two young people who reported that police looked into their mouths, three reported that police required them to roll their tongue and three reported that police searched their mouth using their fingers or a paddle.

Of the 52 young people who said they were searched at a police station, 10% (5 young people) reported that police searched their mouth including two young people who reported that police looked inside their mouth, three young people who said police asked them to roll their tongue and two young people who said police used their fingers or a paddle.

44 Local Court survey 195.

45 Local Court survey 200.

Chapter 5.

Personal search safeguards

This chapter looks at the search practices described by Local and Children's Court respondents with regard to the personal search safeguards provided in LEPR. The analysis covers information about defendants' perceptions of:

- the general safeguards in section 201 which essentially require that police provide: evidence that they are a police officer (if not in uniform); their name and place of duty; and the reason for exercising the power
- the general search safeguards in section 32 which aim to protect the searched person's right to privacy and maintenance of dignity throughout the search
- the additional rules for strip searches in section 33 which specify when a support person can (or must) be present and provide additional privacy and dignity safeguards.⁴⁶

Each section in this chapter is prefaced with a brief explanation of the LEPR safeguard under consideration and a description of the related questions in our survey, followed by a summary of the responses.⁴⁷

5.1. Evidence of identity as a police officer

Section 201(1)(a) of LEPR requires police to provide the person who is subject to the exercise of the power with 'evidence that the police officer is a police officer (unless the police officer is in uniform)'. In our survey, people who described being searched on arrest in the field were asked how they knew that the person they were dealing with was a police officer.

5.1.1. Local Court

Of the 174 Local Court respondents who described being searched on arrest in the field, 83% (144 people) said that they knew the person was a police officer because they were in uniform and 10% (18 people) said that they knew the person was a police officer because they showed police identification — both of which meet the section 201(1)(a) requirement in LEPR.⁴⁸

Of the 12 people who did not specify that they knew the person was a police officer because he or she was in uniform or showed police identification:

- six people said they knew the person was a police officer because the officer said that he or she was a police officer
- four people said they knew the person was a police officer because of other factors such as the presence of a police car or weapons (for example, one person commented that they saw 'flashing car lights and they were carrying guns')⁴⁹
- one person knew the officer from previous dealings
- one person did not say if or how she knew the person was a police officer.

5.1.2. Children's Court

Of the 60 Children's Court respondents who described being searched on arrest in the field, 82% (49 young people) said that they knew the person was a police officer because they were in uniform and 8% (5 young people) said that they knew the person was a police officer because they showed police identification.

Of the six young people who did not specify that the officer was in uniform or showed police identification:

- three said they knew the person was a police officer because the officer said so
- two recognised police from previous dealings

⁴⁶ See Appendix 1 (4.4) for the definition of frisk and ordinary and (4.5) for the definition of strip searches used in this analysis.

⁴⁷ A more detailed discussion of each safeguard provision can be found in Chapters 15 and 16 in Part 2 of the LEPR Final Report.

⁴⁸ People could nominate more than one factor in response to this question. However, because section 201(1)(a) specifies that a police officer is only required to provide identification if not in uniform, people who said they knew the person was a police officer because they were in uniform have been excluded from the count for subsequent factors. This process was repeated for the remainder in the following order: showed police identification, told me they were police, previous dealings and other.

⁴⁹ Local Court survey 86.

- one reported that she 'didn't know they were police because [they were] plain clothed and didn't show badges'.⁵⁰

5.2. Name and place of duty

Section 201(1)(b) of LEPRA states that police must provide their name and place of duty when exercising a power to arrest or search a person. We asked people whether they could recall police providing their name and/or the police station they were from with regard to searches in the field.

5.2.1. Local Court

Of the 174 Local Court respondents who described being searched on arrest in the field:

- 30% (53 people) reported that they were provided with both the name and place of duty of the officer — in accordance with the section 201(1)(b) requirement in LEPRA
- 14% (25) reported that they were only provided with the officer's name — which partially meets the section 201(1)(b) requirement
- 12% (21) reported that they were only provided with the officers place of duty — which partially meets the section 201(1)(b) requirement
- 26% (46) reported that they received neither the officer's name nor place of duty
- 17% (29) reported that they could not remember and/or did not provide an answer.

We also asked people whether they asked any of the police officers present for their name and or place of duty at any time during the search.⁵¹ Twelve people reported that they asked for the searching officer's details, seven of whom said police provided the requested information.⁵²

5.2.2. Children's Court

Of the 60 Children's Court respondents who described being searched on arrest in the field:

- 18% (11 young people) reported that they were provided with both the name and place of duty of the officer
- 5% (3) reported that they were provided with just the officer's name
- 10% (6) reported that they were provided with just the officer's place of duty
- 57% (34) reported that they received neither the officer's name nor place of duty
- 10% (6) reported that they could not remember and/or did not provide an answer.

We also asked young people whether they asked any of the police officers present for their name and or place of duty at any time during the search. Seven young people reported that they asked for the searching officers' details, one of whom said police provided the requested information.⁵³

5.3. Reason for search

Section 201(1)(c) of LEPRA requires police to give the person a reason for conducting a search. In our survey, people were asked whether police provided a reason for the search and if so, what that reason was. The responses generally fitted into three broad categories: 'evidence related', 'safety related' and 'arrest or procedure related' reasons.

5.3.1. Local Court

Of the 174 Local Court respondents who described being searched on arrest in the field, 61% (106 people) reported that police provided a reason for the search.⁵⁴ Of those who said they were provided with a reason: 22 people described evidence related reasons, for example, 'looking for stolen stuff';⁵⁵ 24 people described safety reasons,

⁵⁰ Children's Court survey 4.

⁵¹ Section 201(5) states, 'if a person asks another police officer present for information as to the name of the police officer and his or her police of duty, the police officer must give to the person the information requested'.

⁵² The remaining five people reported that police did not provide this information when requested.

⁵³ The remaining six said police did not provide this information when requested.

⁵⁴ 34% (60 people) reported that police did not provide a reason for the search and 5% (8 people) could not remember or did not provide an answer.

⁵⁵ Local Court survey 139.

for example, 'because I was to get into a police car — wanted to make sure I had no weapons';⁵⁶ and 60 people described reasons that appeared to relate to the grounds for their arrest and/or police procedures for example, '[I was] just advised you're under arrest, you're going to be searched'.⁵⁷

Of the 177 Local Court respondents who described being searched at a police station, 38% (68 people) reported that police provided a reason for the search.⁵⁸ Of those who said they were provided with a reason: 26 people described evidence related reasons, 18 people described safety reasons, and the remaining 24 people described reasons that appeared to relate to the grounds for their arrest and/or police procedures.

5.3.2. Children's Court

Of the 60 Children's Court respondents who described being searched on arrest in the field 38% (23 young people) reported that police provided a reason for the search.⁵⁹ Of those who said they were provided with a reason, six young people described evidence related reasons such as, 'looking for break and enter stuff';⁶⁰ six young people described safety related reasons, for example, 'looking for syringes on me';⁶¹ and 11 young people described reasons that appeared to relate to the grounds for their arrest and/or police procedures for example, 'because I had a text in my hand and I was under arrest and that meant they could search me'.⁶²

Of the 52 Children's Court respondents who described being searched at a police station, 31% (16 young people) reported that police provided a reason for the search.⁶³ Of those who said they were provided with a reason: four young people described evidence related reasons, five young people described safety related reasons, a further five young people described reasons that appeared to relate to the grounds for their arrest and/or police procedures, and two young people said police gave them a reason but did not specify reasons they were given.

5.4. Warning

When LEPR commenced, section 201(1)(d) stated that police must warn the person that they may be committing an offence if they fail to comply with the officer's request or direction whenever they exercise a relevant power. In December 2006 section 201(1)(d) was repealed. The new section 201(2C) specifies that warnings are only required if the person is not complying with the officer's request or direction. In our survey people were asked if police warned them that they may be committing an offence if they did not let police search them.

5.4.1. Local Court

Of the 174 Local Court respondents who described being searched on arrest in the field 34% (60 people) reported that police told them that they 'may be committing an offence' if they did not comply with the search, 48% (83) said that they were not warned, and 18% (31 people) could not remember or did not answer this question.

Of the 177 Local Court respondents who described being searched at a police station, 35% (62 people) reported that police told them that they 'may be committing an offence' if they did not comply with the search, 47% (83 people) said they were not warned, and 18% (32 people) could not remember or did not answer this question.

5.4.2. Children's Court

Of the 60 Children's Court respondents who described being searched on arrest in the field, 38% (23 young people) reported that police told them that they 'may be committing an offence' if they did not comply with the search, 48% (29 young people) said they were not warned and 13% (8 young people) could not remember.

Of the 52 Children's Court respondents who described being searched at police stations, 13% (7 young people) reported that police told them that they 'may be committing an offence' if they did not comply with the search, 69% (36 young people) said they were not warned and 17% (9 young people) could not remember.

56 Local Court survey 305.

57 Local Court survey 336.

58 53% (93 people) reported that police did not provide a reason for the search and 9% (16 people) could not remember or did not provide an answer.

59 37 young people reported that police did not provide a reason for the search.

60 Children's Court survey 9.

61 Children's Court survey 83.

62 Children's Court survey 102.

63 35 young people reported that police did not provide a reason for the search, and two young people could not remember or did not provide an answer.

5.5. Reasons provided for clothing removal

Section 32(2) of LEPR states that police must inform a person being searched if they will be required to remove any clothing and why the removal of the clothing is necessary as far as is reasonably practicable in the circumstances. In our survey, people were asked whether they had to remove any clothing, and if so, whether police told them why this was necessary.

5.5.1. Local Court

Of the 148 Local Court respondents who described a frisk or ordinary search on arrest in the field, 33% (49 people) reported they were asked to remove at least one item of clothing (for instance a jacket, hat, shoes or socks), including 10 people who said that were told why they had to remove those items. Those reasons related to safety (4 people), police procedure (4 people), and drugs (2 people).

Of the 26 Local Court respondents who described a strip search on arrest in the field, 10 said they were told why they had to remove those items. Those reasons related to drugs (3 people), safety (3 people), police procedure (3 people), and because police had a warrant (1 person).

Of the 96 Local Court respondents who described a frisk or ordinary search at a police station, 38% (36 people) reported that they were required to remove at least one item of clothing, including 12 people who said that they were told why they had to remove those items. Those reasons related to safety (8 people), drugs (2 people) and police procedure (1 person). One other person reported that they were provided with a reason but did not specify what that reason was.

Of the 81 Local Court respondents who described a strip search at a police station, 30% (24 people) said they were told why they had to remove those items. Those reasons related to police procedure (9 people), safety (6 people), evidence (5 people), drugs (3 people), and identification (1 person).⁶⁴

5.5.2. Children's Court

Of the 49 Children's Court respondents who described a frisk or ordinary search on arrest in the field, 49% (24 young people) reported they were asked to remove at least one item of clothing, including four young people who said they were told why they had to remove those items. Those reasons related to evidence (2 young people), safety (1 young person) and police procedure (1 young person).

Of the 11 Children's Court respondents who described a strip search on arrest in the field, three said they were told why they had to remove those items. Those reasons related to evidence (2 young people) and police procedure (1 young person).

Of the 34 Children's Court respondents who described a frisk or ordinary search at a police station, 71% (24 young people) reported they were asked to remove at least one item of clothing, including four young people who said they were told why they had to remove those items. Those reasons related to safety (3 young people) and police procedure (1 young person).

Of the 18 Children's Court respondents who described a strip search at a police station, seven young people said they were told why they had to remove those items. Those reasons related to evidence (4 young people), safety (2 young people) and police procedure (1 young person).

5.6. Request for co-operation

Section 32(3) of LEPR states that police must request a person's co-operation when conducting a personal search as far as is reasonably practicable in the circumstances. In our survey, people were asked if police asked them to co-operate with the search.

5.6.1. Local Court

Of the 174 Local Court respondents who described being searched on arrest in the field, 44% (77 people) said police asked them to co-operate and 43% (74 people) said police did not ask. The remaining 13% (23 people) could not remember or did not provide an answer.

Of the 177 Local Court respondents who described being searched at a police station, 42% (74 people) said police asked them to co-operate, 40% (70 people) said police did not ask. The remaining 19% (33 people) could not remember or did not provide an answer.

⁶⁴ The reason classified as 'identification' involved removal of the man's shirt to locate a tattoo for identification purposes. Local Court survey 246.

Respondents were also asked if they co-operated with the search. The majority — 90% of people who described a search on arrest in the field (157 of 174), and 92% of those who described a search at police station (163 of 177) — said that they co-operated.

5.6.2. Children’s Court

Of the 60 Children’s Court respondents who described being searched on arrest in the field, 55% (33 young people) said police asked them to co-operate and 35% (21 young people) said that police did not ask. The remaining 10% (6 young people) could not remember or did not provide an answer.

Of the 52 Children’s Court respondents who described being searched at a police station, 46% (24 young people) said police asked them to co-operate and 48% (25 young people) said that police did not ask. The remaining 6% (3 young people) could not remember or did not provide an answer.

Respondents were also asked if they co-operated with the search. The majority — 92% of young people who described a search on arrest in the field (55 of 60) and 98% of those who described a search at a police station (51 of 52) — said that they co-operated.

5.7. Reasonable privacy

Section 32(4)(a) of LEPR states that police must conduct a search in a way that provides reasonable privacy for the person searched as far as is reasonably practicable in the circumstances. Our survey asked people where the search took place.

The following discussion focuses on the types of places where frisk and ordinary searches were conducted. Strip search locations are considered separately in section 5.14 below.

For the purpose of this analysis, we have categorised the field locations reported by respondents as public and private places in order to provide some comment on the privacy of the search. While we acknowledge that ‘reasonable privacy’ cannot be assessed in terms of the type of location alone, this discussion of search locations does provide some insight into the types of places where searches are conducted, which is an important element of privacy. Respondents were also asked whether there was anything about the search that made them uncomfortable, and if so, what it was. Relevant responses to that question have been considered in the following discussion.

5.7.1. Local Court

Of the 148 Local Court respondents who described a frisk or ordinary search on arrest in the field, 75% (111 people) reported that the search was conducted in public places such as on footpaths, in parks or by the side of roads. A further three people said they were searched at other locations such as a warehouse or hospital. Some people reported that they had been arrested in or near their home but searched in a public location, for example one person said he was arrested in his home and then searched outside by the road.⁶⁵ The remaining 23% of people who described a frisk and ordinary search on arrest in the field identified places that may have afforded more privacy such as residential premises (27 people) and commercial premises (7 people) including the security officer’s room at a shopping centre or a work place.

Of the 96 Local Court respondents who described a frisk or ordinary search at a police station, 58% (56 people) reported that the search was conducted in the charge room, 17% (16 people) reported that the search was conducted in the dock, and 4% (4 people) reported that the search occurred in another unspecified location. A further 13% (12 people) reported that the search was conducted in the cells — an area of the police station that may have afforded more privacy.⁶⁶

The perceived lack of privacy was a common concern raised in response to questions at the end of the survey about whether there was anything police could have done better. For instance, one woman who described being frisk searched in front of the dock area of a police station commented, ‘the search should have been more private and discreet. [It was] in front of men, and that was uncomfortable’.⁶⁷ One man who described being searched on arrest in the field said, ‘because I was searched in a public place my wife found out before I got home’.⁶⁸ Other comments included: ‘very public, outside a busy pub on a Friday night and a crowd formed around me’,⁶⁹ ‘police station [was] only 200 metres up the road, [they] could’ve taken me there for a search — less public’,⁷⁰ and ‘they could have taken me somewhere more private for the search, there was a crowd of people around me, all watching, it was humiliating’.⁷¹

65 Local Court survey 270.

66 The remaining 8% (8 people) did not provide an answer.

67 Local Court survey 184. In relation to description of a frisk or ordinary search at a police station.

68 Local Court survey 142. In relation to description of a frisk or ordinary search on arrest.

69 Local Court survey 195. In relation to description of a frisk or ordinary search on arrest.

70 Local Court survey 145. In relation to description of a frisk or ordinary search on arrest.

71 Local Court survey 46. In relation to description of a frisk or ordinary search on arrest.

5.7.2. Children's Court

Of the 49 Children's Court respondents who described a frisk or ordinary search on arrest in the field, 65% (32 young people) reported they were searched in a public place, and one young person reported that he was searched at school.⁷² As with Local Court respondents, some young people said they had been arrested in or near their home but searched in a public location. For example one boy reported he was arrested in his home 'but searched in the driveway'.⁷³ Other young people who described a frisk and ordinary search on arrest in the field identified search locations that may have afforded more privacy such as residential premises (6 young people) and commercial premises (8 young people) — notably the security officer's room or other private locations, for example 'in the manager's room [of the shopping centre]'.⁷⁴

Of the 34 Children's Court respondents who described a frisk or ordinary search at a police station, 68% (23 young people) reported the search was conducted in the charge room. Of the others, four young people reported that the search was conducted in the dock, one was searched in another unspecified location, four were searched in the cells and two did not provide an answer.

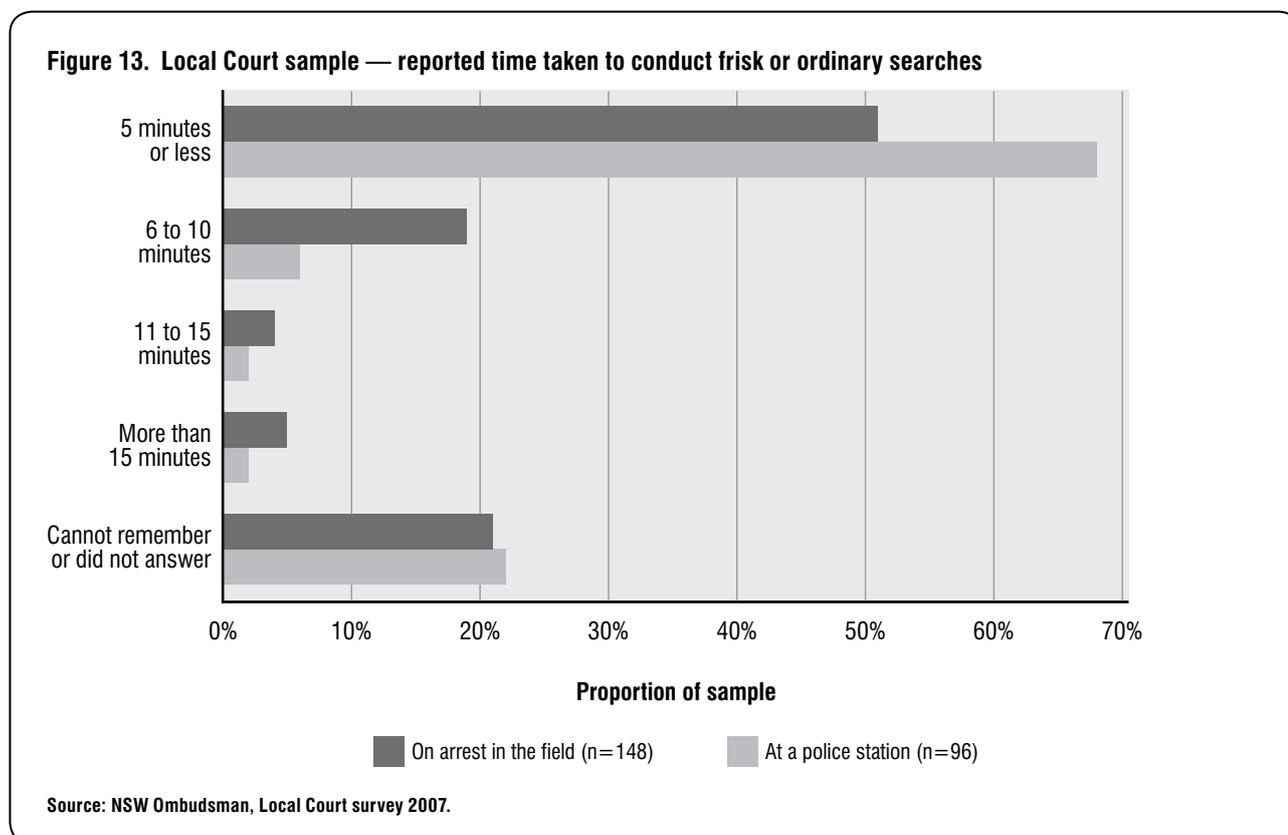
Comments from young people regarding aspects of the search that made them feel uncomfortable or things that police could have done better also included comments about the privacy of the search such as: 'a lot of people were watching',⁷⁵ And 'searches conducted in public shouldn't be allowed'.⁷⁶

5.8. Speed of search

Section 32(4)(b) of LEPRA states that a search must be conducted as quickly as is reasonably practicable in the circumstances. Our survey asked people to estimate the length of time it took police to complete the search. Responses were recorded on a scale of five minute increments.

5.8.1. Local Court

Figure 13 shows the length of time reported by Local Court respondents who described a frisk or ordinary search.



72 Children's Court survey 64.

73 Children's Court survey 11.

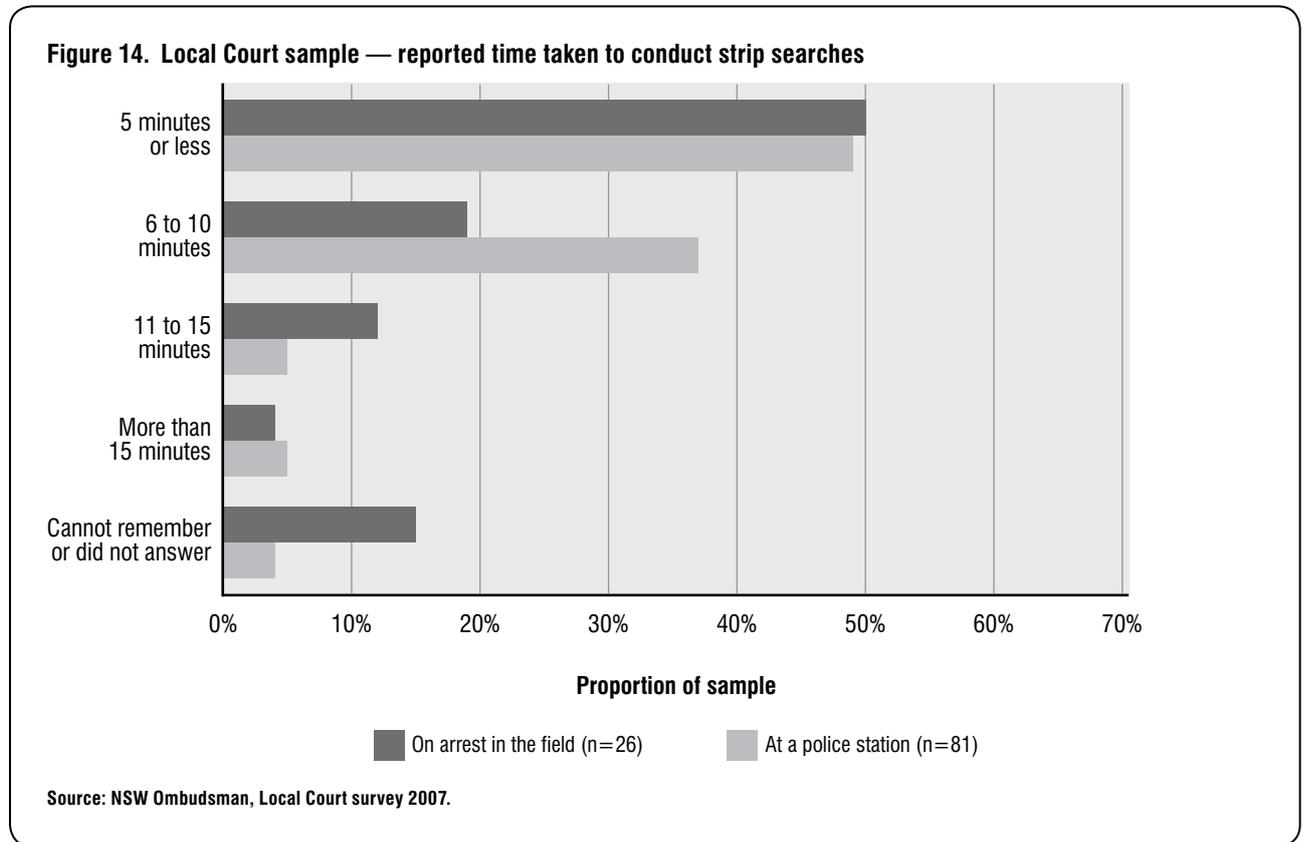
74 Children's Court survey 48.

75 Children's Court survey 32. In relation to description of a frisk or ordinary search on arrest.

76 Children's Court survey 32. In relation to description of a frisk or ordinary search on arrest.

Of the 148 people who described a frisk or ordinary search on arrest in the field, 51% (76 people) estimated that the search took less than five minutes. Of the 96 people who described a frisk or ordinary search at a police station, 68% (65 people) said that the search took less than five minutes. This was the group most likely to report a quick search. The responses also indicate that frisk searches taking longer than 10 minutes were relatively rare.

Figure 14 shows the length of time reported by Local Court respondents who described a strip search.



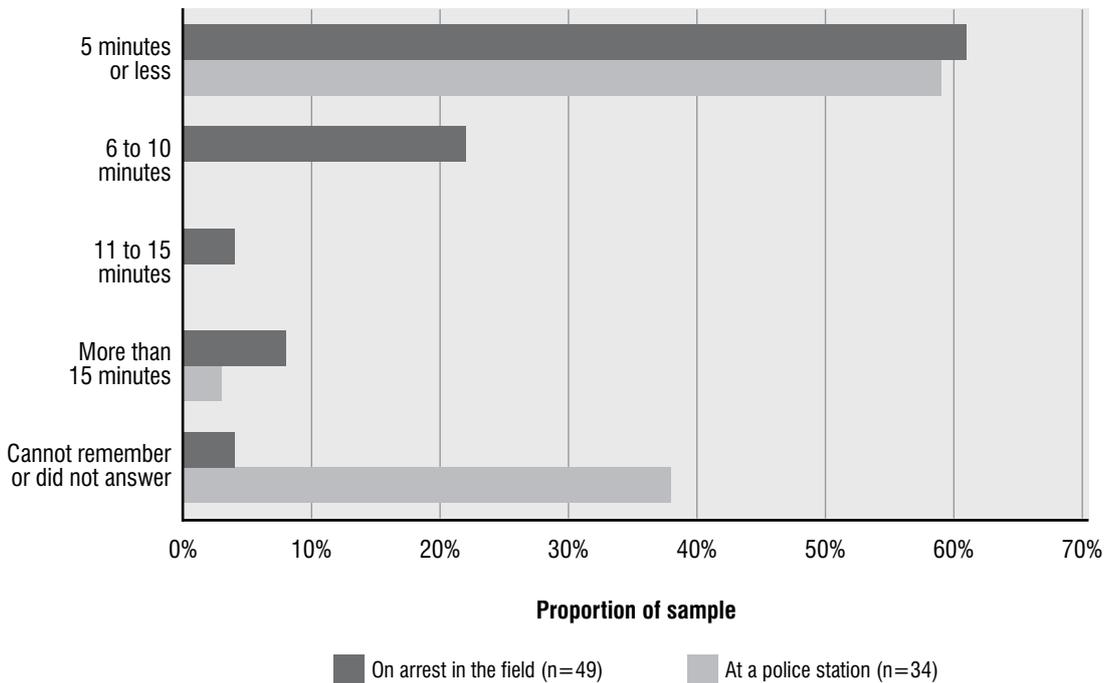
Of the 26 people who described a strip search on arrest in the field, half (13 people) said that the search took less than five minutes. Similarly, of the 81 people who described a strip search at a police station, 49% (40 people) said that the search took less than five minutes. While responses indicate that it is relatively rare for strip searches to take more than 10 minutes, when later asked if there was anything police could have done better, one person said the 'search was too slow — over an hour all up in the cold'.⁷⁷

5.8.2. Children's Court

Most young people reported relatively quick searches. Figure 15 shows the length of time reported by Children's Court respondents who described a frisk or ordinary search.

77 Local Court survey 247.

Figure 15. Children's Court sample — reported time taken to conduct frisk and ordinary searches

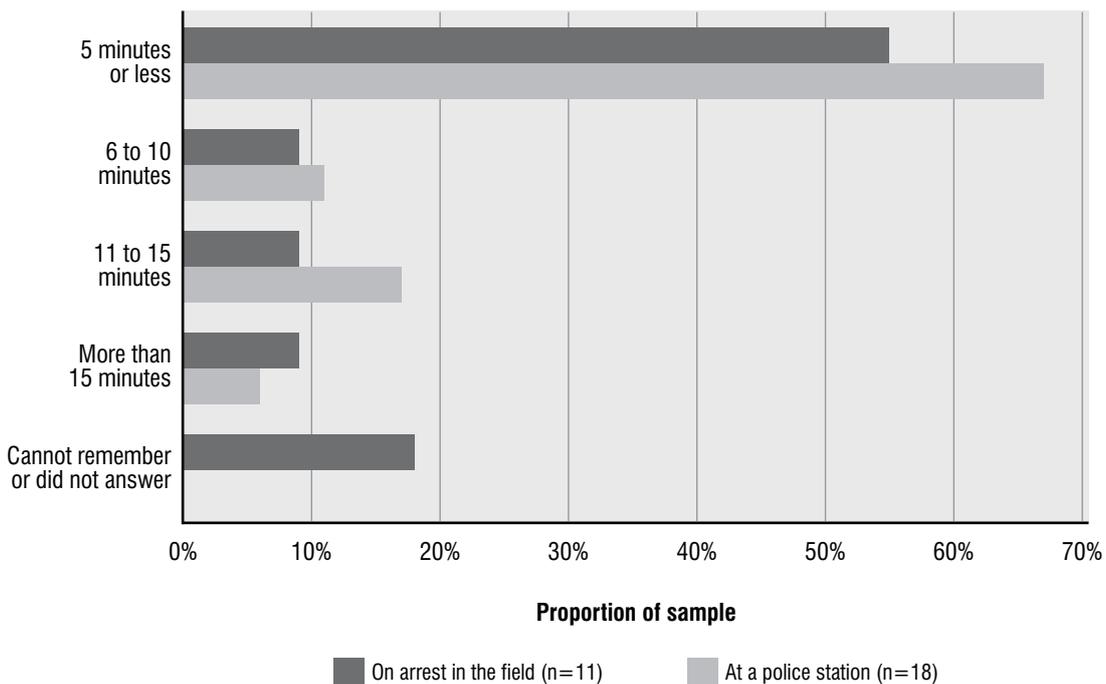


Source: NSW Ombudsman, Children's Court survey 2007.

Of the 49 young people who described a frisk or ordinary search on arrest in the field, 61% (30 young people) said that the search took less than five minutes. Of the 34 young people who described a frisk or ordinary search at a police station, 59% (20 young people) said that the search took less than five minutes.

Figure 16 shows the length of time reported by Children's Court respondents who described a strip search.

Figure 16. Children's Court sample — reported time taken to conduct strip searches



Source: NSW Ombudsman, Children's Court survey 2007.

Of the 11 young people who described a strip search on arrest in the field, 6 young people said that the search took less than five minutes. Of the 18 young people who described a strip search at a police station, 12 said that the search took less than five minutes. When asked later if there was anything police could have done better, several young people commented on the speed of the search and arrest process, with comments such as '[it] could have been quicker'⁷⁸ and '[it] was a bit cold sitting in boxers for four hours. I don't know why they needed to search me again. I told them they'd already done it. I was a bit cold sitting in my boxers'.⁷⁹

5.9. Search of genital area

Section 32(6) of LEPRA states that police must not search the person's genital area as far as is reasonably practicable in the circumstances, and goes on to specify that this includes the breasts if the person searched is female or is a transgender person who identifies as a female.

In our Local Court survey, people were asked whether police conducted certain search practices such as requiring the person to lift their breasts or testicles or spread their buttocks. This question was not put to young people in the Children's Court survey. However, people in both the Local and Children's Court were also asked whether there was anything about the search that made them uncomfortable, and if so, what it was. Relevant responses to that question have been considered in the following discussion.

5.9.1. Local Court

Of the 26 Local Court respondents who described a strip search on arrest in the field, five people reported that they were asked to squat during the search, four people reported that they were asked to bend over, two people reported that they were asked to spread their buttocks, and one person reported that police visually inspected his anus and asked him to lift his testicles.⁸⁰

Of the 81 Local Court respondents who described a strip search at a police station, 52% (42 people) reported that they were asked to squat, 36% (29 people) were asked to bend over, and 28% (23 people) were asked to lift their breasts or testicles. In addition, 14 people said they were asked to spread their buttocks, eight said police visually inspected their anus and one person reported that police inspected her vagina.⁸¹

Even a few frisk or ordinary searches touched on this issue. Of the 148 Local Court respondents who described a frisk or ordinary search in the field, three reported search practices that may have involved police searching their genital area. One man reported that he disliked police searching his groin area,⁸² another man felt uncomfortable when police 'made me spread my legs'⁸³ and one woman reported that she felt uncomfortable when police felt her breasts.⁸⁴ Of the 96 people who described a frisk or ordinary search at a police station, one person reported that the part of the search that made him feel uncomfortable was 'police touching me around the groin area and embarrassment of the situation'.⁸⁵

5.9.2. Children's Court

None of the 11 Children's Court respondents who described a strip search on arrest in the field made comments that suggest police searched their genital area. However, two of the 18 young people who described a strip search at a police station, reported that the part of the search that made them feel uncomfortable involved a search near their groin, suggesting that the search may have involved police searching the young person's genital area in those instances.

Four of the 49 Children's Court respondents who described an ordinary or frisk search in the field reported discomfort about searches near their genital area. One 16 year old boy said he felt uncomfortable when the male officer felt his crotch, and one 16 year old girl reported that she felt uncomfortable when the female officer 'put her hand down my pants'.⁸⁶ The other two boys made reference to searches near their groin. All four searches involved a search by an officer of the same sex. Of the 34 young people who described a frisk or ordinary search at a police station, one 17 year old boy reported discomfort at police 'touching me (when clothed) too close to my crotch'.⁸⁷

78 Children's Court survey 54.

79 Children's Court survey 103.

80 Local Court survey 201. This man also said that he was asked to squat, bend over and spread his buttocks and is included in the count for each of the search practices described above.

81 Local Court survey 217. This woman said: 'police saw my genital piercing and asked me to open my vagina to show her'.

82 Local Court survey 147.

83 Local Court survey 279.

84 Local Court survey 270.

85 Local Court survey 24.

86 Children's Court surveys 31 and 80.

87 Children's Court survey 56.

5.10. Gender of the officer conducting the search

Section 32(7) of LEPRA states that a search must be conducted by a police officer or other person of the same sex as the person searched as far as is reasonably practicable in the circumstances. The following analysis focuses on strip searches.⁸⁸ It shows a high degree of police compliance with this requirement, with very few Local or Children's Court respondents indicating that they were searched by an officer of the opposite sex.

5.10.1. Local Court

Of the 26 Local Court respondents who described a strip search on arrest in the field, two reported searches involving an officer of the opposite sex. A woman who described a search that involved removal of her trousers, shirt, underwear and bra reported that she was searched in the back of a police vehicle by a male officer who was the only officer at the scene.⁸⁹ A man who described a search that involved removal of his shirt reported that he was searched on the roadside by two officers (one male and one female).⁹⁰ Most (21 people) said they were searched by an officer of the same sex,⁹¹ and three could not remember or did not answer.

None of the people who described a strip search at a police station reported that the officer who conducted the search was of the opposite sex. Of the 81 people who described a strip search at a police station, 70 reported that they were searched by an officer of the same sex and the remaining 11 could not remember or did not answer.⁹²

5.10.2. Children's Court

Of the 11 Children's Court respondents who described a strip search on arrest in the field, 10 boys reported that they were searched by a male officer. The remaining 16 year old boy reported that he was searched in a public place by a female officer and that he had to remove his shirt as part of the search. He also reported that male officers were present at the scene and observed, but did not conduct the search.⁹³

All of the 18 young people who described a strip search at police station reported that they were searched by an officer of the same sex.⁹⁴

The Children Court survey also asked this question of young people who described frisk or ordinary searches. Of the 49 young people who described a frisk or ordinary search on arrest in the field, five described searches involving an officer of the opposite sex. Two girls reported being searched by male officers, one boy reported being searched by a female officer, and two boys each reported being searched by two officers, one of whom was female. Of the 34 young people who described a frisk and ordinary search at a police station, one boy reported that he was searched by a female officer and that she was the only officer present.⁹⁵

5.11. Questioning while searching

Section 32(8) of LEPRA states that a search must not be carried out while the person is being questioned. In our survey, people were asked to report whether they were asked questions during the search and if police stopped the search in order to ask those questions. People who reported that they were asked questions during the search were asked to specify whether police asked about: their name; where they lived; the offence police thought they had committed; what they were doing in that area; and/or items found during the search or something else.

5.11.1. Local Court

Of the 148 Local Court respondents who described a frisk or ordinary search in the field, 32% (47 people) reported that police asked them questions during the search, seven of whom said that police stopped the search to ask questions. The types of questions people reported being asked most frequently concerned what the person was doing in that area or the offence they were suspected of committing.⁹⁶ Of the 96 Local Court respondents who

88 This question was also asked of people who described frisk or ordinary searches, but the number of responses was too small to conduct a reliable analysis of this group as it was inserted at a late stage of the development of the Local Court survey.

89 Local Court survey 295.

90 Local Court survey 253.

91 Of the 22 men who described a strip search, 18 reported that they were searched by a male officer, and of the four women, three reported that they were searched by a female officer.

92 58 of the 67 men who described a strip search reported that they were searched by a male officer, and 12 of the 14 women reported that they were searched by a female officer.

93 Children's Court survey 46.

94 All 17 boys who described a strip search reported that they were searched by a male officer, and the one girl reported that she was searched by a female officer.

95 Children's Court survey 23.

96 22 people said they were asked 'what I was doing in the area' and 20 people said they were asked 'questions about the offence they thought I had committed'. People could nominate more than one factor in response to this question.

described a frisk or ordinary search at a police station, 12 people reported that police asked them questions during the search, two of whom said that police stopped the search to ask questions. The types of questions people reported being asked most frequently concerned where the person lived, items found during the search or the offence they were suspected of committing.⁹⁷

Of the 26 Local Court respondent who described a strip search in the field, seven people reported that police asked them questions during the search, only one of whom said that police stopped the search to ask questions. The types of questions people reported being asked most frequently related to the offence they were suspected of committing, items found during the search, or questions such as 'if I had any other drugs on me',⁹⁸ 'what's in the car',⁹⁹ and 'did I have anything on me like sharps or something'.¹⁰⁰ Of the 81 Local Court respondents who described a strip search at a police station, 24 people reported that police asked them questions during the search, three of whom said that police stopped the search to ask questions. The types of questions people reported being asked most frequently concerned the offence they were suspected of committing.¹⁰¹

5.11.2. Children's Court

Of the 49 Children's Court respondents who described a frisk or ordinary search on arrest in the field, 47% (23 young people) reported that police asked them questions during the search, three of whom said that police stopped the search to ask questions. The types of questions people reported being asked most frequently concerned the offence police thought they had committed.¹⁰² Of the 34 young people who described a frisk or ordinary search at a police station, three young people reported that police asked them questions during the search, none of whom said that police stopped the search to ask questions. The types of questions reported by these three young people related to items found during the search and whether they had anything on them.¹⁰³

Of the 11 young people who described a strip search on arrest in the field, two said that police asked them questions during the search. Both said they were asked for their name and where they lived. One said he was also asked what he was doing in the area, and the other boy said he was asked whether he had 'any [medical] conditions'.¹⁰⁴ Of the 18 young people who described a strip search at the police station, four said that police asked them questions during the search.¹⁰⁵

5.12. Dress as soon as possible

Section 32(9) of LEPRA states that a person must be allowed to dress as soon as the search is finished. We asked people who described a strip search to estimate how long after the search they were allowed to dress.

5.12.1. Local Court

Of the 26 Local Court respondents who described a strip search on arrest in the field, 18 reported that they were allowed to dress immediately, two said they were allowed to dress after five minutes, one said he was allowed to dress after 15 minutes and five could not remember or did not answer.

Of the 81 Local Court respondents who described a strip search at a police station 59 people said they were allowed to dress immediately, nine said they were allowed to dress after five minutes, three were allowed to dress after 10 minutes and 10 people could not remember or did not answer.

5.12.2. Children's Court

The Children's Court survey did not include questions about how long after the search young people were allowed to dress, however some did comment on this issue. One young person commented: 'They made me take it all off. Probably about 15 minutes they made me stand there naked, hands on my head and freezing.'¹⁰⁶ Another young person said: '[I] had no clothes on and officers made me stand there naked for ages'.¹⁰⁷

97 Six people said they were asked where they lived, five said they were asked 'questions about the offence they thought I had committed', and five said they were asked 'questions about items found during the search'.

98 Local Court survey 99.

99 Local Court survey 253.

100 Local Court survey 29.

101 13 people said they were asked 'questions about the offence they thought I had committed'.

102 11 people said they were asked 'questions about the offence they thought I had committed'.

103 Two young people said they were asked whether they had anything on them and one young person said he was asked about items found during the search.

104 Children's Court surveys 96 and 43 respectively.

105 Three young people said they were asked for their name, and two young people said they were asked about their address.

106 Children's Court survey 57.

107 Children's Court survey 27.

5.13. Replacement clothes

If clothing is seized during a search, section 32(10) of LEPPA states that police must ensure that the person is left with or given appropriate clothing. In our survey, people were asked what, if any clothing was seized by police following a strip search, and if so, whether replacement clothing was provided. It should be noted that police policy provides that it is lawful and appropriate for police to seize clothing and personal effects if the items are required for evidence or considered likely to cause harm, interfere with evidence, damage property, or assist in escape.¹⁰⁸ For instance, custody managers generally require the removal of ties, belts, shoe laces, cords of track pants, socks and other items capable of being used as a ligature to reduce the risk of suicide.

5.13.1. Local Court

Of the 26 Local Court respondents who described a strip search on arrest in the field, two reported that clothing was seized.¹⁰⁹ However, as both searches occurred in their own homes, it is likely that replacement clothing was readily available.

Of the 81 Local Court respondents who described a strip search at a police station, six reported that basic items including trousers, shirts and underwear were seized. All were offered replacement clothing for the items seized, except a woman whose underwear was taken following a strip search at a police station.¹¹⁰ The other five included a man who said, 'clothes were removed, jumpsuit given, but replacement clothing took a while'.¹¹¹ Another man was provided with disposable overalls when his pants, shirt, jacket, shoes, socks and belt were seized.¹¹² When asked if there was anything about the search that could have been done better the man said: 'we were very cold in [the] overalls provided'.¹¹³ A further 10 people said that only outer clothing such as shoes, shoelaces and belts were seized. For example, one man reported that he was 'given shirt back straight away but they kept my shoes and socks all night, right up until they took me to court'.¹¹⁴

5.13.2. Children's Court

Of the 11 Children's Court respondents who described a strip search on arrest in the field, one boy reported that his shirt was seized during a search in public and no replacement was provided.¹¹⁵ Two other boys reported that their shoes were seized, but one was searched in his own home where alternative footwear should have been available.¹¹⁶

Of the 18 Children's Court respondents who described a strip search at a police station, five said that basic items such as trousers and shirts were seized. One boy who reported that his jumper and trousers were seized and that no replacement clothing was offered commented: 'I was a bit cold sitting in my boxers for four hours'.¹¹⁷ The other four young people were offered replacement clothing. One boy reported that he was told to remove his hat, pants and shirt as evidence. He said his cousin brought replacement clothing for him, but that his friends had to wear overalls.¹¹⁸ Three other young people reported that outer clothing was seized.

5.14. Strip searches must be conducted in a private area

Section 33(1)(a) states that a strip search must be conducted in a private area, as far as is reasonably practicable in the circumstances. We asked people where the searches took place.¹¹⁹

The following discussion focuses on information related to strip search locations. The types of places where frisk and ordinary searches were conducted are considered above in section 5.7 of Appendix 1. For the purpose of the following analysis, we have categorised locations reported by respondents as public and private places in order to provide some comment on the privacy of the search. However, as noted earlier, location is just one of a number of factors affecting the degree of privacy afforded to people searched.

108 NSW Police Force Legal Services, *Code of Practice for Custody, Rights, Investigation, Management and Evidence*, February 1998, updated May 2008, p.30.

109 Local Court survey 19 involved seizure of shoes and Local Court survey 231 involved seizure of trousers and shirt.

110 Local Court survey 94.

111 Local Court survey 360.

112 Local Court survey 303.

113 Local Court survey 303.

114 Local Court survey 64.

115 Children's Court survey 91.

116 Children's Court surveys 24 and 46.

117 Children's Court survey 102.

118 Children's Court survey 38.

119 This strip search provision reinforces the section 32(4)(a) safeguard which requires reasonable privacy for all searches.

5.14.1. Local Court

Of the 26 Local Court respondents who described a strip search on arrest in the field, 69% (18 people) reported that the search was conducted in a public place like a footpath, park or by the side of the road. The remaining 31% (8 people) who described a strip search on arrest in the field, identified places that may have afforded more privacy such as residential premises (3 people) and commercial premises (3 people) including the security officer's room at a shopping centre, the back of a police vehicle (1 person) or the stairwell inside a block of flats (1 person). When asked whether there was anything about the search that made them feel uncomfortable or anything police could do better, one man who described a strip search on arrest in a public place said 'being stripped down in public, they should take you somewhere where people can't see you if they're going to do a strip search'.¹²⁰

Of the 81 Local Court respondents who described a strip search at a police station, 41% (33 people) reported that the search was conducted in the cells and 7% (6 people) reported that the search was conducted in an interview room — which are areas of the police station that may have afforded more privacy. A further 15 people reported that the search was conducted in the charge room, two said they were searched in the dock, and 18 said that the search was conducted in another area.¹²¹ The remaining seven people could not remember where the search was conducted within the police station.

5.14.2. Children's Court

Of the 11 Children's Court respondents who described a strip search on arrest in the field, eight said they were searched in a public place like a footpath or park, two young people said they were searched in their own home, and one boy said he was searched in a private room in a shopping centre.

Of the 18 Children's Court respondents who described a strip search at a police station, five young people reported that the search was conducted in the cells and two young people said that the search was conducted in an interview room — areas that may have afforded more privacy. A further two young people reported that the search was conducted in the dock, one young person reported that the search was conducted in the charge room, and seven young people reported that the search was conducted in another area.¹²² The remaining young person could not remember where the search was conducted within the police station. When asked if there was anything about the search that made them feel uncomfortable, one boy said 'being naked in front of these two officers'.¹²³

5.15. Strip searches must not be conducted in view of people not necessary to the search or of members of the opposite sex

Section 33(1)(b) and (c) of LEPPA states that a strip search must not be conducted in the presence or view of people who are not necessary to the search or people of the opposite sex, as far as is reasonably practicable in the circumstances. In our survey people were asked questions to establish whether people who were not necessary for the search were present, in particular, how many police officers were present, whether people other than the searching officers or a support person could see the search and, if so, who those people were (members of the public, friends or other police), and what sex the observers were.

5.15.1. Local Court

Of the 26 Local Court respondents who described a strip search on arrest in the field two people reported that only one officer was present, seven reported that two officers were present, one reported that three officers were present and 13 reported that four or more officers were present. The other three could not remember or did not answer. Of the 21 people who said that more than one officer was present, 12 said that officers of the opposite sex were present during the search.

In relation to the presence of people other than officers or support persons, 15 people said that the search was visible to members of the public. Four people said no one else could see the search and the remaining seven were unsure or did not provide an answer. Of the 15 people who said that members of the public could see them, 14 said that the other people present were of both sexes.

120 Local Court survey 44. Described a strip search on arrest that involved removal of his shirt, trousers (and shoes).

121 The 18 people who noted 'other' locations include eight people who described a dedicated searching area in the charge room.

122 The seven young people who noted 'other' locations include four young people who described a dedicated searching area in the charge room.

123 Children's Court survey 58. Described a strip search at a police station that involved removal of his shirt, trousers, underwear, (shoes and socks).

Of the 81 Local Court respondents who described a strip search at a police station, 14 people reported that only one officer was present, 41 said two officers were present, 12 said three officers were present and five said four or more officers were present. The other nine people could not remember or did not provide an answer. Of the 58 people who said that more than one officer was present for the search, six said that officers of the opposite sex were present during the search.

In relation to the presence of others, 18 people said that someone other than the searching officer could see them, 19 said no one else could see them and the remaining 44 were unsure or did not provide an answer. Of the 18 people who said the search was visible to others, 13 said that officers not involved in the search could see them, two said that members of the public could see them, and three said the search was visible to both other officers and members of the public. With regard to the gender of those other people present, six people reported that the other people present were of the same sex, five reported that the other people were of both sexes and seven could not remember or did not answer.

5.15.2. Children's Court

Of the 11 Children's Court respondents who described a strip search on arrest in the field, one young person reported that three officers were present and 10 said that four or more officers were present for the search. All said that officers of the opposite sex were present during the search.

In relation to the presence of others, six young people said that someone other than the searching officer could see them. Of these, two said officers not involved in the search could see them, two said that officers not involved in the search and members of the public could see them, one said that both other officers and his friends could see him and one said other police, his friends and members of the public could all see the search. All six young people reported that the other people present were of both sexes.

Of the 18 Children's Court respondents who described a strip search at a police station, two young people said the search involved just one officer, 11 said two officers were present, three said three officers were present and two reported that four or more officers were present. None reported that officers of the opposite sex were present during the search.

In relation to the presence of others, six young people said that someone other than the searching officers could see them. Of these, five said the search was visible to officers who were not involved in the search, and one said friends and officers not involved in the search could see him. With regard to the gender of others who were present, one young person reported that both males and females could see the search.

5.16. Strip searches may be conducted in the presence of a support person

Section 33(2) provides that a parent, guardian or personal representative of the person being searched may, if it is reasonably practicable in the circumstances, be present during a search if the person being searched has no objection to that person being present. People who described a strip search were asked if a support person was present during their search.

5.16.1. Local Court

Of the 26 Local Court respondents who described a strip search on arrest in the field, three people said that they had a support person. One had a friend present, and one had an uncle and a brother. The third respondent had a cousin with him, but the cousin was also being searched by police.¹²⁴

Of the 81 Local Court respondents who described a strip search at a police station, three people reported having a support person present. Support persons were required in relation to all three, as two were under 18 years of age and the other reported having impaired intellectual functioning — see the discussion on section 33(3) of LEPRA below in section 5.17.

¹²⁴ Local Court surveys 199, 19 and 35.

5.16.2. Children's Court

In the Children's Court one 18 year old Aboriginal man described a strip search on arrest at his home that involved removal of his shirt (as well as his hat, shoes and socks).¹²⁵ He said police asked if he would like his aunt to be present. He agreed, saying that he felt 'comfortable' that his aunt was able to both see the search and hear police, and that he 'wanted her there'.¹²⁶ Describing the search, the young person said he 'undressed himself — shirt off, shoes, socks and belt — had to roll trouser legs up to thigh level — then allowed to dress'. As there is a specific support safeguard for strip searches of children, those survey responses are considered below.

5.17. Strip searches must be conducted in the presence of a support person if the person being searched is a child or has impaired intellectual functioning

Section 33(3) provides that 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, unless it is not reasonably practicable in the circumstances, be conducted in the presence of a parent or guardian of the person being searched or, in the presence of another person (other than a police officer) who is capable of representing the interests of the person.

5.17.1. Local Court

Both of the Local Court respondents under 18 years of age (at the time of their arrest) who described a strip search at a police station reported that a parent was present at the police station, but not necessarily present for the search. One 17 year old boy described a search that involved the removal of his trousers and shirt (as well as his belt, shoes and socks). When asked if a support person was present, the young person said 'my dad was called but he waited outside while I was searched'.¹²⁷ The other was a 16 year old boy who described a search that involved the removal of his trousers (as well as his shoes, socks and shoelaces), who said his 'mum and dad' were present.¹²⁸

A number of people also reported that they had impaired intellectual functioning including one 24 year old man who described a strip search at a police station that involved removal of his trousers and shirt (as well as his sweater, belt, shoes, socks and shoelaces). When asked if a support person was present, he stated that a doctor was present in addition to the searching officer and two other officers.¹²⁹

5.17.2. Children's Court

In the Children's Court, young people were asked questions to establish whether someone capable of representing their interests was present for the search, who that person was, how the young person felt having that person present and whether that person could see the search and/or hear what police were saying.

Of the 10 young people aged under 18 years who described a strip search in the field, only one reported that a support person was present.¹³⁰ He was a 14 year old boy who described a strip search on arrest at his home that involved the removal of his trousers, shirt and underwear. He said police took him into the 'lounge room where [his] carers were' and he felt 'really comfortable' that his carers were able to see the search and hear police.¹³¹ The nine young people who described a strip search on arrest without a support person present included one 15 year old girl whose search involved the removal of her shirt, pants, bra, underpants and shoes. When asked if there was anything she thought police could have done better she said, 'the bull wagon was parked about five [metres] from my front door and my mum was at home. I would have liked my mum to be with me when they strip searched me but I didn't know I could ask and I didn't know that they should get her. I wish I had known'.¹³²

125 All other Children's Court respondents who described a strip search on arrest in the field were under 18 years of age and are therefore considered below in Appendix 1 (5.17).

126 Children's Court survey 34.

127 Local Court survey 337.

128 Local Court survey 112.

129 Local Court survey 54.

130 The remaining Children's Court respondent who described a strip search at a police station was 18 years old and is therefore considered in the discussion at Appendix 1 (5.16).

131 Children's Court survey 24.

132 Children's Court survey 90.

Of the 17 young people under 18 years of age who described a strip search at a police station, only two reported that police asked if they would like someone to be present during the search and arranged for a support person to attend.¹³³ One was a 16 year old boy who described a search at a police station that involved the removal of his trousers, shirt and underwear. He said police waited for about one hour for his foster mother to attend to act as a support person. When asked how he felt about having his foster mother present, the boy said he felt 'fine' and would 'rather have her there than not'. Describing the search, our interviewer's record of the boy's comments note that he said police told him to 'take shirt off — put it on table. Turn around, put shirt back on, then take trousers off and undies and put on table. Turn around, then able to dress straight away'.¹³⁴ Of the 15 young people who described a strip search at a police station without a support person present, one 17 year old boy reported that he asked for a support person but 'police said no so I didn't get one'.¹³⁵

The importance of support for young people was also highlighted in comments made at the end of the survey. When asked if there was anything police could have done better, one girl who described a strip search at a police station that involved removal of her shirt (as well as her jumper and shoes) said:

*My mum was outside when they did the search at the station. Why couldn't she come and be with me? Also, police said I couldn't go unless I gave an interview and gave my prints and photo. The [Aboriginal Legal Service] told me I didn't have to. I was confused and didn't know what to do.*¹³⁶

5.18. Strip searches must not involve a search of body cavities or examination by touch

Section 33(4) of LEPPRA states that a strip search must not involve a search of a person's body cavities or an examination of the body by touch. Because of the difficulty in differentiating between 'an examination of the body by touch' and general contact between police and the person, including accidental contact, we asked whether the searching officer touched them during the search, and if so, to describe what happened and if they knew why. Although people were not asked explicitly if police searched any body cavities (other than their mouth), people were also given a number of opportunities to disclose search practices of this kind.

5.18.1. Local Court

Of the 26 Local Court respondents who described a strip search on arrest in the field, eight reported being touched during the search, but none made comments to indicate that they were subject to 'an examination of the body by touch'. For three of these eight people, the reference to touching appears to relate to frisk or ordinary search practices prior to the removal of clothing, two said police restrained them so that they could be searched and one said that police touched her to take her clothes off her.¹³⁷ The other two people did not provide any further comments about the nature of this touching.

Of the 81 Local Court respondents who described a strip search at a police station, eight people said that police touched them during the search, but none made comments to indicate that the touching amounted to 'an examination of the body by touch'. For four of these eight people, the reference to touching appears to relate to a frisk or ordinary search that preceded the removal of clothing. However, one 29 year old woman facing fraud related charges said that the officer 'put her hand in my mouth and she yanked my jumper because I was slow in taking it off' and that the officer visually inspected her vagina and 'saw my genital piercing and asked me to open my vagina to show her'.¹³⁸ The other three people who described a strip search at a police station made comments alleging that they were deliberately pushed or punched.¹³⁹

- A 51 year old man charged with 'resist/hinder police' described a search at a police station in which he was required to strip to his underwear, open his mouth and lift his arms. When asked if he was touched during the search, he said police 'pushed me to the wall'. When asked why, he said, 'because I had said I wasn't going to do it'.¹⁴⁰

133 Children's Court surveys 9 and 55. The remaining Children's Court respondent who described a strip search at a police station was 18 years old and is therefore considered in the discussion at Appendix 1 (5.16).

134 Children's Court survey 9.

135 Children's Court survey 27.

136 Children's Court survey 95.

137 Local Court survey 295. Described a strip search on arrest in the field that involved removal of her trousers and underwear.

138 Local Court survey 217.

139 As survey respondents were promised anonymity at the outset, such allegations of police misconduct could not be verified or reported for investigation. However, people were provided with information on how to make a complaint to our office or directly to police.

140 Local Court survey 16.

- A 34 year old man charged with 'trespass' described a search at a police station in which he was required to remove all his clothing, squat, walk up and down, bend over, spread his buttocks and lift his testicles. When asked if he was touched, he said, 'when I was standing up after squatting for them, one of them punched me in the face and then I stumbled and the other punched me in the back of the head'. When asked why, he said, 'because they wanted to bash me or hurt me — I was homeless and they thought I was scum'.¹⁴¹
- A 32 year old man facing charges relating to assault, breaking into an ex-partner's house, escaping custody, assaulting police and resist/hinder police described a search at a police station in which he was required to remove his shirt, trousers and underwear, as well as squat and open his mouth. When asked if he was touched he said one of the officers, 'pushed me in [the] chest when I fell towards him'. He also said 'they swore at me too'. When asked if there was anything about the search that made him feel uncomfortable his main concern was the 'way they talked to me and swore at me'.¹⁴²

5.18.2. Children's Court

Young people who described a strip search were not asked directly if police touched them. Instead they were asked: 'In your own words can you tell me what happened during the (strip) search'.

Of the 11 Children's Court respondents who described a strip search on arrest in the field, two said that police touched them during the search but their comments about the nature of this touching suggest that they were not subject to 'an examination of the body by touch'. One 16 year old boy said 'police unzipped [my] jacket, checked it [and] took my hat off. I was in handcuffs on the ground so they took my shoes and socks off'.¹⁴³ The other was a 17 year old boy who said police held him and removed his shirt after he refused a police request to take it off.¹⁴⁴

Of the 18 young people who described a strip search at a police station, none indicated that police touched them during the search.

141 Local Court survey 140.

142 Local Court survey 316.

143 Children's Court survey 1.

144 Children's Court survey 50.

Chapter 6.

Further issues

The survey also gave us the opportunity to obtain comments on related issues such as other aspects of respondent's interactions with police, their understanding of the arrest process and conditions associated with their detention.

6.1. Aspects of the search identified as being uncomfortable

As mentioned throughout Chapter 5 of Appendix 1, respondents who described being searched on arrest in the field were asked if there was anything about the search that made them feel uncomfortable. While specific comments and issues raised are included in relevant sections of Chapter 5, the following provides an overall account of the answers to that particular survey question.

In relation to searches on arrest in the field, 36% of Local Court respondents (53 of 148) who described a frisk or ordinary search and 65% of respondents (17 of 26) who described a strip search indicated that there were aspects of the search that made them feel uncomfortable.

In relation to searches at a police station, 16% of Local Court respondents (15 of 96) who described a frisk or ordinary search and 60% of respondents (49 of 81) who described a strip search indicated that there were aspects of the search that made them feel uncomfortable.

Common reasons given included embarrassment at being searched in public or in view of others, alleged police comments or behaviour during the search, specific aspects of the search such as having to strip, bend or squat in front of others, or that the searches were rougher or more intrusive than necessary.¹⁴⁵

In relation to searches on arrest in the field, 27 of the 49 young people who described a frisk or ordinary search and three of the 11 young people who described a strip search indicated that there were aspects of the search that made them feel uncomfortable.

In relation to searches at a police station, two of the 34 young people who described a frisk or ordinary search and 13 of the 18 young people who described a strip search indicated that there were aspects of the search that made them feel uncomfortable.

6.2. Comments about anything police 'could have done better'

Although the focus of the survey was on personal searches, the questions at the end inviting respondents to comment on what, if anything, police 'could have done better' raised a number of additional issues about the search and arrest process and their interactions with police. Much of this feedback related to defendants' perceptions that police had been slow to listen to defendants or explain what was happening, or that police had been unnecessarily rude or, in some cases, unfair in the approach they adopted.

6.2.1. Listening and effective communication

A number of people were of the view that problems could have been avoided had police listened, considered their point of view or communicated more effectively. This group said police should have, 'listen[ed] to me and not talk over me, otherwise they weren't that bad at all',¹⁴⁶ 'listened to [my] side of the story before arresting/charging',¹⁴⁷ and 'explain[ed] what they are doing'.¹⁴⁸ Other comments in this vein included:

*Could have been better explained of what was going on. Didn't agree search was necessary, [the] strip search that is.*¹⁴⁹

*Could have spoken to me a bit more politely and respectfully, could've explained what was happening a bit better.*¹⁵⁰

*Could have explained my rights better, [I] felt in the dark.*¹⁵¹

145 These comments are included in the discussions in Appendix 1(5.7), (5.9), (5.14) and (5.18).

146 Local Court survey 50.

147 Local Court survey 126.

148 Local Court survey 37.

149 Local Court survey 110.

150 Local Court survey 143.

151 Local Court survey 297.

*Police need to show more compassion and understanding when dealing with domestic issues.*¹⁵²

The Children's Court respondents who touched on the issue of effective communication included one young person who said police 'should have explained why I was under arrest'.¹⁵³

6.2.2. Lack of respect and rudeness

Some people were more critical of their interaction with police, with perceptions that the officers were being deliberately rude or had pre-judged them. Their feedback on what police could have done better included comments such as 'they could have treated me with a bit of respect',¹⁵⁴ that police should 'be less aggressive and condescending',¹⁵⁵ that 'they could ... talk to people not assume they are criminal straight away',¹⁵⁶ or that they should 'treat each case differently'.¹⁵⁷ Other such comments included:

*They were a little rude, a little arrogant. They make you wait while they check things and they don't explain what they're doing.*¹⁵⁸

*[Police should] not swear, be nice... [they] can do [their] job without being rude.*¹⁵⁹

Some Children's Court respondents also commented on this issue, with one saying police should 'change the way they pull over and speak to me'.¹⁶⁰ Another perceived there to be an element of racism in the police approach:

*Every time a black kid walks down the street in [inner Sydney suburbs] and the cops see we get searched. If you're with white kids they do nothing to them.*¹⁶¹

6.2.3. Fairness of the police approach

Some questioned the fairness or legitimacy of the police approach:

*They tricked me. Leading up to my arrest they were trying to pretend to be my friend. They said I had nothing to worry about; I just had to tell them what happened. Then they arrested me.*¹⁶²

*[They] could've not told me to come in [to the police station] for a talk when really they intended to just arrest me.*¹⁶³

*They used RBT as an excuse to pull me over because they saw me leave the house of a guy who's well known to them. They could've chosen not to search me for a traffic offence, or searched me in a not so public place.*¹⁶⁴

While others commented on their physical treatment, as one man said, 'police were very rough when arresting me — could have been less so'.¹⁶⁵

Children's Court respondents were also more likely to comment about the physical aspects of the arrest and search, with feedback including:

*Overall [I was] treated pretty badly... [it was] unexpected to be thrown around, especially as no one was resisting arrest.*¹⁶⁶

*They shouldn't have manhandled me in the way they did, throwing me to the ground was an excessive response and it hurt me.*¹⁶⁷

*The police were a bit rough with me, they made me lie in wet grass and handcuffed me.*¹⁶⁸

152 Local Court survey 10.

153 Children's Court survey 68.

154 Local Court survey 6.

155 Local Court survey 153.

156 Local Court survey 238.

157 Local Court survey 74.

158 Local Court survey 192.

159 Local Court survey 82.

160 Children's Court survey 47.

161 Children's Court survey 46.

162 Local Court survey 24.

163 Local Court survey 137.

164 Local Court survey 142.

165 Local Court survey 244.

166 Children's Court survey 35.

167 Children's Court survey 98.

168 Children's Court survey 99.

6.2.4. Timing or circumstances

There were also people who commented about the timing or circumstances of the search or arrest, or how the contact with police impacted on other events:

*Could have picked a better time — kids had been taken off them by DoCS earlier in the day so added to the trauma.*¹⁶⁹

*Would have been preferable to arrest at reasonable hour. [I] was arrested at 11:30pm, when at home asleep, having just given birth a few days prior.*¹⁷⁰

*Don't know why they needed seven police. I had kids in the house. It was a bit intimidating.*¹⁷¹

One boy said, 'they could have taken me to station and waited for me to sober up before asking me questions,'¹⁷² another boy who said he was called out of class for the arrest commented that police 'shouldn't have arrested me at school — [I was] in middle of sport... got called to principal's office'.¹⁷³ Another boy said that arresting officers rejected his request to first sit his exam before attending the police station with a parent:

*The police strategy to arrest in school was humiliating and affected [my] exams and the other kids. [I] was arrested during year 11 exam — [I] requested they didn't arrest [me] at that time but wait till after exam. Police refused.*¹⁷⁴

6.2.5. Conditions in police custody

A number of Local Court respondents also commented on the custody conditions at the police station. These typically related to thirst, hunger and other sources of discomfort.

*At the station — could have provided water.*¹⁷⁵

*They kept me at the police station for six to seven hours with no food or drink.*¹⁷⁶

*Handcuffed in cell ... pants had worked their way down but police wouldn't allow [me] to pull up pants.*¹⁷⁷

*We were very cold in [the] overalls provided — could have given us a drink and a blanket.*¹⁷⁸

The lack of food was a particular concern for a number of Children's Court respondents:

*Could have given [me] something to eat.*¹⁷⁹

*They could have given food.*¹⁸⁰

*Didn't give food, were very rude.*¹⁸¹

6.3. Knowledge of arrest status by respondents

As the focus of our review was on searches on or after arrest, we asked respondents how they knew that they were under arrest.

Of the 358 Local Court respondents, 66% (236 people) said they knew they were under arrest because police told them. Others said they thought they were under arrest because: police took them to the police station (8%, 28 people); they were prevented from leaving or told that they had to go with police (6%, 22 people); they were handcuffed (4%, 15 people); they were put in a police car (3%, 9 people); or they thought they were under arrest for some other unspecified reason (3%, 10 people). A further 2% (8 people) said they voluntarily attended a police station to present themselves for charge or at the request of police, and 3% (9 people) said they were not aware they were under arrest, including two who said they were heavily intoxicated at the time.¹⁸² The remaining 6% (21 people) did not say if or how they knew they were under arrest.

169 Local Court survey 105.

170 Local Court survey 125.

171 Local Court survey 42.

172 Children's Court survey 87.

173 Children's Court survey 74.

174 Children's Court survey 101.

175 Local Court survey 15.

176 Local Court survey 40.

177 Local Court survey 250.

178 Local Court survey 303.

179 Children's Court survey 26.

180 Children's Court survey 78.

181 Children's Court survey 73.

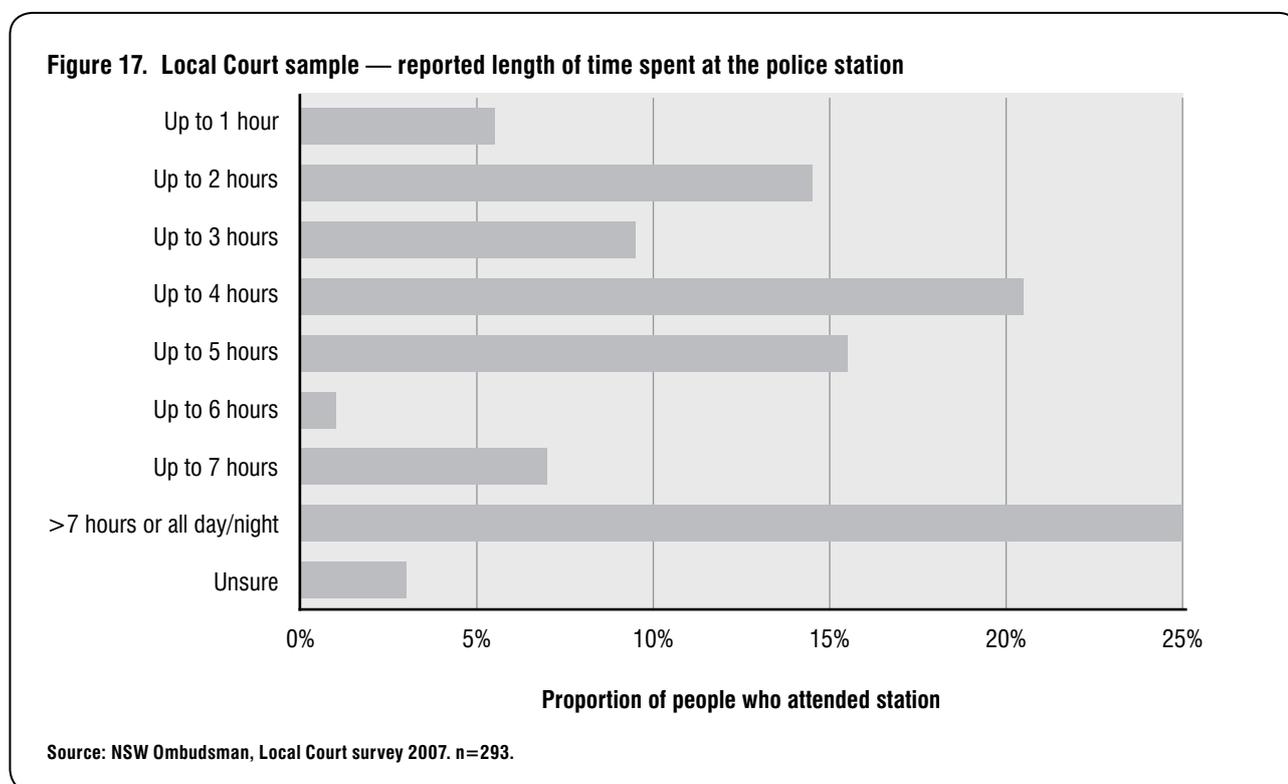
182 Local Court surveys 171 and 309. One man said he knew when he woke up in a police cell the, other said he found out the next day.

Of the 103 Children’s Court respondents, 67% (69 young people) said they knew they were under arrest because police told them. Others said they thought they were under arrest because: police took them to the police station (11 young people); they were handcuffed (6 young people) they were prevented from leaving or told that they had to go with police (5 young people); they were put in a police car (2 young people); or they thought they were under arrest for some other unspecified reason (2 young people). The remaining eight young people did not say if or how they knew they were under arrest. One boy said he knew because police told him ‘they were taking me to the cop shop, [they] didn’t say why, they didn’t say I was under arrest’.¹⁸³ However, some young people said it was much less clear what was happening at the time, for example, ‘they could have told me what was going on the street when they first grabbed us’;¹⁸⁴ ‘the whole process is very confusing ... lots of misinformation, especially as ... a first-time offender’.¹⁸⁵

6.4. Amount of time spent at the police station

Survey respondents were asked to estimate the length of time they spent at the police station. The following figures only include responses by people who reported attending a police station.

Of the 358 Local Court respondents, 293 reported attending a police station. Figure 17 shows the amount of time those people estimated they spent at a police station.

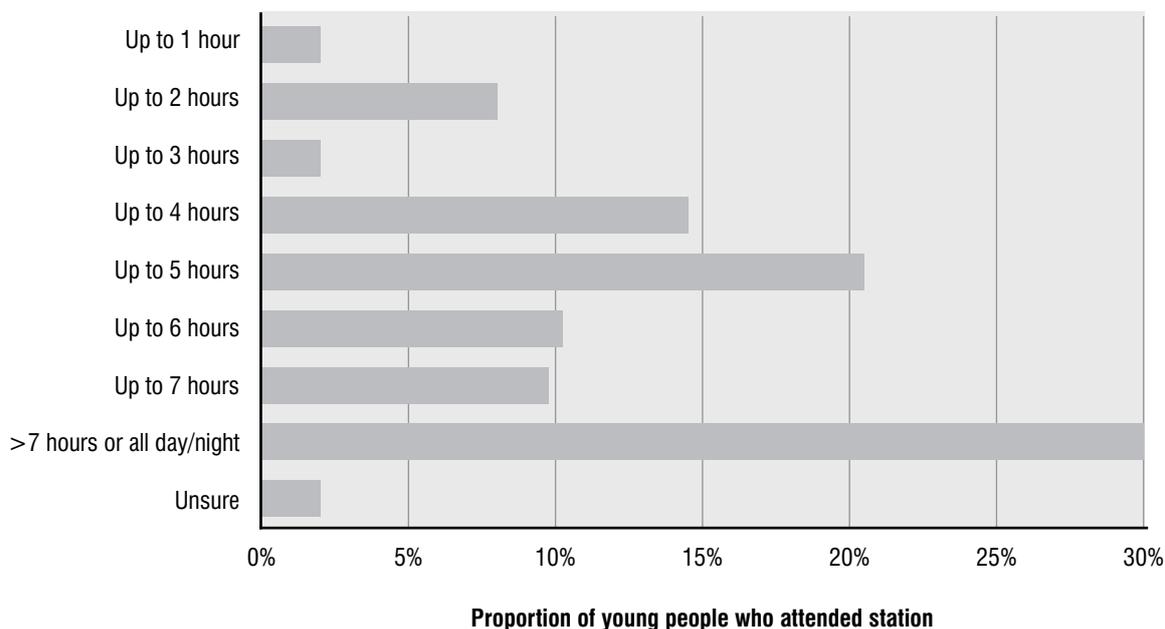


Of the 293 Local Court respondents who said they spent time at a police station, more than a quarter (29% or 84 people) estimated that they spent no more than three hours at the station, almost half (44% or 128 people) estimated that they spent between four and seven hours at the station, and a quarter (25% or 73 people) estimated that they spent more than seven hours at the station. The remaining eight people reported that they attended a police station but could not estimate how long they spent there.

Of the 103 Children’s Court respondents, 97 reported attending a police station. Figure 18 shows the amount of time those people estimated they spent at a police station.

183 Children’s Court survey 43.
 184 Children’s Court survey 38.
 185 Children’s Court survey 82.

Figure 18. Children's Court sample — reported length of time spent at the police station



Source: NSW Ombudsman, Children's Court survey 2007. n=97.

In the Children's Court 97 respondents said they spent time at a police station. In comparison to adults, young people's estimates of time spent at a police station tended to be longer. While just 12% (12) estimated that they spent no more than three hours at the station, over half (55% or 53 young people) estimated that they spent between four and seven hours at the station and almost a third (31% or 30 young people) estimated that they spent more than seven hours at the station. The remaining two young people reported that they attended a police station but could not estimate how long they spent there. When asked later if there was anything police could have done better, one young person said:

Took too long. After I spoke to Legal Aid and said I wouldn't be interviewed, they still kept at the station for seven hours (until 11.15pm). They didn't give me dinner. Shut door of dock on me.¹⁸⁶

6.5. Provision of support person for interview

We asked all respondents who were interviewed at a police station whether police provided an interpreter or organised for a support person (other than a lawyer) to be present.

Of the 128 Local Court respondents who said they were interviewed at a police station, two said police organised for an interpreter to be present and 15 people said police organised for a support person, including four people whose support person was their parent or guardian.¹⁸⁷ One respondent thought that more timely access to an interpreter could have prevented a lot of problems saying, 'if [an] interpreter [was] involved at the first instance ... could have resolved at the time'.¹⁸⁸

Of the 39 Children's Court respondents who said that they were interviewed at a police station, all 39 said that police organised for a support person to be present for the interview — including 27 young people who had a parent or guardian present and 12 who had some other support person attend.¹⁸⁹ However, in commenting later in the survey about their interactions with police, a number of young people felt there may be other circumstances that might warrant access to a support person:

Parent wasn't allowed into charge room until questioned (took seven hours).¹⁹⁰

¹⁸⁶ Children's Court survey 76.

¹⁸⁷ The four people who said that their parent or guardian was present included two 16 year olds (Local Court surveys 26 and 36).

¹⁸⁸ Local Court survey 119.

¹⁸⁹ Note that the Law Enforcement (Powers and Responsibilities) Regulation 2005, clause 9 provides that a child cannot waive their right to a support person for an investigative procedure and section 10 of the *Young Offenders Act 1997* provides that an admission by a child who is under 16 years of age is not an admission for the purpose of the Act unless it takes place in the presence of a parent or person who has the care of the child.

¹⁹⁰ Children's Court survey 76.

[Police should have] allowed [me] to speak to Legal Aid.¹⁹¹

They could have allowed mum as support person.¹⁹²

6.6. CCTV recording of strip searches

Current police guidelines state that strip searches should not be recorded on closed-circuit television (CCTV) for privacy and dignity reasons.¹⁹³ In order to obtain people's views on the recording of strip searches on CCTV we asked people who described being strip searched at a police station, 'if the CCTV tapes were kept secure, would you prefer to have your strip search recorded?'

Of the 81 Local Court respondents who described a strip search at a police station, 46% (37 people) said that they would like the search recorded if the footage was kept secure. Those in support of using CCTV to their search gave reasons such as, 'preferred to be on video — it's on record',¹⁹⁴ and 'everything in police station should be recorded — better protection'.¹⁹⁵ However, 30% (24 people) were against the idea and 25% (20 people) were unsure or did not answer. Those who rejected the idea included one woman who said that, as she was searched, 'there was a camera in the cell — [I] asked about it but [was] assured that the camera was off. [I] felt very uncomfortable'.¹⁹⁶

Of the 18 young people who described being strip searched at a police station six young people were in favour of recording such searches on CCTV, seven were against and five were not sure or did not answer. One young person who indicated that he would prefer for strip searches to be recorded commented, 'I think I'd be better off'.¹⁹⁷

6.7. Praise for police

There was also praise for police in response to open-ended questions at the end of the survey that invited all respondents to comment about their interactions with police and whether there was anything police 'could have done better'. Although most people used these questions to provide feedback indicating certain aspects of the arrest or search that could have been handled differently, including some who made comments but were not necessarily critical of the officers involved, a number of respondents were quite positive about their interactions with police, with 103 Local Court respondents commenting that there was nothing police could have done better and/or making positive comments about their interaction. These kinds of comments included:

They were alright, I was treated fairly.¹⁹⁸

They were okay, just doing their job.¹⁹⁹

Very professional.²⁰⁰

They weren't that bad this time.²⁰¹

They were pretty good — they were the best I've ever dealt with. They were polite and didn't search me. It was done very quickly ... wish they were all like that.²⁰²

To be honest they were really good, very respectful, communicated well, told me what was going on, contacted ACLO and ALS.²⁰³

Some people whose earlier comments indicated that they were critical of aspects of the search and arrest process, concluded their surveys with comments indicating that the officers involved had treated them fairly or appropriately.

I'm not a big fan of police but they've got a job to do.²⁰⁴

They done alright for [name of station] coppers, I suppose.²⁰⁵

191 Children's Court survey 34.

192 Children's Court survey 79.

193 The *Standard Operating Procedures for CCTV Surveillance in Police Charge Rooms and Other Locations in Police Stations* (the CCTV SOPs) provide that strip searches should be 'carried out in an area not covered by the CCTV and in accordance with the Code of Practice for CRIME', January 2005, p.4. See section 16.2.3 in Part 2 of the LEPRA Final Report for further discussion of this issue.

194 Local Court survey 100.

195 Local Court survey 98.

196 Local Court survey 110.

197 Children's Court survey 61.

198 Local Court survey 350. Described a frisk or ordinary search at a police station.

199 Local Court survey 298. Described a strip search on arrest.

200 Local Court survey 81. Described a frisk or ordinary search at a police station.

201 Local Court survey 53. Described a strip search at a police station.

202 Local Court survey 194. No searches described.

203 Local Court survey 163. No searches described. ACLO stands for Aboriginal Community Liaison Officer and ALS stands for Aboriginal Legal Services.

204 Local Court survey 346. Described a frisk or ordinary search at a police station.

205 Local Court survey 20. Described a frisk or ordinary search on arrest.

*They could have let me off with a warning (but) they were pretty good.*²⁰⁶

*They were pretty fair, but I felt intimidated by having five or so police standing around me while I was searched in the street, while I was on my own.*²⁰⁷

*Street search could have been quicker so it was less embarrassing. Junior officers could have been more civil. Sergeant was easygoing and helpful but that's rare. Informed of rights — didn't know rights.*²⁰⁸

In addition, there were some who said that there were particular officers who had gone out of their way to assist them or make a difficult situation better:

*Constable [name] was very positive, helpful and professional. Very nice and reassuring and the constable helped me keep calm. I appreciated it.*²⁰⁹

*The police in the cells were very nice but the arresting police were very rude and violent towards me. I went to carry my anger back to the police station and they reassured me they had nothing to do with what had happened to me with the arresting officers.*²¹⁰

In the Children's Court, 20 young people said there was nothing police could have done better and/or make positive comments about their interaction. This included comments about police such as: 'been good to me',²¹¹ 'they were really good',²¹² 'they were okay',²¹³ 'they were pretty good about this situation — there was no man-handling so it was all right',²¹⁴

206 Local Court survey 325. Described frisk or ordinary searches on arrest and at a police station.

207 Local Court survey 93. Described a frisk or ordinary search on arrest and strip search at a police station.

208 Local Court survey 347. Described frisk or ordinary searches on arrest and at a police station.

209 Local Court survey 357. Described a strip search at a police station.

210 Local Court survey 94. Described a frisk or ordinary search on arrest and a strip search at a police station.

211 Children's Court survey 5. 15 year old who did not describe any searches.

212 Children's Court survey 45. 16 year old who described a frisk or ordinary search at a police station.

213 Children's Court survey 20. 15 year old who did not describe any searches.

214 Children's Court survey 51. 14 year old who described a frisk or ordinary search on arrest.

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Appendix 2:

Amendments to the personal search provisions

The following table summarises the changes to LEPPRA provisions that relate to personal searches that occurred after 1 December 2005.

Section	Date amended provision commenced	Effect of amendment
Part 1: Preliminary		
3	15 December 2006 <i>Police Powers Legislation Amendment Act 2006</i>	Added 'socks' to the definition of an 'ordinary search'.
Part 4: Search and seizure powers without warrant		
21A	15 December 2006 <i>Police Powers Legislation Amendment Act 2006</i>	Inserted a new section 21A, providing police with a new ancillary power to request that a person open their mouth or move their hair if exercising the power to search a person on detention under section 21.
23A	17 December 2007 <i>Law Enforcement (Powers and Responsibilities) Amendment Act 2007</i>	Inserted a new section 23A, providing police with a new ancillary power to request that a person open their mouth or move their hair if exercising the power to search a person on arrest under section 23.
Part 15: Safeguards relating to powers		
201	15 December 2006 <i>Police Powers Legislation Amendment Act 2006</i>	<p>Removed the general warning provision in subsection 201(1) (d) and replaced it with a two tiered warning requirement in subsection 201(2C) that only applies if the person is not complying.</p> <p>Inserted subsection 201(2B) so that the general warning requirements apply if police are giving a direction to two or more people.</p> <p>Removed subsection 201(3)(j) which applied to the section 26 search power and replaced it with new subsections (j) and (k) so that (j) applies to the section 21A power (k) applies to the section 26 search power.</p> <p>Inserted subsection (3A) so that a police officer exercising more than one relevant power on a single occasion, and in relation to the same person, is required to provide their name and station once.</p> <p>Amended subsection 201(4) so that only one officer is required to comply with section 201 if two or more officers are involved in the exercise of any relevant power — not just crime scene and entry powers.</p> <p>Inserted subsection 201(6) which clarifies that section 201 does not apply to the exercise of a power that is conferred by an Act or Regulation specified in Schedule 1.</p>
	21 December 2007 <i>Law Enforcement and Other Legislation Amendment Act 2007</i>	<p>Amended subsection 201(1) which clarified that the reference to 'the power' in subsection 201(1) means 'a power referred to in subsection (3)'.</p> <p>Added the words 'before or at that time' to subsection 201(2) (b) after 'if it is not practicable to do so'.</p>

Appendix 3:

Amendments to the crime scene and notice to produce provisions

The following table summarises the changes to LEPPRA provisions that relate to crime scenes and notices to produce that occurred after 1 December 2005 with the exception of Part 15 amendments already discussed in Appendix 2.

Section	Date amended provision commenced	Effect of amendment
Part 1: Preliminary		
3	17 December 2007 <i>Law Enforcement (Powers and Responsibilities) Amendment Act 2007</i>	Defined a 'scene of crime officer' as 'a member of the NSW Police Force responsible for examining or maintaining crime scenes'.
Part 5: Search and seizure powers with warrant or other authority		
61	15 December 2006 <i>Police Powers Legislation Amendment Act 2006</i>	Removed the phrase 'in case of a search warrant' wherever it occurred which clarified that where a crime scene warrant is obtained by telephone, an occupier's notice must be prepared and provided.
67	17 December 2007 <i>Law Enforcement (Powers and Responsibilities) Amendment Act 2007</i>	Removed subsection 67(2)(b)(ii) so that the name of the authorised officer who issued the crime scene warrant is not required on the occupier's notice.
70	15 December 2006 <i>Crimes Legislation Amendment (Gangs) Act 2006</i> .	Inserted subsection 70(1A) providing police with the power to disable any alarm, camera or surveillance device or pacify any guard dog at the premises if it is reasonably necessary to do so for the purpose of entering premises pursuant to a warrant. Inserted subsection 70(3) providing police with the power to do anything it is reasonably necessary to do (including blocking drains) for the purpose of preventing the loss or destruction of, or damage to, anything connected with an offence.
73A	17 December 2007 <i>Law Enforcement (Powers and Responsibilities) Amendment Act 2007</i>	Inserted subsections 73A(7) and (8) which allows for the extension of a crime scene warrant issued in connection with terrorism offences for up to 30 days.
75	15 December 2006 <i>Police Powers Legislation Amendment Act 2006</i>	Inserted a reference to section 75 which clarifies that a power to extend either a warrant or notice to produce may be exercised by a different authorised officer if the issuing officer dies, ceases to be an authorised officer or is absent.
Part 7: Crime scenes		
89	15 December 2006 <i>Police Powers Legislation Amendment Act 2006</i>	Inserted subsection 89(3) which clarifies that when a crime scene is established in a public place (e.g. in relation to a traffic accident on a public road), police do not need to get a crime scene warrant to exercise crime scene powers in relation to the vehicle, vessel or aircraft. Rather, the vehicle is automatically considered part of the crime scene. However, if police wish to search, seize or detain this vehicle, vessel or aircraft they must suspect on reasonable grounds that it is necessary to do so to preserve, or search for and gather, evidence of the offence for which the crime scene was established, or obtain a crime scene warrant for this purpose.

Section	Date amended provision commenced	Effect of amendment
Part 7: Crime scenes cont'd		
90	15 December 2006 <i>Police Powers Legislation Amendment Act 2006</i>	Inserted subsection 90(1A) which clarifies that a crime scene warrant gives police the authority to establish a crime scene.
91	17 December 2007 <i>Law Enforcement (Powers and Responsibilities) Amendment Act 2007</i>	Inserted subsection 91(3) which clarifies that if a crime scene is established on premises by a police officer or scene of the crime officer, any subsequent crime scene on the premises within 24 hours can only be established using a crime scene warrant.
92	15 December 2006 <i>Police Powers Legislation Amendment Act 2006</i>	Removed subsection 92(5) and replaced it with two new subsections 92(5) and 92(6) which: Enables police to exercise those crime scene powers that do not require a warrant, with the aid of assistants. Allows members of the NSW Police Force responsible for examining or maintaining a crime scene to exercise crime scene powers relating to forensic investigation — only with the permission of the police officer who either established the crime scene or is responsible for the crime scene at the time.
	17 December 2007 <i>Law Enforcement (Powers and Responsibilities) Amendment Act 2007</i>	Amended subsections 92(1) and (2) so that in certain circumstances, scene of crime officers can establish crime scenes. This amendment allows police officers to exercise crime scene powers at crime scenes established by scene of crime officers. Removed the phrase 'any member of the NSW Police Force responsible for examining or maintaining a crime scene' from subsection 92(5), replaced it with 'a scene of crime officer' and defined that term in section 3.
93	15 December 2006 <i>Police Powers Legislation Amendment Act 2006</i>	Added the words 'otherwise than by authority of a crime scene warrant' to section 93 which clarifies that a senior officer must be advised if a crime scene is established without a warrant for 3 hours or less.
94	15 December 2006 <i>Police Powers Legislation Amendment Act 2006</i>	Inserted subsection 94(4) which allows members of the NSW Police Force responsible for examining or maintaining a crime scene to exercise crime scene powers authorised by a crime scene warrant relating to forensic investigation only. However, this can only be done with the permission of the police officer who is responsible for executing the warrant.
	17 December 2007 <i>Law Enforcement (Powers and Responsibilities) Amendment Act 2007</i>	Removed the phrase 'any member of the NSW Police Force responsible for examining or maintaining a crime scene' from subsection 94(4), replaced it with 'a scene of crime officer' and defined that term in section 3.
95A	17 December 2007 <i>Law Enforcement (Powers and Responsibilities) Amendment Act 2007</i>	Inserted new section 95A, providing scene of crime officers with the power to establish a crime scene and exercise crime scene powers in relation to the vehicle when a vehicle, reported as stolen, is in a public place.
Part 9: Investigations and questioning		
117	15 December 2006 <i>Police Powers Legislation Amendment Act 2006</i>	Inserted a reference to crime scenes which clarifies that when calculating the time spent in lawful custody, the time spent by officers obtaining a crime scene warrant is to be regarded as a 'time out'.

Appendix 4: List of submissions to the LEPRA issues paper

AIDS Council of NSW (ACON)
Chief Magistrate of the NSW Local Court
Community Relations Commission
Court Services (Attorney General's Department of NSW)
Director's Chambers (DPP NSW)
Law Society of NSW
Legal Aid NSW
NSW Aboriginal Justice Advisory Council (AJAC)
NSW Department of Aboriginal Affairs
NSW Department of Community Services (DoCS)
NSW Police, Commissioner's Office
Police Integrity Commission
Rowe, B., private individual
The Shopfront Youth Legal Centre

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Appendix 6: Comparable personal search legislation

Personal search powers

Jurisdiction	New South Wales	Commonwealth	Australian Capital Territory	Queensland	Western Australia
Act	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	<i>Crimes Act 1914</i>	<i>Crimes Act 1900</i>	<i>Police Powers and Responsibilities Act 2000</i>	<i>Criminal Investigation Act 2006</i>
Power to search on arrest	<p>If a person has been arrested to be taken into lawful custody, a search may be conducted if the officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying anything:</p> <ul style="list-style-type: none"> (a) that would present a danger to a person (b) that could be used to assist a person to escape from lawful custody. <p>If a person has been arrested for an offence or under a warrant the officer may <i>additionally</i> conduct a search if the officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying anything:</p> <ul style="list-style-type: none"> (c) that is a thing with respect to which an offence has been committed (d) that is a thing that will provide evidence of the commission of an offence, or (e) that was used or is intended to be used in or in connection with the commission of an offence [s.23]. 	<p>If a person has been arrested for an offence:</p> <p>A <u>frisk search</u> may be conducted if the officer suspects on reasonable grounds that it is prudent to do so to ascertain whether the person is carrying any <u>seizable items</u>.</p> <p>An <u>ordinary search</u> may be conducted if the officer suspects on reasonable grounds that the person is carrying:</p> <ul style="list-style-type: none"> - <u>evidential material</u> in relation to that or another offence, or - a <u>seizable item</u> [ss.223 & 224]. 	<p>If a person is:</p> <ul style="list-style-type: none"> - <u>lawfully arrested</u> - in <u>lawful custody</u> for a charge of an offence that has not been decided - in custody under a sentence for a period of imprisonment, or - otherwise lawfully detained under this Act: <p>An officer may search and re-search the person and seize from the person anything found during the search that the officer reasonably suspects may provide evidence of the commission of an offence.</p> <p>While the person is in custody an officer may also take and retain anything that may endanger anyone's safety or anything that may be used for an escape, or anything else the officer reasonably considers should be kept in safe custody while the person is in custody [ss.442, 443 & 626].</p> <p>'<u>Lawful custody</u>' is not defined in the Act, however, s.442 contains examples of lawful custody:</p> <ul style="list-style-type: none"> - the person may be in lawful custody because bail has been refused or revoked or a condition of bail is contravened, or - the person may be in lawful custody pending the satisfaction of a condition on which the person is to be released on bail. 	<p>An authorised officer may conduct a <u>basic or strip search</u> of the person for a <u>security risk item</u> if a person is in <u>lawful custody</u> [s.135].</p> <p>s.135(2) states that a person is considered to be in '<u>lawful custody</u>' for the purpose of this section if:</p> <ul style="list-style-type: none"> - the person is under arrest, whether under this Act or under another written law, or is otherwise in the lawful custody of an officer, or - the person is accompanying an officer to (or waiting at) a police station or other place under the <i>Road Traffic Act 1974</i>. <p>A '<u>security risk item</u>' is defined in s.135(1) as anything that could:</p> <ul style="list-style-type: none"> - be used to endanger the person in possession of the thing or any other person - be used to assist a person to escape from lawful custody, or - adversely affect the security, good order or management of a place where a person is being kept in custody. <p>Police can also conduct a <u>basic or strip search</u> of a person if the officer reasonably suspects that a person has in his or her possession or under his or her control any thing relevant to an offence [s.68].</p>	

Personal search powers

Jurisdiction	New South Wales	Commonwealth	Australian Capital Territory	Queensland	Western Australia
Act	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	<i>Crimes Act 1914</i>	<i>Crimes Act 1900</i>	<i>Police Powers and Responsibilities Act 2000</i>	<i>Criminal Investigation Act 2006</i>
Power to search in custody	<p>If a person is in lawful custody (whether at a police station or any other place) a search may be conducted [s.24].</p> <p>'Lawful custody' is defined in s.3 as lawful custody of the police.</p>	<p>If a person has been arrested for an offence and is brought to a police station.*</p> <p>An <u>ordinary search</u> may be conducted if one has not been conducted.</p> <p>A <u>strip search</u> may be conducted if:</p> <ul style="list-style-type: none"> - the officer suspects on reasonable grounds that the person has a seizable item, or evidential material, and - the officer suspects on reasonable grounds that it is necessary to conduct a strip search to recover that item, and - an officer of the rank of superintendent or higher has approved the conduct of the search [s.3ZH]. <p>* Included here as a power to search in custody as it may be exercised in a custody location.</p>	<p>If a person is in lawful custody in a police station, a <u>frisk or ordinary search</u> may be conducted if an officer of the rank of sergeant or higher, or an officer who is for the time being in charge of the police station suspects on reasonable grounds that it is prudent to do so.</p> <p>If a person is arrested for an offence and brought to a police station.*</p> <ul style="list-style-type: none"> - an <u>ordinary search</u> may be conducted if one has not been conducted - a <u>strip search</u> may be conducted if: <ul style="list-style-type: none"> - the officer suspects on reasonable grounds that the person is carrying evidential material in relation to that or another offence or a seizable item, or - the officer suspects on reasonable grounds that a visual inspection of the person's body will provide evidence of the person's involvement in an offence, and - the officer suspects on reasonable grounds that it is necessary to conduct a strip search of the person to recover that thing or to discover that evidence - an officer of the rank of superintendent or higher has approved the conduct of the search [ss.226 & 227]. <p>'Lawful custody' is not defined in the Act.</p> <p>* Included here as a power to search in custody as it may be exercised in a custody location.</p>		

Search types

Jurisdiction	New South Wales	Commonwealth	Australian Capital Territory	Queensland	Western Australia
Act	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	<i>Crimes Act 1914</i>	<i>Crimes Act 1900</i>	<i>Police Powers and Responsibilities Act 2000</i>	<i>Criminal Investigation Act 2006</i>
Power to conduct frisk and ordinary searches	<p>An officer or other person who is authorised to search a person may carry out a frisk search or an ordinary search of the person for any purpose for which the search may be conducted. In conducting a frisk search, a police officer or other person may, if the police officer or other person has asked the person to remove a coat or jacket, treat the person's outer clothing as being the person's outer clothes after the coat or jacket has been removed [s.30].</p> <p>A 'frisk search' is defined in s.3 as a search of a person conducted by quickly running the hands over the person's outer clothing or by passing an electronic metal detection device over or in close proximity to the person's outer clothing, and an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person, including an examination conducted by passing an electronic metal detection device over or in close proximity to that thing.</p> <p>An 'ordinary search' is defined in s.3 as a search of a person or of articles in the possession of a person that may include:</p> <ul style="list-style-type: none"> - requiring the person to remove their overcoat, coat, jacket or similar article of clothing, gloves, shoes, socks and hat, and - an examination of those items. 	<p>No separate power authorising frisk and ordinary searches per se [ss.3ZE, 3ZF & 3ZH].</p> <p>A 'frisk search' is defined in s.3C as a search of a person conducted by quickly running the hands over the person's outer garments, and an examination of anything worn or carried by the person that is conveniently and voluntarily removed by that person.</p> <p>An 'ordinary search' is defined in s.185 as a search of a person or of articles in the possession of a person that may include:</p> <ul style="list-style-type: none"> - requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes, socks and hat, and - an examination of those items. 	<p>No separate power authorising frisk and ordinary searches per se [ss.223, 224 & 226].</p> <p>A 'frisk search' is defined in s.185 as a search of a person conducted by quickly running hands over a person's outer garments, and an examination of anything worn or carried by the person that is conveniently and voluntarily removed by that person.</p> <p>An 'ordinary search' is defined in s.185 as a search of a person or of articles in the possession of a person that may include:</p> <ul style="list-style-type: none"> - requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes, socks and hat, and - an examination of those items. 	<p>No equivalent.</p> <p>The types of searches that may be performed on arrest or in custody are not defined in the Act.</p>	<p>A person who is authorised by this Act to do a <u>basic search</u> may do any or all of the following:</p> <ul style="list-style-type: none"> - scan the person with an electronic or mechanical device whether hand held or not, to detect anything - remove the person's headwear, gloves, footwear or outer clothing (such as coat or jacket), but not his or her inner clothing or underwear, in order to facilitate a frisk search - frisk search the person - search any article removed [s.63]. <p>If authorised to conduct a basic search under this Act, the searcher can also:</p> <ul style="list-style-type: none"> - stop and detain the person for a reasonable period - search any thing being carried by or under the immediate control of the person - order the person to remove any thing that might injure the searcher when doing the search from any article that the person is wearing - order the person to do anything reasonable to facilitate the exercise by the searcher of any power in this section, or in ss.63 or 64, as the case requires - photograph part or all of the search while it is being done [s.65]. <p>A 'frisk' is defined in s.3 as quickly and methodically running the hands over the outside of the person's clothing.</p>

Search types

Jurisdiction	New South Wales	Commonwealth	Australian Capital Territory	Queensland	Western Australia
Act	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	<i>Crimes Act 1914</i>	<i>Crimes Act 1900</i>	<i>Police Powers and Responsibilities Act 2000</i>	<i>Criminal Investigation Act 2006</i>
Power to conduct a strip search	<p>To conduct a strip search, an officer or other person authorised to conduct the search must <u>suspect on reasonable grounds</u> that it is necessary to conduct a strip search of the person for the purposes of the search and that the <u>seriousness</u> and <u>urgency</u> of the circumstances require the strip search to be carried out [s.31].</p> <p>A 'strip search' is defined in s.3 as a search of a person or of articles in the possession of a person that may include:</p> <ul style="list-style-type: none"> - requiring the person to remove all of their clothes and - an examination of the person's body - but not body cavities, and those clothes. 	<p>To conduct a strip search the person must be arrested for an offence and brought to a police station.</p> <p>The officer must <u>suspect on reasonable grounds</u> that:</p> <ul style="list-style-type: none"> - the person has a seizable item or evidential material, and that - it is <u>necessary</u> to conduct a strip search to recover that item [s.3ZH(1) & (2)]. <p>An officer of the rank of superintendent or higher must approve the conduct of the search. In doing so:</p> <ul style="list-style-type: none"> - approval may be obtained by telephone, telex, facsimile or other electronic means [s.3ZH(5)] - reasons for giving or refusing approval must be recorded [s.3ZH(6)] - the officer may use such force as is necessary and reasonable in conducting a strip search [s.3ZH(7)]. <p>An officer can also conduct a strip search if the person consents in writing [s.3ZH(3)].</p> <p>A 'strip search' is defined in s.3C as a search of a person or of articles in the possession of a person that may include:</p> <ul style="list-style-type: none"> - requiring the person to remove all of his or her garments, and 	<p>To conduct a strip search the person must be arrested for an offence and brought to a police station.</p> <p>The officer must <u>suspect on reasonable grounds</u> that:</p> <ul style="list-style-type: none"> - the person has evidential material in relation to an offence or a seizable item in their possession, or - a visual inspection of the person's body will provide evidence of the person's involvement in an offence, and that - it is necessary to conduct a strip search to recover that thing or to discover that evidence [s.227(1) & (2)]. <p>An officer of the rank of superintendent or higher must approve the conduct of the search. In doing so:</p> <ul style="list-style-type: none"> - approval may be obtained by telephone, telex, fax or other electronic means [s.227(5)] - reasons for giving or refusing approval must be recorded [s.227(6)] - the force that is necessary and reasonable in the circumstances may be used to conduct a strip search [s.227(7)]. <p>An officer can also conduct a strip search if the person consents in writing [s.227(3)].</p> <p>A 'strip search' is defined in s.185 as a search of a person or of articles in the possession of a person that may include:</p> <ul style="list-style-type: none"> - requiring the person to remove all of his or her garments, and - an examination of the person's body (but not of the person's cavities) and of those garments. 	<p>A police officer conducting a lawful search of a person under this Act may require a person to remove all items of clothing or all items of outer clothing from the upper or lower part of the body [s.629].</p>	<p>An officer who is authorised by this Act to do a strip search of a person may do any or all of the following:</p> <ul style="list-style-type: none"> - remove any article that the person is wearing including any article covering his or her private parts - search any article removed - search the person's external parts, including his or her private parts, and - search the person's mouth, but not any other orifice [s.64]. <p>Unless an authorised officer is searching a person in custody for a security risk item (under s.135), a strip search must not be conducted unless the searcher <u>reasonably suspects</u> that a strip search is <u>necessary</u> in the circumstances [s.72(2)].</p> <p>For the purposes of this Act, a person reasonably suspects something at a relevant time if he or she personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable [s.4].</p> <p>If authorised to conduct a strip search under this Act, the searcher can also:</p> <ul style="list-style-type: none"> - stop and detain the person for a reasonable period - search any thing being carried by or under the immediate control of the person - order the person to remove any thing that might injure the searcher when doing the search from any article that the person is wearing

Search types

Jurisdiction	New South Wales	Commonwealth	Australian Capital Territory	Queensland	Western Australia
Act	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	<i>Crimes Act 1914</i>	<i>Crimes Act 1900</i>	<i>Police Powers and Responsibilities Act 2000</i>	<i>Criminal Investigation Act 2006</i>
Power to conduct a strip search cont'd		<p>- an examination of the person's body (but not of the person's body cavities) and of those garments.</p> <p>A strip search may also include taking photographs of evidential material found on the person [s.3ZH(2B)].</p> <p>'Evidential material' is defined in s.3C as a thing relevant to an indictable offence or a summary offence, including such a thing in electric form.</p> <p>A 'seizable item' is defined in s.3C as anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.</p>	<p>'Evidential material' is defined in s.185 as a thing relevant to an indictable offence or a summary offence, including such a thing in electric form.</p> <p>A 'seizable item' is defined in s.185 as anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.</p>		<ul style="list-style-type: none"> - order the person to do anything reasonable to facilitate the exercise by the searcher of any power in this section, or in ss 63 or 64, as the case requires - order the person to accompany the searcher to a place where the search can be done in accordance with the additional strip search rules in s.72(3) - photograph any thing that may be lawfully seized in the position it is found on the person's body [s.65].

General safeguards (insofar as they apply to searches on arrest or in custody)

Jurisdiction	New South Wales	Commonwealth	Australian Capital Territory	Queensland	Western Australia
Act	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	<i>Crimes Act 1914</i>	<i>Crimes Act 1900</i>	<i>Police Powers and Responsibilities Act 2000</i>	<i>Criminal Investigation Act 2006</i>
General info that must be provided	<p>Before or at the time of conducting the search if it is practicable to do so, or as soon as is reasonably practicable after if not, the officer must provide:</p> <ul style="list-style-type: none"> - evidence that the person is a police officer if not in uniform - name and place of duty, and - the reason for the search [s.201(1), (2) & (3)]. <p>An officer must also provide this information if present while the person is being searched and the person asks for this information [s.201(5)].</p>	<p>No equivalent for personal searches; however, a similar safeguard is provided in s.3V(3) in relation to requesting the details of an arrested person, if the arrested person asks for the officers details. Similarly, while there is no requirement that police give reasons for the search, an officer is required to inform the person of the offence for which they are being arrested at the time of the offence under s.3ZD unless:</p> <ul style="list-style-type: none"> - the person should know the substance of the offence in the circumstances, or - the person's actions make it impractical for the officer to do so. 	<p>No equivalent for personal searches, however, a similar safeguard is provided in s.211 in relation to requesting the name and address of a person who may be able to assist with inquiries.</p> <p>If making such a request, the officer must inform the person of the reason for the request, and if requested by the person:</p> <ul style="list-style-type: none"> - provide their name and/or station, and - evidence that he or she is a police officer if not in uniform. <p>Similarly, while there is no requirement that police give reasons for the search, under s.222 the officer must inform the person of the reason why they are being arrested at the time of the arrest, unless the arrested person should know the substance of the offence or the person's actions make it impractical for the person making the arrest to inform the person of the reason of their arrest.</p>	<p>As soon as reasonably practicable, the officer must provide:</p> <ul style="list-style-type: none"> - evidence and state that he or she is a police officer if not in uniform - name, rank and station, and - purpose of the search and reason for seizing property [s.637(1)(a), (2), (3) & (4)]. <p>An officer must also provide this information if asked for this information [s.637(6)].</p>	<p>Before the searcher conducts a basic search or strip search of the person, the searcher must, if reasonably practicable:</p> <ul style="list-style-type: none"> - identify himself or herself to the person, and - inform the person of the reason for the search. <p>Note that this is not a general safeguard (only applies to personal searches) [s.70(2)(a) & (b)].</p>
Warning the person that they may be committing an offence if not complying	<p>If the person is not complying with a request or direction, the officer must:</p> <ul style="list-style-type: none"> - warn the person that they are required by law to comply with a direction or request and the person isn't already complying, and - if the person continues to fail to comply after being warned and the officer believes that failure to comply is an offence, the officer must warn the person that failure to comply with the request or direction is an offence [s.201(2C)]. 	<p>No equivalent for personal searches; however, a similar warning safeguard is provided in s.3V(2) if a person who has been asked for their details to assist with inquiries under s.3V fails to do so.</p>	<p>No equivalent.</p>	<p>If a person obstructs a police officer conducting a lawful search of the person, a police officer must, if reasonably practicable:</p> <ul style="list-style-type: none"> - warn the obstructing person it is an offence to obstruct a police officer in the performance of the police officer's duties, and - give the obstructing person a reasonable opportunity to stop obstructing the search. <p>It may not be reasonably practicable for a police officer to comply if, for example:</p> <ul style="list-style-type: none"> - there is an immediate or sudden need to use force because, for example, the person is struggling with a police officer, or - there is a reasonable expectation that, if warned, the person may immediately dispose of, or destroy, evidence, or - an immediate search is necessary to protect the safety of any person [s.628]. 	<p>Before the searcher conducts a basic search or strip search of the person, the searcher must, if reasonably practicable:</p> <ul style="list-style-type: none"> - request the person to consent to the search, and - if the person does not consent to the search or withdraws his or her consent, inform the person that it is an offence to obstruct the searcher doing the search [s.70(2)(c) & (d)]. <p>Note that this is not a general safeguard (this provision only applies to personal searches).</p>

General search safeguards

Jurisdiction	New South Wales	Queensland	Western Australia
Act	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	<i>Police Powers & Responsibilities Act 2000</i>	<i>Criminal Investigation Act 2006</i>
Clothing removal advice	The officer or other person must inform the person to be searched whether the person will be required to remove clothing during the search and why it is necessary to do so, as far as is reasonably practicable in the circumstances [s.32(2)]. The officer or other person must ask for the person's cooperation, as far as is reasonably practicable in the circumstances [s.32(3)].	If reasonably practicable before conducting the search (that involves removal of clothing), the officer must tell the person he or she will be required to remove clothing during the search, and why it is necessary to remove the clothing [s.630(1)]. If reasonably practicable the officer must, before conducting the search (that involves the removal of clothing) ask for the person's cooperation [s.630(1)].	If the searcher proposes to remove any article that the person is wearing, the searcher must tell the person why it is considered necessary to do so [s.70(3)]. Request the person to consent to the search [s.70(2)].
Cooperation	The officer or other person must conduct the search: - in a way that provides reasonable privacy for the person searched, and - as quickly as is reasonably practicable, as far as is reasonably practicable in the circumstances [s.32(4)].	A police officer searching a person must ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person, and take reasonable care to protect the dignity of the person [s.623(1)]. A person can be taken to another place for a search if it is impracticable to search for a thing that may be concealed on a person where the person is. Before doing so, the officer must consider: - whether the thing sought may be concealed on the person, - whether, for an effective search, the search should be conducted somewhere else, and - the need to protect the dignity of the person [s.625]. Example states 'To search a person out of public view and cause minimal embarrassment to the person, a person in a casino may be taken to another room in the casino'.	If a basic or strip search is conducted it must be done as quickly as is reasonably practicable [s.70(3)].
Least invasive search	The officer or other person must conduct the least invasive kind of search practicable in the circumstances, as far as is reasonably practicable in the circumstances [s.32(5)].	Unless an immediate and more thorough search of a person is necessary, the officer must restrict a search of the person in public to an examination of outer clothing and if a more thorough search is necessary but does not have to be conducted immediately, conduct a more thorough search out of public view, for example, in a room of a shop or if a police station is nearby, in the police station [s.624(1)]. An example to illustrate when an immediate and more thorough search might be necessary is provided in s.624 as circumstances in which: an officer reasonably suspects the person to be searched may have a bomb strapped to his or her body or has a concealed firearm or knife.	The search must not be any more intrusive than is reasonably necessary in the circumstances [s.70(3)].

General search safeguards

Jurisdiction	New South Wales	Queensland	Western Australia
Act	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	<i>Police Powers & Responsibilities Act 2000</i>	<i>Criminal Investigation Act 2006</i>
Genital area	<p>The officer or other person must not search the genital area of the person searched, or in the case of female or a transgender person who identifies as a female, the person's breasts unless the police officer or person suspects on reasonable grounds that it is necessary to do so for the purposes of the search, as far as is reasonably practicable in the circumstances [s.32(6)].</p> <p>'Transgender person' means a person whether or not the person is a recognised transgender person:</p> <ul style="list-style-type: none"> - who identifies as a member of the opposite sex, by living, or seeking to live as a member of the opposite sex, or - who has identifies as a member of the opposite sex by living as a member of the opposite sex, or - who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex, <p>and includes a reference to the person being thought of as a transgender person, whether or not the person is, or was, in fact a transgender person [s.32(11)].</p>	<p>A police officer conducting the search (involving the removal of clothing) must not make physical contact with the genital and anal area of the person searched, but may require the person to hold his or her arms in the air or to stand with legs apart and bend forward to enable a visual examination to be made [s.630(4)].</p>	<p>No safeguards appear to prohibit searches of the genital area.</p>
Search by person of the same sex	<p>A search must be conducted by a police officer or other person of the same sex under the direction of the police officer or other person concerned, as far as is reasonably practicable in the circumstances [s.32(7)].</p>	<p>Unless an immediate search is necessary, the person conducting the search must be either:</p> <ul style="list-style-type: none"> - a police officer of the same sex as the person to be searched, or - if there is no police officer of the same sex available to search the person, someone acting at the direction of a police officer and of the same sex as the person being searched, or - a doctor acting at the direction of a police officer [s.624(2)]. <p>Example states 'An immediate search by a person of the opposite sex may be necessary because the person searched may have a bomb strapped to his or her body or has a concealed firearm'.</p>	<p>If the searcher is conducting a basic search or a strip search that involves removing any article that the person is wearing or searching the person's private parts the searcher must be the same gender as the person being searched, unless the searcher is a doctor or nurse [ss.71 & 72(3)].</p>
Questioning and searching	<p>A search of a person must not be carried out while the person is being questioned. If questioning has not been completed before a search is carried out, it must be suspended while the search is carried out, as far as is reasonably practicable in the circumstances [s.32(8)].</p> <p>'Questioning' means: questioning the person, or carrying out an investigation in which the person participates [s.32(11)].</p>	<p>No equivalent.</p>	<p>The person must not be questioned while the search is being done about any offence that she or he is suspected of having committed [s.70(3)].</p>
Dressing after a search	<p>A person must be allowed to dress as soon as the search is finished, as far as is reasonably practicable in the circumstances.</p>	<p>The search (involving removal of clothing) must be conducted as quickly as is reasonably practicable and the person searched must be allowed to dress as soon as the search is finished [s.630(3)].</p>	<p>The person must be allowed to dress as soon as the search is finished [s.70(3)].</p>
Clothing seized	<p>If clothing is seized because of the search, the officer or other person must ensure that the person searched is left with or given reasonably appropriate clothing, as far as is reasonably practicable in the circumstances [s.32(10)].</p>	<p>If the officer seizes clothing because of the search (involving removal of clothing), the officer must ensure the person is left with or given reasonably appropriate clothing [s.630(5)].</p>	<p>The person must be provided with a reasonably adequate replacement of clothing or footwear seized, if, due to the seizure, the person is left without adequate clothing or footwear in the circumstances [s.70(3)].</p>

Additional strip search safeguards

Jurisdiction	New South Wales	Commonwealth	Australian Capital Territory	Queensland	Western Australia
Act	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	<i>Crimes Act 1914</i>	<i>Crimes Act 1900</i>	<i>Police Powers and Responsibilities Act 2000</i>	<i>Criminal Investigation Act 2006</i>
Strip search to be conducted in a private area	A strip search must be conducted in a private area, as far as is reasonably practicable [s.33(1)(a)].	A strip search must be in a private area [s.3Z(1)(a)].	A strip search shall be conducted in a private area [s.228(1)].	The search (that involves the removal of clothing) must be conducted in a way providing reasonable privacy for the person [s.630(2)]. Example states: Reasonable privacy may be provided by conducting the search in a way that ensures, as far as reasonably practicable, the person searched cannot be seen by anyone of the opposite sex and by anyone who does not need to be present.	A strip search that involves removing any article that the person is wearing or searching the person's private parts must be done in circumstances affording reasonable privacy to the person [s.72(3)(c)].
Strip search to be conducted out of view of the opposite sex	A strip search must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched, as far as is reasonably practicable [s.33(1)].	A strip search must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched. This requirement does not apply to: - medical practitioners of the opposite sex if a medical practitioner of the same sex is not available within reasonable time, or - the person's parent, guardian or personal representative if the person being searched has no objection to the person being present [s.3Z(1)(c), (3) & (4)].	A strip search shall not be conducted in the presence or view of a person who is of the opposite sex to the person being searched. This requirement does not apply to: - medical practitioners of the opposite sex if a medical practitioner of the same sex is not available within a reasonable time, or - the person's parent, guardian or personal representative if the person being searched has no objection to the person being present [s.228(1)(c), (3) & (4)].	No equivalent. But note that in respect to protecting the dignity of persons during any search, the example of reasonably privacy in s.630(2) includes ensuring 'as far as reasonably practicable, the person being searched can not be seen by anyone of the opposite sex'.	Any person present during a strip search that involves removing any article that the person is wearing or searching the person's private parts must, if practicable, be of the same gender as the person being searched [s.72(3)(b)].
Strip search to be conducted out of view of people who are not necessary to the search	The 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, as far as is reasonably practicable [s.33(1)(c)].	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 [s.3Z(1)(d)].	A strip search shall not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search [s.228(1)(d)].	No equivalent. But note that in respect to protecting the dignity of persons during any search, the example of reasonably privacy in s.630(2) includes ensuring 'as far as reasonably practicable... the person being searched can not be seen by anyone who does not need to be present'.	The number of people present during a strip search that involves removing any article that the person is wearing or searching the person's private parts, must not be more than is reasonably necessary to ensure it is done effectively and to ensure the safety of all present [s.72(3)(f)].

Additional strip search safeguards

Jurisdiction	New South Wales	Commonwealth	Australian Capital Territory	Queensland	Western Australia
Act	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	<i>Crimes Act 1914</i>	<i>Crimes Act 1900</i>	<i>Police Powers and Responsibilities Act 2000</i>	<i>Criminal Investigation Act 2006</i>
Support person (for any person being searched)	Parent, guardian or personal representative of the person being searched may, if it is reasonably practicable in the circumstances, be present during a search if the person being searched has no objection to that person being present [s.33(2)].	No equivalent.	No equivalent.	No equivalent.	No equivalent.
Support person (for vulnerable persons)	A strip search of a child aged 10 to 17 or person with impaired intellectual functioning, must, unless it is not reasonably practicable in the circumstances, be conducted in the presence of: <ul style="list-style-type: none"> - a parent or guardian of the person being searched, or - if that is not acceptable to the child or person, in the presence of another person (other than a police officer) who is capable of representing the interest of the person and who, as far as is reasonably practicable in the circumstances, is acceptable to the person [s.33(3)]. 	If the person being strip searched is aged 10 to 17, or is incapable of managing his or her affairs, a strip search may only be conducted if: <ul style="list-style-type: none"> - the person has been arrested and charged, or - a magistrate orders that it be conducted [s.32(1)(f)]. In deciding whether to make an order, the magistrate must have regard to: <ul style="list-style-type: none"> - the seriousness of the offence - the age or any disability of the person, and - any other matters the court thinks fit. The strip search shall be conducted in the presence of: <ul style="list-style-type: none"> - a parent or guardian of the person being searched, or - another person (other than a police officer) who is capable of representing the interests of the person who is searched, and who, as far as is practicable in the circumstances, is acceptable to the person. 	If the person being strip searched is aged 10 to 17, or is incapable of managing his or her affairs, a strip search may only be conducted if: <ul style="list-style-type: none"> - the person has been arrested and charged, or - if a court orders that it be conducted [s.228(1)(f)]. In deciding whether to make an order, the court must have regard to: <ul style="list-style-type: none"> - the seriousness of the offence - the age or any disability of the person, and - any other matters the court thinks fit. The strip search shall be conducted in the presence of: <ul style="list-style-type: none"> - a parent or guardian of the person being searched, or - another person (other than a police officer) who is capable of representing the interests of the person who is searched, and who, as far as is practicable in the circumstances, is acceptable to the person. 	If the person to be searched is a child, or a person with impaired capacity, who may not be able to understand the purpose of the search, the police officer must conduct the search in the presence of a support person [s.631]. However, the police officer may search the person in the absence of a support person if the police officer reasonably suspects delaying the search is likely to result in evidence being concealed or destroyed or an immediate search is necessary to protect the safety of a person. Support person for a child means: <ul style="list-style-type: none"> - a parent or guardian of the child - a lawyer acting for the child - a person acting for the child who is employed by an agency whose primary purpose is to provide legal services, or - an adult relative or friend of the child who is acceptable to the child. If the child is an Aboriginal or a Torres Strait Islander and none of the above mentioned people are available, a person whose name is included in the list of support persons and interpreters.	If the person is a protected person , a strip search that involves removing or any article that the person is wearing or searching the person's private parts, must, if practicable, be done in the presence of a responsible person or some other person who can provide the protected person with support and represent his or her interests [s.72(3)(g)]. 'Responsible person in relation to a child' is defined in s.73 as: <ul style="list-style-type: none"> - a parent of the child - a guardian of the child - another person who has responsibility for the day to day care of the child, or - if no person mentioned in another paragraph of this definition is available a person, or a person in a class of persons, prescribed. 'Responsible person in relation to an incapable person' is defined in s.73 as: <ul style="list-style-type: none"> - the spouse or de facto partner of the incapable person - a parent of the incapable person - if the incapable person is under 18 years of age – a guardian of the incapable person

Additional strip search safeguards

Jurisdiction	New South Wales	Commonwealth	Australian Capital Territory	Queensland	Western Australia
Act	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	<i>Crimes Act 1914</i>	<i>Crimes Act 1900</i>	<i>Police Powers and Responsibilities Act 2000</i>	<i>Criminal Investigation Act 2006</i>
Support person (for vulnerable persons) cont'd				<p>If none of the above-mentioned is available, a justice of the peace, other than a justice of the peace who is a member of police or a (Commissioner for declarations).</p> <p>Support person for person with impaired capacity means a parent or another adult who provides or is able to provide support necessary to help care for the person by looking after or managing the person's interests.</p>	<ul style="list-style-type: none"> - if the incapable person has reached 18 years of age – a guardian of the incapable person appointed under the <i>Guardianship and Administration Act 1990</i> or the Public advocate - another person who has responsibility for the day to day care of the incapable person, or - if no person mentioned in another paragraph of this definition is available – a person, or person in a class of persons, prescribed.
Definition of vulnerable persons identified as requiring special safeguards for strip searches	<p>'Impaired intellectual functioning' is defined in s.33(9) as:</p> <ul style="list-style-type: none"> - total or partial loss of a person's mental functions - a disorder or malfunction that results in a person learning differently from one without that condition - a disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or results in disturbed behaviour. 	<p>'Incapable of managing his or her affairs' does not appear to be defined in the Act.</p> <p>However, s.23WA defines "incapable person" for the purpose of forensic procedures as a person who:</p> <ul style="list-style-type: none"> - is incapable of understanding the general nature and effect of, and purposes of carrying out, a forensic procedure, or - is incapable of indicating whether he or she consents or does not consent to a forensic procedure being carried out. 	<p>'Incapable of managing his or her affairs' does not appear to be defined in the Act.</p>	<p>'Child' is defined in Sch. 4 of the <i>Juvenile Justice Act 1992</i> as a person who has not turned 18 years.</p> <p>'Impaired capacity' is defined in sch. 6 (PPRA) as: A person whose capacity to look after or manage his or her own interests is impaired because of either of the following: - an obvious loss or partial loss of the person's mental functions - an obvious disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.</p>	<p>'Protected person' is defined in s.73 as a person who is a child or an incapable person.</p> <p>'Child' is defined in s.73 as a person who is under 18 years of age and in respect of whom there are no reasonable grounds to suspect that he or she is an incapable person.</p> <p>'Incapable person' is defined in s.73 as a person of any age who is: - unable by reason of a mental disability (including intellectual disability, psychiatric condition, acquired brain injury and dementia) to understand the general nature and effect of, and the reason for and the consequences of (of undergoing, a forensic procedure, or a procedure), or - unconscious or otherwise unable to understand a request made or information given under this Act or to communicate whether or not he or she consents (to undergoing a forensic procedure).</p>

Additional strip search safeguards

Jurisdiction	New South Wales	Commonwealth	Australian Capital Territory	Queensland	Western Australia
Act	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	<i>Crimes Act 1914</i>	<i>Crimes Act 1900</i>	<i>Police Powers and Responsibilities Act 2000</i>	<i>Criminal Investigation Act 2006</i>
Definition of vulnerable persons identified as requiring special safeguards for strip searches cont'd					s.62 advises that definitions for terms used in 'Part 8 – Searching people' have the same meaning as those given in s.73 with any necessary changes.
Strip searches of children under 10 years old	A strip search must not be conducted on a person who is under 10 years of age [s.34].	A strip search must not be conducted on a person who is under 10 years of age [ss.32(1)(e)].	A strip search shall not be conducted on a person who is under 10 years of age [s.228(1)(e)].	If a person to be searched is a child, the search must be conducted in the presence of a support person. Child means a child within the meaning of the <i>Juvenile Justice Act 1992</i> . Sch. 4 of that Act defines a child as a person who has not turned 17 years; or after a day fixed under s.6, a person who has not turned 18 years [s.631(1)].	Must, if practicable, be done in the presence of a responsible person or some other person who can provide the protected person with support and represent his or her interests [s.72(3)(g)].
Body cavities & examination of body by touch	A strip search must not involve a search of a person's body cavities or an examination of the body by touch [s.33(4)]. 'Body cavities' is not defined in LEPPRA.	A strip search must not involve a search of a person's body cavities [s.32(1)(g)]. 'Body cavities' is not defined in the Act.	A strip search shall not involve a search of a person's body cavities [s.228(1)(g)]. 'Body cavities' is not defined in the Act.	No direct equivalent. The officer conducting the search must not make physical contact with the genital and anal area of the person searched, but may require the person to hold his or her arms in the air or to stand with legs apart and bend forward to enable a visual examination to be made [s.630(4)].	No equivalent.
Limit on the removal of clothing for a strip search	A strip search must not involve the removal of more clothes than the person conducting the search believes on reasonable grounds to be reasonably necessary for the search [s.33(5)].	A strip search must not involve the removal of more garments than the constable conducting the search believes on reasonable grounds to be necessary to determine whether the person has in his or her possession the item searched for or to establish the person's involvement in the offence [s.32(1)(h)].	A strip search shall not involve the removal of more garments than the police officer conducting the search believes on reasonable grounds to be necessary to determine whether the person has, in his or her possession the item searched for, or to establish the person's involvement in the offence [s.228(1)(h)].	If reasonably practicable the person must be given the opportunity to remain partly clothed during the search, for example, by allowing the person to dress his or her upper body before being required to remove items of clothing from the lower part of the body [s.630(1)(b)].	A strip search that involves removing any article that the person is wearing or searching the person's private parts must not involve the removal of more articles being worn by the person than is reasonable necessary for the conduct of the search [s.72(3)(d)].

Additional strip search safeguards

Jurisdiction	New South Wales	Commonwealth	Australian Capital Territory	Queensland	Western Australia
Act	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	<i>Crimes Act 1914</i>	<i>Crimes Act 1900</i>	<i>Police Powers and Responsibilities Act 2000</i>	<i>Criminal Investigation Act 2006</i>
Limit on visual search for a strip search	A strip search must not involve more visual inspection than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search [s.33(6)].	A strip search must not involve more visual inspection than the constable believes on reasonable grounds to be necessary to establish the person's involvement in the offence [s.3Z(1)(i)].	A strip search shall not involve more visual inspection than the officer believes on reasonable grounds to be necessary to establish the person's involvement in the offence [s.228(1)(i)].	No equivalent.	A strip search that involves removing any article that the person is wearing or searching the person's private parts must not involve more visual inspection than is reasonably necessary for the search [s.72(3)(e)].
Presence of a medical practitioner	Search may be conducted in the presence of a medical practitioner of the opposite sex if the person does not object [s.33(7)].	Subject to s.3Z, a strip search may be conducted in the presence of a medical practitioner who may be able to assist in the search [s.3ZH(4)]. A strip search may be conducted in the presence of a medical practitioner of the opposite sex if a medical practitioner of the same sex is not available within a reasonable time [s.3Z(3)].	Subject to s.288, a strip search may be conducted in the presence of a medical practitioner who may assist in the search [s.227(4)]. A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if a medical practitioner of the same sex as the person being searched is not available within a reasonable time [s.228(3)].	A doctor is authorised to conduct any search (not just a search involving removal of clothing) at the direction of a police officer [s.624(2)(c)].	The searcher must be the same gender as the person being searched, unless the searcher is a doctor or nurse [s.72(3)(a)].

Appendix 7: Comparable crime scene legislation

Jurisdiction	New South Wales	Western Australia	Queensland
Act	<i>Law Enforcement (Powers and Responsibilities) Act (2002)</i>	<i>Criminal Investigation Act 2006</i>	<i>Police Powers and Responsibilities Act 2000</i>
Alternative name for 'crime scene'	n/a	Protected forensic area (PFA).	n/a
Circumstances in which a crime scene can be established	<p>If the officer reasonably suspects:</p> <ul style="list-style-type: none"> - a traffic accident has resulted in death or serious injury - serious indictable offence is being or has been committed on the premises (i.e. 5 years or life). - evidence relating to a serious indictable offence committed elsewhere is on the premises [s.90]. 	<p>If the officer reasonably suspects:</p> <ul style="list-style-type: none"> - a serious offence has or is being committed in a place or - that there is in a place a thing relevant to a serious offence [s.40(2)] - serious offence is an offence for which the statutory penalty includes imprisonment for 5 years or more [s.40(1)]. 	<p>A police officer can enter premises if they reasonably suspect it is a crime scene and stay on the premises for time reasonably necessary to establish if it is a crime scene [s.164(1)(b)].</p> <p>A (primary) crime scene is a place where:</p> <ul style="list-style-type: none"> - a 7 year imprisonment offence has happened - it is necessary to protect; reasonably necessary to search for and gather evidence of the commission of the offence. <p>A secondary crime scene is a place:</p> <ul style="list-style-type: none"> - where there may be evidence; of significant probative value, of the commission of a serious violent offence that happened somewhere else, and - it is necessary to protect; reasonably necessary to search for and gather evidence of the commission of the offence.
Power to enter premises for the purpose of establishing a crime scene?	No.	Yes [s.40(2)].	Yes [s.164(1)].
Other powers to enter premises relevant to crime scenes	<p>Power to enter in emergencies [s.9].</p> <p>Power to enter to arrest or detain or execute a warrant [s.10].</p>	<p>Power to enter place to attend to a dead or seriously injured person [s.36].</p> <p>Power to enter place to investigate a serious event [s.37(2)].</p> <p>Serious event means a fire, explosion or presence of any article, gas or substance that is likely to endanger the safety of people or cause serious damage to property [s.37(1)].</p> <p>In public and private places.</p>	<p>Power to enter a place to gain access to another place that police reasonably suspect is a crime scene [s.164(1)(a)].</p>
Where can a crime scene be established	On public and private premises [s.89].	In public and private places.	In public and private places.
Definition of premises/place	Any building, structure, vehicle, vessel or aircraft and any place built or not, whether or not a public place [s.3].	Not defined in the Act.	Premises, vacant land, vehicle, a place in Queensland waters and a place held under 2 or more titles or owners [Sch. 6].
Who can establish a crime scene/ PFA?	A police officer [s.88(a)]. In circumstances where a stolen vehicle has been found in a public place and been reported as stolen, a scene of crime officer may establish a crime scene i.e. a member of the NSW Police Force responsible for examining or maintaining crime scenes [s.95A].	A police officer [s.40(1)].	The responsible officer may establish a crime scene i.e. the police officer that has entered a premise lawfully and has decided that a place is a crime scene [s.165].

Jurisdiction	New South Wales	Western Australia	Queensland
Act	<i>Law Enforcement (Powers and Responsibilities) Act (2002)</i>	<i>Criminal Investigation Act 2006</i>	<i>Police Powers and Responsibilities Act 2000</i>
Physically establishing a crime scene	A crime scene may be established in any way that is reasonably appropriate to the circumstances [s.91(1)].	The area of the PFA must not be greater than is reasonably necessary for the purposes [s.46(5)]. The boundaries of the protected forensic area may be altered at any time [s.46(4)].	Boundaries must be decided and marked in a way that sufficiently identifies the crime scene to the public [s.167].
Notice to public of a crime scene	If reasonably appropriate, public notice must be given that the premises are a crime scene [s.91(2)].	Reasonable steps must be taken to notify the people of the existence and boundaries of the protected forensic area [s.46(2)].	The crime scene must be established in a way that gives anyone wanting to enter the place enough notice that it is a crime scene [s.165(3)].
Crime scene powers	<p>Preservation powers [s.95(1)(a) to (f) and (k)]:</p> <ul style="list-style-type: none"> - direct person to leave crime scene or remove vehicle, vessel or aircraft from crime scene - remove from scene a person who fails to comply with a direction to leave scene or remove a vessel, aircraft or vehicle from the scene - direct a person not to enter crime scene - prevent a person from entering crime scene - prevent a person from removing evidence from or otherwise interfering with crime scene or anything in it. For this purpose, police can detain and search the person - remove an obstruction from crime scene. - direct the occupier of the premises, or other relevant person, to maintain a continuous supply of electricity at the premises. <p>Investigation powers [s.95(1)(g) to (i) & (l) to (p)]:</p> <ul style="list-style-type: none"> - perform any necessary investigation, including searching the crime scene and inspecting anything in it - conduct any examination or process - open anything at the crime scene that is locked - take electricity, gas or any other utility for use at the crime scene - photograph or otherwise record the crime scene and anything in it - seize and detain all or part of a thing that may provide evidence of the commission of an offence - dig up anything at the crime scene - remove wall or ceiling linings or floors of a building, or panels of a vehicle - any other function reasonably necessary or incidental to a function conferred by s.95(1). 	<p>Preservation powers [s.47(2)]:</p> <ul style="list-style-type: none"> - prevent a thing relevant to the offence from being concealed or disturbed - protect the safety of persons - secure the area against unauthorised disturbance - prevent/restrict/remove an unauthorised person, animals or vehicles - prevent a vehicle from being moved. <p>Investigation powers [s.43(8)]:</p> <ul style="list-style-type: none"> - enter the place - search for thing identified in search warrant, search a person in the place, and seize thing identified in search warrant - seize things relevant to other offences [s.43(9)] - conduct forensic examination on any things found in the place [s.43(10)]. <p>Ancillary powers [s.44(2)]. A search warrant also authorises the officer executing the warrant to exercise ancillary powers, including:</p> <ul style="list-style-type: none"> - prevent a target or thing from being disturbed - prevent a person from fleeing the target place - protect the safety of any person, including the officer, who is in or near the target place - to take into and use in the target area any equipment or facilities that are reasonably necessary in order to exercise any power under the warrant - to photograph or make a record of a thing in the target area - make reasonable use of equipment/facilities/services in the target area - to order the occupier to assist in gaining access to or operate any device or equipment [s.44(2)]. 	<p>Preservation powers [s.177]:</p> <ul style="list-style-type: none"> - direct a person to leave crime scene or remove a vehicle or animal from crime scene - remove or cause to be removed from crime scene a person who fails to comply with a direction to leave crime scene or a vehicle or animal a person fails to remove from crime scene - direct a person not to enter crime scene - prevent a person from entering crime scene - prevent a person from removing evidence from or otherwise interfering with crime scene or anything in it and, for that purpose, detain and search the person - direct the occupier of the place or a person apparently in charge of the place to maintain a continuous supply of electricity at the place. <p>Investigation powers [s.176]:</p> <ul style="list-style-type: none"> - enter crime scene - if reasonably necessary enter another place to gain access to crime scene examination or process - perform any necessary investigation - open anything at a crime scene that is locked - take electricity for use at a crime scene - dig up anything at crime scene - remove wall or ceiling linings or floors of a building, or panels or fittings of a vehicle - remove or cause to be removed an obstruction from crime scene - photograph crime scene and anything in it - seize all or part of a thing that may provide evidence of the commission of an offence.

Jurisdiction	New South Wales	Western Australia	Queensland
Act	<i>Law Enforcement (Powers and Responsibilities) Act (2002)</i>	<i>Criminal Investigation Act 2006</i>	<i>Police Powers and Responsibilities Act 2000</i>
When can crime scene powers be exercised?	<p>Preservation powers can be exercised once a crime scene is established [s.92(1)].</p> <p>Investigation powers can be exercised under a crime scene warrant [s.94(1)] or without a crime scene warrant in circumstances where:</p> <ul style="list-style-type: none"> - a crime scene has been established - a crime scene warrant has been applied for, and - police suspect on reasonable grounds it is necessary to immediately exercise the power to preserve evidence of the commission of an offence e.g. to prevent evidence being destroyed [s.92(2)]. 	<p>Preservation powers can be exercised once a protected forensic area is established [s.47(2)].</p> <p>Investigation powers can be exercised under a search warrant.</p> <p>The ancillary powers under a search warrant can only be exercised by a police officer with the written approval to do so from a senior officer who is not involved in the investigation to which the search warrant relates [s.44(3)].</p>	<p>All crime scene powers can be exercised once a crime scene has been established by a responsible officer [s.165(1)].</p> <p>However, a crime scene warrant must be applied for as soon as reasonably practicable after establishing a crime scene and if the crime scene warrant is refused, the place stops being a crime scene and crime scene powers can no longer be exercised [s.166(1) & (6)].</p>
Who can exercise crime scene powers?	<p>Police officers can exercise all preservation and investigation powers, even if they were not responsible for establishing the crime scene [s.92(1) & (4)].</p> <p>Police officers can exercise crime scene powers with the aid of any assistants the police officer considers necessary [s.92(6)].</p> <p>Scene of crime officers can exercise investigation powers only, with the authority of the police officer who established or is responsible for the crime scene [s.92(5)].</p>	<p>Preservation powers can be exercised by a police officer [s40(2)].</p> <p>Investigation and ancillary powers can be exercised by the officer executing the search warrant [s.43(8) & 44(2)].</p>	<p>Preservation powers can be exercised by the responsible officer at a crime scene or a police officer acting under the direction of the responsible officer [s.177(1)].</p> <p>Investigation powers can be exercised by the responsible officer at a crime scene or a police officer acting under the direction of the responsible officer [s.176(1)].</p> <p>An authorised assistant may also perform investigation powers at a crime scene [s.176(3)]. However, an authorised assistant may only enter a crime scene or enter another place to gain access to a crime scene if asked by a responsible officer to do so [s.176(4)].</p>
Time limit for exercising crime scene powers/search warrant powers without a warrant	All crime scene powers can only be exercised, on private premises, for up to three hours without a crime scene warrant [s.95(3)].	A protected forensic area can be established for up to six hours, in all places, except public open areas, without a search warrant [s.48].	The responsible officer must apply for a crime scene warrant as soon as reasonably practicable after establishing a crime scene [s.166(1)].
Impact of occupier's consent	Police can exercise their preservation and investigation powers if the occupier of the premises consents to them doing so. In these situations, police are not establishing a crime scene or exercising crime scene powers under LEPR [s.95(3)].	An officer may exercise without a search warrant any of the powers that could be exercised under a search warrant in respect of the place with the informed consent of the occupier [s.30(1)].	Legislation makes no reference to occupier's consent.
Nature of occupier's consent	Not specified.	Occupier's consent must be informed [s.30(1)]. Consent is informed if the occupier consents after being informed by the officer: - of the power that the officer wants to exercise in respect of the place - of the reason why the officer wants to exercise those powers - that the occupier can refuse to consent to the officer doing so [s.30(2)]. If a place has two or more occupiers, consent may be obtained from any one of the occupiers [s.29].	Legislation makes no reference to occupier's consent.

Jurisdiction	New South Wales	Western Australia	Queensland
Act	<i>Law Enforcement (Powers and Responsibilities) Act (2002)</i>	<i>Criminal Investigation Act 2006</i>	<i>Police Powers and Responsibilities Act 2000</i>
When is a crime scene warrant required?	<p>When the police officer does not have consent of the occupier to be on the premises to establish a crime scene and/or exercise crime scene powers and the police officer reasonably suspects it is necessary to establish a crime scene and/or exercise crime scene powers the premises [s.94(1)].</p> <p>If occupier provides consent and then withdraws it, police officers can exercise their crime scene preservation powers for 3 hours without a warrant.</p> <p>They can also exercise their crime scene investigation powers for up to 3 hours if they:</p> <ul style="list-style-type: none"> - apply for a warrant, and - reasonably suspect it is necessary to immediately exercise the power to preserve evidence of the commission of an offence e.g. to prevent evidence being destroyed. 	<p>When the police officer does not have consent of the occupier to enter a place, other than a public open place, establish a protected forensic area and search for things connected to a serious offence and the officer does not reasonably suspect that in the time it would take to obtain a search warrant the thing relevant to the offence would be concealed or disturbed or the safety of a person in the place is likely to be endangered [s.40(4)].</p> <p>If occupier provides consent and then withdraws it, police officers have 6 hours within which to exercise their crime scene preservation powers without a warrant. They can also exercise their crime scene investigation powers for up to 3 hours if they apply for a warrant and reasonably suspect it is necessary to immediately exercise the power to preserve evidence of the commission of an offence, e.g. to prevent evidence being destroyed.</p>	<p>A crime scene warrant is required once the responsible officer has established a crime scene [s. 166(1)].</p>
Crime scenes in public places	<p>A crime scene warrant is not required to establish a crime scene or exercise crime scene powers in a public place [s.89].</p> <p>An officer may exercise crime scene powers in relation to a vehicle that is within a crime scene established in a public place without obtaining a crime scene warrant [s.89(3)].</p>	<p>A police officer can establish a protected forensic area in a public open area if they reasonably believe it is necessary to do so to prevent a thing relating to a serious offence that is or may be in the area from being concealed or disturbed, until the area has been properly examined and inspected; or to protect the safety of any person who is or may enter the area [s.40(3)].</p> <p>An officer may exercise any of the powers under a search warrant in a public open place without obtaining a search warrant [s.33(1)].</p> <p>The officer must not damage/destroy/dig up/seize anything in a public area without informed consent of the person managing the area [s.33(2)].</p> <p>A police officer may still apply for a search warrant for a public open area [s.33(4)].</p>	<p>A police officer can exercise powers at a public place without a crime scene warrant [s.178(1)].</p> <p>If however the place is a public place only while it is ordinarily open to the public and the occupier asks police to leave, police can remain and exercise all powers for the time reasonably necessary for an application for a crime scene warrant for the place to be made and decided [s. 178(2)].</p>
Definition of public place	<p>A place or part of premises that is open to the public or is used by the public, whether or not on payment of money or any other consideration, whether or not the place is part ordinarily so open or used, and whether or not the public to whom it is open consists only of a limited class of persons, and a road or road related area. However, does not include a school [s.3].</p>	<p>Public open area is defined as an area that is part of a road open to and used by the public, or an area of land which the public has access, whether on payment or not, and on which there is no building, structure, tent or mobile home, and it does not matter if the area is the whole or part of a surveyed lot or of an unsurveyed piece of land, or, the area is part of such a lot, there is a building, structure, tent or mobile home on some other part [s.3].</p>	<p>Public place is:</p> <ul style="list-style-type: none"> - a place to which members of the public have access as of right, whether or not on payment of a fee and whether or not access to the place may be restricted at particular times or for particular purposes - a place declared under another Act to be a public place for any law conferring powers or imposing functions on police officers - a part of a place that the occupier of the place allows members of the public to enter, but only while the place is ordinarily open to members of the public, or - a place that is a public place under another Act [Sch 6].

Jurisdiction	New South Wales	Western Australia	Queensland
Act	<i>Law Enforcement (Powers and Responsibilities) Act (2002)</i>	<i>Criminal Investigation Act 2006</i>	<i>Police Powers and Responsibilities Act 2000</i>
Who issues a crime scene warrant?	An authorised officer [s.94(2)] who may be either: - a magistrate/Children's Court magistrate - a clerk of a local court or - an employee of the Attorney General's Department who has been appointed by the Attorney General to this role [s.3]. Police officer [s.94(1)].	Justice of the peace [s.41(2)].	Supreme Court judge or magistrate [s.166(1)]. In circumstances where it is intended to do something that may cause structural damage to a building, only a Supreme Court judge may issue a crime scene warrant [s.166(4)].
Who can apply for a crime scene warrant?	Police officer [s.94(1)].	A police officer or public officer may apply for a search warrant [s.41(1)]. A public officer is a person other than a police officer, appointed under a written law to an office prescribed under s.9(1) [s.3].	A police officer [s.170(1)].
How is a crime scene warrant application made?	Application must be in writing, in the prescribed form and made, in person, by the applicant [s.60(2)]. However, a crime scene warrant can be applied for by telephone if facilities are available for that purpose [s.61(3)]. Telephone includes radio, facsimile and other communication devices [s.3]. A telephone crime scene warrant must only be granted if the authorised officer is satisfied that it is urgently required and not practicable for the application to be made in person [s.61(2)].	Application must be made in person unless the warrant is needed urgently and the applicant reasonably suspects that a justice of the peace is not available within a reasonable distance of the applicant [s.13(4)]. In these circumstances, the application may be made to a judicial officer by remote communication [s.13(4)(c)]. Remote communication means any way of communicating at a distance including by telephone, fax, email and radio [s.3].	The application must be made to Supreme Court judge or a magistrate (the issuer) [s.170]. The application can be made by phone, fax, radio, email or other similar facilities if the police officer considers it necessary to do so due to urgent circumstances or other special circumstances, including for example the officer's remote location [s.800].
Duration of a crime scene warrant	Authorised officer must specify when the warrant expires [s.73(2)]. If no time is specified, the warrant expires 72 hours after issue [s.73(5)]. When an authorised officer issues a telephone warrant, the warrant expires 24 hours from the time of issue [s.73(1)(d)].	A search warrant authorises entry for a reasonable period [s.43(7)]. A search warrant ceases to be in force if the thing identified in the search warrant is seized or found or the relevant forensic examination is completed or the person to be searched for is found or another thing is found and seized, whichever happens last [s.43(11)].	A crime scene warrant stops having effect on the day fixed under the warrant or after 7 days after issue [s.173(1)].
Extension of crime scene warrant	An authorised officer can extend the warrant if satisfied that it cannot be executed within 72 hours [s.73A(1)(b)]. A warrant can only be extended once and must not extend the period of the warrant beyond 144 hours after its issue [s.73A(4) & (6)(a)]. A telephone crime scene warrant may be extended for up to 60 hours at a time and may be extended twice [s.73A(2) & (5)]. Any extensions cannot extend the period of the telephone crime scene warrant beyond 144 hours after its issue [s.73A(6)(a)]. Crime scene warrants issued in connection with terrorism related offences only, can be extended for up to 30 days [s.73A(7)].	Not specified.	A crime scene warrant can be extended for a stated reasonable time of no more than 7 days [s.173(2)].
Refusal of crime scene warrant application	When a crime scene warrant applied for is refused, police officer may make a further application but only if they are able to provide additional information that justifies making the further application [s.64(1)]. If the first application was made to an authorised officer who was not a magistrate, a further application may be made to a magistrate whether or not additional information is provided [s.64(2)].	Not specified.	The judge or magistrate may refuse to consider the application until the police officer provides all the information required about the application, in the way that judge or magistrate requires [s.170(6)].

Jurisdiction	New South Wales	Western Australia	Queensland
Act	<i>Law Enforcement (Powers and Responsibilities) Act (2002)</i>	<i>Criminal Investigation Act 2006</i>	<i>Police Powers and Responsibilities Act 2000</i>
Offences	<p>A person must not, without reasonable excuse, obstruct or hinder a person executing a crime scene warrant. Maximum penalty 100 penalty units or 2 years imprisonment [s.96(1)].</p> <p>A person must not, without reasonable excuse, fail or refuse to comply with a request made or direction given by a police officer. Maximum penalty 10 penalty units [s.96(2)].</p> <p>Not specified.</p>	<p>An unauthorised person who without reasonable excuse enters a protected forensic area commits an offence. Penalty: \$12000 and 12 months imprisonment [s.47(7)].</p> <p>An unauthorised person who without reasonable excuse disturbs anything in that area commits an offence. Penalty: \$12000 and 12 months imprisonment [s.47(8)].</p> <p>Not specified.</p>	<p>It is an offence to assault or obstruct a police officer in the performance of the officer's duties. Maximum penalty: 40 penalty units or 6 months imprisonment [s.790].</p> <p>A person must not contravene a requirement or direction given by a police officer without a reasonable excuse. Maximum penalty: 40 penalty units [s.791].</p>
Alternative accommodation and other related compensation	Not specified.	Not specified.	<p>Alternative accommodation must be arranged for the occupier of the dwelling if:</p> <ul style="list-style-type: none"> - the occupier cannot continue to live in the dwelling while a crime scene is established because of a direction given at a crime scene - the occupier cannot continue to live in the dwelling because of damage caused to the dwelling in the exercise of powers under this Part [s.179(1)]. <p>If reasonably practicable, the accommodation must be in the same locality as, and of at least a similar standard to, the occupier's dwelling [s.179(3)].</p>
Occupier's notice of warrant	The occupier of premises where a crime scene warrant is to be executed must be served with an occupier's notice [s.67].	The occupier of the premises where the search warrant is to be executed must be given a copy of the search warrant [s.31(c)].	<p>An occupier must be given notice of the making of a crime scene warrant application, if reasonably practicable [s.170(3)].</p> <p>If present when the application is made, the occupier may make submissions to the issuer, provided they do not cause undue delay [s.170(5)].</p> <p>The occupier does not have to be given notice of the application if doing so would hinder the investigation of the offence [s.170(4)].</p> <p>A copy of the crime scene warrant must be given to the occupier and a statement in the approved form summarising the person's rights and obligations under the warrant [s.175].</p>
Occupier's rights in relation to crime scene warrant	None specified.	A person who is aggrieved by the fact that a protected forensic area is established may apply to the Magistrate's Court to review the grounds for the continued establishment of the area [s.49(1)].	The occupier can apply for an order revoking the crime scene warrant if the application was made in the absence, and without knowledge, of the occupier [s.174(1)].

Jurisdiction	New South Wales	Western Australia	Queensland
Act	<i>Law Enforcement (Powers and Responsibilities) Act (2002)</i>	<i>Criminal Investigation Act 2006</i>	<i>Police Powers and Responsibilities Act 2000</i>
Safeguards and occupier's rights generally	<p>The safeguards under Part 15 of LEPRA apply generally to the exercise of the crime scene powers.</p> <p>A police officer must:</p> <ul style="list-style-type: none"> - provide evidence that they are a police officer (if not in uniform) [s.201(1)(a)] - provide their name and place of duty [s.201(1)(b)] - provide the reason for the exercise of the power [s.201(1)(c)]. 	<p>Before entering the premises, a police officer must:</p> <ul style="list-style-type: none"> - identify him or herself to the occupier [s.31(2)(a)] - inform the occupier that they intend to enter the place [s.31(2)(b)] - give the occupier the opportunity to give informed consent to the place being entered [s.31(2)(e)]. 	<p>A police officer must as soon as reasonably practicable, inform the occupier of the following:</p> <ul style="list-style-type: none"> - that he or she is a police officer (if not in uniform) and his or her name, rank and station [s.637(2)(a)] - if in uniform, his or her name, rank and station [s.637(2)(b)] - the reason for the search of the place and seizure of any property [s.637(4)] - warn the occupier that failure to comply with the officer's oral directions may be an offence [s.633]. <p>The officer must give the occupier notice of any damage caused during the exercise of crime scene powers [s.636].</p>
Requirements following execution of a crime scene warrant	<p>Within 10 days of a crime scene warrant being executed or the expiry of the warrant, whichever occurs first, a report must be provided to the relevant authorised officer by the person who applied for the crime scene warrant [s.74].</p>	<p>If reasonably practicable, an audiovisual recording must be made of the execution of a search warrant [s.45(2)].</p>	<p>If reasonably practicable, a police officer who executes a warrant or order must make a record on the back of the warrant of the day and time of execution, the name of the person on whom it was executed, the name of the occupier of the place (if known), their name, rank, registration number and station [s.638].</p>

Appendix 8: Comparable notice to produce legislation

Jurisdiction	NSW	Western Australia	Queensland
Act	<i>Law Enforcement (Powers and Responsibilities) Act (2002)</i>	<i>Criminal Investigation Act 2006</i>	<i>Police Powers and Responsibilities Act 2000</i>
What is the instrument called?	Notice to produce.	Order to produce a business record.	Production notices [Part 4, s.180]. Production orders [Part 5, s.189].
Definition of a document	Not defined in the Act.	A 'business record' is defined in [s.50] as a record prepared or used in the ordinary course of a business for the purpose of recording any matter relating to the business.	Not defined in the Act.
Who can issue a notice to produce?	An authorised officer [ss.3 & 53(1)].	An application for an order to produce must be made to a justice of the peace in accordance with s.13 [ss.13 & 52(2)].	Production notices Magistrate [s.180(2)]. Production orders Supreme Court Judge [s.189(2)].
Who can be served with a notice to produce?	An authorised deposit-taking institution [s.54(a)].	An order to produce must be served on the person to whom it applies as soon as practicable after it is issued [s.54(1)].	Production notices Cash dealer [s.180(1)] (includes financial institution, insurers, securities dealers, persons operating gambling houses or casinos, bookmakers, people/organisations that issue, sell or exchange items such as bullion, travellers cheques or currency). Sch. 6 of the Act, defines cash dealer as a cash dealer under the <i>Financial Transaction Reports Act 1988</i> (Cth). Production orders A person [s.189(1)].
What items and/or information can be specified in the notice to produce?	The authorised officer may specify in the notice that the documents are to be produced to a police officer within a stated time and at a stated place and in a stated form (whether electronic or otherwise) [s.54(2)]. The application for the notice must include the name of the authorised deposit-taking institution the subject of the application [s.55]. The application should also specify the reasonable grounds on which the application for the notice to produce documents is based.	An order to produce must contain: - the applicant's full name and official details - the name of the person to whom the order applies - a reasonably particular description of the business record or class of business record to be produced by the person - an order that the person produce the record or records - whether the original or a copy of the record or records is required - whether a paper, electronic or other version of the record or records is required - the place where the record or records are to be produced - the date on or before which the order must be obeyed, which must allow a reasonable period for the person to obey the order - the name of the JP who issued it - the date and time when it was issued [s.53(2)].	Production notices The magistrate may, in the production notice, require the documents to be produced to a police officer within a stated time and at a state place [s.181(2)]. Production orders Production orders must order a stated person to produce to a police officer any documents, other than a financial institution's books, of the kind mentioned in s.189(1) that are in the person's possession, or to make available to a police officer, for inspection, any documents of that kind that are in the person's possession, and state when and the place where the documents are to be produced or made available for inspection [s.191].
Can the notice to produce only be obtained for specific offences?	An offence committed by someone other than an authorised deposit-taking institution [s.53(1)].	No specification.	Production notices An offence or confiscation related activity [s.180(1)]. Production orders A confiscation offence or a serious crime related activity [s.188(1)].

Appendix 9: Field arrest form



NSW POLICE

P 000

Version 1.0 (11/05)

Field Arrest Form

(To be completed IN FULL by Arresting OR Escorting Police)

OFFENDER DETAILS

Offender Full Name

Address (Street)

Suburb/Town

State

Postcode

Date of Birth (dd / mm / yyyy)

C.N.I.

Next of Kin/Relationship

Phone No.

Address (Street)

Suburb/Town

State

Postcode

ARREST/LOCATION INFORMATION

Arrest - Time

Arrest - Date

Location of Arrest

Offence Arrested For

Convey - Start Time

Convey - Start Date

Arrival at Station

Time

Date

Has the offender been arrested in the last 48 hours

Yes

No

Were there any time outs between arrest time & convey start time?

Yes

No

Note: If YES, then must record details as follows: (eg: medical attention at scene, waiting time for investigators)

ADDITIONAL TIME OUTS AT SCENE (if applicable - if not, then go ▼)

StartTime

EndTime

ARRESTING/ESCORTING POLICE DETAILS (Registered No's ONLY)

Arresting Police - 1

Arresting Police - 2

Escorting Police - 1

Escorting Police - 2

POLICE ASSESSOR - BRIEF ASSESSMENT

Registered No. of Officer

Q1. Does the person complain of, or have you observed any sign of intoxication, pain, injury or illness? Yes No

If YES, explain. (bring also to the attention of the Custody Manager)

Q2. Does the person show any sign of mental illness or display any sign of self harm? Yes No

If YES, explain. (bring also to the attention of the Custody Manager)

COMPLETE BOTH SIDES OF FORM
PART 9 - CUSTODY MANAGER ENTERS CUSTODY DETAILS
NON-PART 9 - INVESTIGATING POLICE ENTERS CUSTODY DETAILS

PROPERTY OF DETAINED PERSON

Searching Officer (Surname OR Regd No.)

Time of Search

Date of Search

Location of Search (ie: at scene/changeroom)

PROPERTY LOCATED

Total money

Denominations

OTHER PROPERTY

No. Description

- 1 _____
- 2 _____
- 3 _____
- 4 _____
- 5 _____
- 6 _____
- 7 _____
- 8 _____
- 9 _____
- 10 _____
- 11 _____
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- 34 _____
- 35 _____
- 36 _____

Appendix 10: Crime scene forms

Form 4

(Clauses 4 (1)(d) and 5 (d))

Application for crime scene warrant/record of application (Law Enforcement (Powers and Responsibilities) Act 2002)

Part 1 Application

On ,
(date)

I,
(name)

of ,
(rank) (place of work)

apply for a crime scene warrant to enter the premises known as

(address)

in the State of New South Wales, being a

(description of premises, e.g. dwelling house)

and to exercise all reasonably necessary crime scene powers at, or in relation to, ⁽¹⁾

I swear/solemnly, sincerely and truly declare and affirm* that:

1 I have reasonable grounds for suspecting that it is necessary to exercise crime scene powers at the crime scene for the purpose of preserving, or searching for and gathering, evidence of the commission of:

(a)* the offence of ⁽²⁾

which is a serious indictable offence.

(b)* the offence of ⁽²⁾

that is being/was/may have been* committed in connection with a traffic accident that has resulted in the death of/serious injury* to a person.

2 I rely on the following grounds in support of this application: ⁽³⁾

⁽¹⁾ Specify crime scene.

⁽²⁾ Delete if inapplicable.

⁽²⁾ Specify offence.

⁽³⁾ Insert the reasonable grounds on which the application for the crime scene warrant is based. If space is insufficient, continue overleaf or attach a separate sheet.

[3 and 4 are to be completed if a previous application for the warrant has been made and refused. Attach a copy of previous application to this Form.]

3 The following are details of the refusal of the previous application:

4 The additional information that I consider justifies the making of this further application is: ⁽⁴⁾

Sworn/declared and affirmed* before me on

(Date)

at

(Place)

in the State of New South Wales.

Applicant.

.....

(Print name and insert signature)

Justice of the Peace⁽⁵⁾

.....

(Print name and insert signature)

⁽⁴⁾ Need not be completed if the previous application was made to an authorised officer who was not a Magistrate and this application is made to a Magistrate.

⁽⁵⁾ This application may be sworn before the authorised officer to whom the application is made for the issue of the warrant. Any alterations, deletions or annexure should be initialled or signed by the applicant and witnessed by the justice of the peace.

Warning

IT IS AN OFFENCE UNDER SECTION 63 OF THE LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) ACT 2002 TO GIVE INFORMATION IN THIS APPLICATION KNOWING IT IS FALSE OR MISLEADING IN A MATERIAL PARTICULAR. THE MAXIMUM PENALTY IS A FINE OF \$11,000 OR 2 YEARS IMPRISONMENT (OR BOTH).

Note: In the case of an application by telephone (but not by facsimile), this Form of application should be completed by the authorised officer for record purposes as if it were made in person by the applicant but not on oath.

Part 2 Authorised officer's record of application for a crime scene warrant

On at a.m / p.m
(date) *(time)*

I, the undersigned authorised officer, received this application for a crime scene warrant.

1 *(To be completed if the application was not made in person.)*

The application was made by⁽⁶⁾

and I was/was not* satisfied that the warrant was required urgently and it was/was not* practicable for the application to be made in person.

2* *(To be completed if the authorised officer required the applicant to provide further information concerning the grounds on which the warrant was sought.)*

*Further information provided by the applicant, as required by me, is attached.

*Particulars of further information orally provided by the applicant, as required by me, are as follows:⁽⁷⁾

3 On considering the application I found/did not find* that there were reasonable grounds for issuing the warrant.

(If warrant is issued – continue.)

4 The relevant particulars of the grounds on which I relied to justify the issue of the warrant are as follows⁽⁸⁾:

5 *(To be completed if the warrant may be executed by night.)*

The grounds on which I relied to justify the execution of the warrant by night are as follows:

- (a)* execution of the warrant by day is unlikely to be successful,
- (b)* there is likely to be less risk to the safety of any person if it is executed by night,
- (c)* an occupier is likely to be on the premises only at night to allow entry without the use of force,
- (d)* *Other grounds*

⁽⁶⁾ Specify how the application was made (eg facsimile, telephone).

^(*) Delete if inapplicable.

⁽⁷⁾ Specify particulars.

⁽⁸⁾ Either identify or specify the relevant particulars of the grounds in the application that are relied on. If space is insufficient, continue overleaf or attach a separate sheet.

6 The crime scene warrant was issued at a.m. / p.m. on
(date)

Authorised Officer
(Print name and insert signature)

Date

Notes.

1. Return this Form, together with a copy of the warrant and a copy of the occupier's notice, to the Local Court named in the occupier's notice.

Form 12

(Clause 6 (1)(d))

Crime scene warrant
(Law Enforcement (Powers and Responsibilities) Act 2002)

This warrant expires at a.m. / p.m.* on
(time) *(date)*

and must not be used after that time.

On
(date)

an authorised officer empowered to issue crime scene warrants under Part 7 of the Law Enforcement (Powers and Responsibilities) Act 2002, granted this warrant authorising

(name)

of
(rank) *(place of work)*

(the applicant), a police officer, and all other police officers:

1 to enter the premises known as

(address)

being a
 and
(description of premises, e.g. dwelling house)

2 to exercise all reasonably necessary crime scene powers, as listed in paragraphs (d) - (s) below, at, or in relation to,⁽¹⁾

The applicant has reasonable grounds for suspecting that it is necessary to exercise crime scene powers at the crime scene for the purpose of preserving, or searching for and gathering, evidence of the commission of:

(a)* The offence of ⁽²⁾ ,
which is a serious indictable offence.

(b)* The offence of ⁽²⁾
that is being/was/may have been* committed in connection with a traffic accident that has resulted in the death of/serious injury to* a person.

This warrant may be executed:

(a)* only by day (ie between 6.00 am and 9.00 pm).

(b)* by day (ie between 6.00 am and 9.00 pm) or night (ie between 9.00 pm and 6.00 am).

⁽¹⁾ Specify crime scene.

⁽²⁾ Specify offence

(*) Delete if inapplicable.

In executing this warrant a police officer may exercise the powers provided by the Law Enforcement (Powers and Responsibilities) Act 2002. These include the following powers:

- (a) to enter the named premises, using such force as is reasonably necessary for that purpose,
- (b) to use any persons necessary to assist in the execution of this warrant,
- (c) to exercise any lawful power to arrest a person,
- (d) to direct a person to leave the crime scene or remove a vehicle, vessel or aircraft from the crime scene,
- (e) to remove from the crime scene a person who fails to comply with a direction to leave the crime scene or a vehicle, vessel or aircraft a person fails to remove from the crime scene,
- (f) to direct a person not to enter the crime scene,
- (g) to prevent a person from entering the crime scene,
- (h) to prevent a person from removing evidence from or otherwise interfering with the crime scene or anything in it and, for that purpose, detain and search the person,
- (i) to remove or cause to be removed an obstruction from the crime scene,
- (j) to perform any necessary investigation, including, for example, search the crime scene and inspect anything in it to obtain evidence of the commission of an offence,
- (k) to conduct any examination, or process, for the purpose of performing any necessary investigation,
- (l) to open anything at the crime scene that is locked,
- (m) to take electricity, gas or any other utility, for use at the crime scene,
- (n) to direct the occupier of the premises or a person apparently involved in the management or control of the premises to maintain a continuous supply of electricity at the premises,
- (o) to photograph or otherwise record the crime scene and anything in it,
- (p) to seize, detain, remove from the crime scene or guard all or part of a thing that might provide evidence of the commission of an offence,
- (q) to dig up anything at the crime scene,
- (r) to remove wall or ceiling linings or floors of a building, or panels of a vehicle,
- (s) to exercise any other power reasonably necessary or incidental to a power conferred by paragraphs (d) – (r),
- (t) to stay on premises for the purpose of exercising the powers set out in paragraphs (d) – (s).

Signed

(insert signature)⁽³⁾

Date

⁽³⁾ The authorised officer should sign and date the warrant and initial any corrections. In the case of telephone search warrant, in circumstances where the warrant is issued but not furnished to the applicant (for example, because facsimile facilities are not available), the applicant is to complete this Form of warrant in the terms dictated by the authorised officer and write on it the date and time when the warrant was signed.

Form 19

(Clauses 7 (c))

Occupier's notice for crime scene warrant
(Law Enforcement (Powers and Responsibilities) Act 2002)

A crime scene warrant has been issued by an authorised officer. It gives the authority and power to the police, including

(name)

of
(rank) *(Place of work)*

to enter the premises at

(address)

being a

(description of premises, e.g. dwelling house)

and exercise all reasonably necessary crime scene powers in relation to ⁽¹⁾

Expiry

This crime scene warrant will expire at a.m. / p.m on
(time) *(date)*

Warning

YOU HAVE THE RIGHT TO INSPECT THE WARRANT BUT YOU MUST NOT HINDER OR OBSTRUCT THE POLICE OFFICER EXECUTING THE WARRANT, AS TO DO SO MAY BE A CRIMINAL OFFENCE. UNDER SECTION 96 (1) OF THE *LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) ACT 2002*, THE MAXIMUM PENALTY FOR OBSTRUCTING OR HINDERING, WITHOUT REASONABLE EXCUSE, A PERSON ACTING UNDER A WARRANT IS A FINE OF \$11,000 OR 2 YEARS IMPRISONMENT (OR BOTH).

FURTHER, YOU MUST NOT FAIL OR REFUSE TO COMPLY WITH A REQUEST MADE OR DIRECTION GIVEN BY A POLICE OFFICER EXERCISING CRIME SCENE POWERS AT THE CRIME SCENE AS TO DO SO MAY ALSO BE A CRIMINAL OFFENCE. UNDER SECTION 96 (2) OF THE *LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) ACT 2002*, THE MAXIMUM PENALTY FOR FAILING OR REFUSING, WITHOUT REASONABLE EXCUSE, TO COMPLY WITH A REQUEST MADE OR DIRECTION GIVEN BY A POLICE OFFICER EXERCISING SUCH POWERS UNDER THIS WARRANT IS A FINE OF \$1,100.

The powers given by the warrant

The police have the following powers:

- (a) to enter the named premises, using such force as is reasonably necessary for that purpose,
- (b) to use any persons necessary to assist in the execution of this warrant,
- (c) to exercise any lawful power to arrest a person,
- (d) to direct a person to leave the crime scene or remove a vehicle, vessel or aircraft from the crime scene,

⁽¹⁾ Specify crime scene.

- (e) to remove from the crime scene a person who fails to comply with a direction to leave the crime scene or a vehicle, vessel or aircraft a person fails to remove from the crime scene,
- (f) to direct a person not to enter the crime scene,
- (g) to prevent a person from entering the crime scene,
- (h) to prevent a person from removing evidence from or otherwise interfering with the crime scene or anything in it and, for that purpose, detain and search the person,
- (i) to remove or cause to be removed an obstruction from the crime scene,
- (j) to perform any necessary investigation, including, for example, search the crime scene and inspect anything in it to obtain evidence of the commission of an offence,
- (k) for the purpose of performing any necessary investigation, to conduct any examination or process,
- (l) to open anything at the crime scene that is locked,
- (m) to take electricity, gas or any other utility, for use at the crime scene,
- (n) to direct the occupier of the premises or a person apparently involved in the management or control of the premises to maintain a continuous supply of electricity at the premises,
- (o) to photograph or otherwise record the crime scene and anything in it,
- (p) to seize and detain, remove from the crime scene or guard all or part of a thing that might provide evidence of the commission of an offence,
- (q) to dig up anything at the crime scene,
- (r) to remove wall ceiling linings or floors of a building, or panels of a vehicle,
- (s) to exercise any other power reasonably necessary or incidental to a power listed in paragraphs (e) – (s),
- (t) to stay on premises for the purpose of exercising the powers set out in paragraphs (d) – (s).

Issue Details

The warrant was granted by an authorised officer, under the *Law Enforcement (Powers and Responsibilities) Act 2002*

on at a.m / p.m
(date) (time)

The warrant was issued on the application of
(name of police officer)

of
(rank) (place of work)

Basis for the issue of the warrant

The warrant was granted on the basis that the authorised officer found that there were reasonable grounds for the issue of the warrant and, in particular, that the applicant police officer had reasonable grounds to suspect that it was necessary to exercise crime scene powers at a crime scene for the purpose of preserving, or searching for and gathering, evidence of the commission of:

(a)* the offence of ⁽²⁾ ,

which is a serious indictable offence,

(b)* the offence of ⁽²⁾

(*) Delete if inapplicable.

(²) Specify offence.

that is being/was/may have been* committed in connection with a traffic accident that has resulted in the death of/serious injury to* a person.

Challenging the issue or execution of the warrant

If you are dissatisfied with the issue or the execution of the warrant, you should seek legal advice. This advice may assist you to decide whether your rights have been infringed and what action you can take. If your rights have been infringed you may be entitled to a legal remedy.

You should keep this notice as it will assist you if you seek advice.

Limitations on the powers conferred

The following limitations apply to the warrant:

- (a) the warrant must be executed before the date and time of the expiry given above,
- (b) any force used to enter the premises must be reasonably necessary,
- (c) the warrant must be executed between 6.00 am and 9.00 pm unless the warrant states that it may be executed by day or night,
- (d) the warrant must be shown to you if you ask to see it,
- (e) the powers listed in paragraphs (d) – (s) under the heading “**Powers given by the warrant**” may be exercised if it is reasonably necessary to do so.

Inspection

The application for the warrant, written reasons for the issue of the warrant and other associated documents are to be held at⁽³⁾

You may seek to inspect those documents by arrangement with that Court. You should produce this notice at the court when seeking to inspect the application.

Signed
(Insert signature)

(Authorised Officer/Applicant Officer)⁽⁴⁾

Date

⁽³⁾ Insert the Local Court to which the issuing authorised officer is attached or to which it is intended to forward the documentation.

⁽⁴⁾ In the case of a notice relating to a telephone crime scene warrant, in circumstances where the warrant is issued but the notice is not furnished to the applicant (for example, because facsimile facilities are not available), the applicant officer is to complete this Form of notice in the terms dictated by the authorised officer.

Form 20

(Clause 9 (1))

Report to authorised officer about execution of warrant

(Law Enforcement (Powers and Responsibilities) Act 2002)

Note. This report must be made within 10 days after the execution of the warrant or the expiry of the warrant, whichever first occurs.

This report is made to the authorised officer who issued the attached warrant. ⁽¹⁾

1* The warrant was not executed for the following reasons:

2* The warrant was executed on

(date)

3* (To be completed unless 4 applies)

The warrant was executed at ⁽²⁾

a.m./p.m.

4* (To be completed if the warrant authorised the use of a dog for general drug detection)

The warrant was executed during the period/periods* of ³

5* The result of the execution of the warrant (including a description of the things seized) is briefly as

follows: ⁽⁴⁾

6* The things seized are now in the custody of ⁽⁵⁾

7* The occupier's notice was not served/served on* ⁽⁶⁾

Signed

.....
(Print name and insert signature)

Date

Rank or Designation

Place of Work

Date of receipt of report by authorised officer

Authorised Officer

.....
(Print name and insert signature)

Note. On completion of the report, forward the report and attachments to the Local Court named in the Occupier's Notice.

⁽¹⁾ Unless completed on the back of the warrant, attach the original warrant issued by the authorised officer or telephone warrant completed by the applicant.

^(*) Delete if inapplicable.

⁽²⁾ Specify time at which execution of warrant was completed.

⁽³⁾ Specify period/periods.

⁽⁴⁾ If a receipt is given for anything seized, attach copy.

⁽⁵⁾ Specify the person who has responsibility for the safekeeping of the things seized. Specify the place where the things are held unless specifying the place where they are held would adversely affect the security of the things seized.

⁽⁶⁾ Specify manner of service and on whom notice was served.