Not so TASTY

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The debate over police powers in the aftermath of the raid on a Melbourne nightclub.

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At the end of November 1994 the Deputy Ombudsman of Victoria released the report into the police raid on the Tasty nightclub in which 463 people were strip searched under a single warrant. The innocous title, *Investigation of Police Raid on the Commerce Club (Tasty Night Club) on Sunday 7 August 1994,* hides a stormy background. The raid, in the words of Justice Kirby, involved 'intimate, humiliating personal searches of people [which] shocked many people [and] appeared to evidence a continuation of official oppression and a serious abuse of police power'.[1] Even the conservative Premier and Attorney-General expressed dismay at the mass strip search. Many people expected the Deputy Ombudsman would take a strong position against what appeared to be indefensible conduct by the police. Perhaps the report might also provide the impetus for a reconsideration of the nature and consequences of strip searching, its use in a routine manner and the criteria by which it should be permitted. Unfortunately that is not what happened.

This article analyses the main findings of the Deputy Ombudsman's Report and examines the subsequent developments in strip searches in Victoria. The discussion is broken into three areas: an examination of allegations that the decision to instigate the raid and the manner in which it was conducted were motivated by homophobia; the general conduct of the raid; and an examination of proper requirements for the correct issue of a warrant, with particular reference to the nature and strength of evidence required. The final part examines the need for reforms to the unsatisfactory state of police powers to strip search people in Victoria and consider the recent changes to police guidelines.

Complaints of homophobia

The Report examined allegations that the decision to instigate the raid and the manner in which it was conducted were both influenced by homophobia. The finding on this point was expressed in an astonishing *non-sequitur* that the 'raid was discriminatory but was not, insofar as can be ascertained, based on prejudice against homosexuals' (p.1). So while declining to make any direct finding of homophobic motivation the Report concluded that the Tasty Cub was certainly 'treated differently' because it was a gay venue (pp.62–5).

The most obvious example of different treatment was the decision not to conduct undercover operations. This tactic would have allowed plainclothes officers to mingle with patrons in a low key and non-confrontational manner. Any knowledge gained could have been used to make an *informed* assessment of drug use at the club. They could also have arrested, or identified for future arrest, any offenders they encountered. The Report clearly favoured this tactic instead of a raid, but police did not. The officer who sought the warrant was found to clearly favour the use of raids as a policing strategy. The same officer also made 'certain stereotypical references' in his interview (p.64). It was elsewhere remarked about the officer that 'superficially it would not be illogical to conclude he might be prejudiced against homosexuals.

However, the investigators felt ill at ease with that conclusion . . .' (p.56).

Apparently more than one officer had attitudinal problems. Other officers felt the patrons at Tasty were 'different', and that they would be unable to dress and behave among them inconspicuously (pp.63–5). The Report offers some support for this assessment of the attitudes and capacities of plainclothes officers by concluding at several points that their behaviour was significantly worse than that of uniformed members (pp.23–4, 68). Another example of 'difference' was the many complaints about the use of derogatory language. The Report gave no actual examples, but stated that none of the instances were 'serious' and that many examples of inappropriate comment were deemed to be 'subjective'. It is hard to believe that a public official would dare excuse racist language on the same basis. In the end, all that was concluded was that 'a minority of members could have behaved with greater restraint and far more civility' (p.68).

The Deputy Ombudsman concluded special groups should not be singled out for 'inappropriate policing action', but added that 'perceived minority groups should not derive immunity from the law' (pp.69–70). It is hard to know why this was said. Discrimination against people on the basis of sexual preference is not outlawed in Victoria: gay people do not receive the same spousal allowances as heterosexuals; they are disadvantaged in every aspect of family law; excluded from IVF programs; and face great problems when seeking property from a deceased partner in the event of an intestacy. Many also endure ostracism, abuse and harassment as a normal part of their life. To this author's knowledge there is not, and never has been, any form of treatment or legal right which they receive more favourably than heterosexuals. So there was no reason for the Deputy Ombudsman to raise the tired and persistently unsubstantiated chestnut of preferential treatment to gay people who complain about mistreatment. But on the whole, many gay people might have expected the 'preferential treatment' argument to have an airing, which might explain the failure of most patrons to co-operate with the investigation. The Report noted that of the 55 complainants only 23 gave interviews to the Ombudsman's staff (pp.10-12, 14). It does not seem to have occurred to the Deputy Ombudsman that if many more people are prepared to initiate legal action than co-operate with his investigation (170 at last report in the *Age* on 7 February 1995), one sector of the Victorian public has expressed its opinion as to the most effective form of querying police actions by voting with its feet.

The conduct of the raid

Forty police officers carried out the raid in the belief that around 200, mostly male, patrons would be in the club. This meant the raid was insufficiently staffed. The first consequence was that many patrons seemed unaware of exactly what was happening. All patrons stated that though they knew a raid was occurring fairly soon after the police entered, they were unaware that they were to be strip searched until this began happening. In the confused atmosphere some feared this might include a cavity search (pp.16–9). Insufficient staffing meant that the searches proceeded very slowly and many people were detained for much longer than they would have been had the operation been properly staffed.

According to several complaints the ineffective dissemination of information was compounded by the practice that anyone who attempted to question the authority of the police to conduct the raid or search people was removed and not seen for the remainder of the night (p.24). It is obvious that such a tactic is intimidating, and in a raid where there was no violent struggle or sign that one was about to ensue (pp.16–7), the intimidation was intentional. The Report made no final comment on this point.

Many police who were interviewed asserted that the raid was conducted in a good humoured atmosphere and professed surprise at the adverse reactions of patrons and negative publicity (p.22). Despite taking only 23 detailed interviews from patrons, the Report was able to declare on one hand that 'a large number . . . have indicated most police conducted themselves well' but on the other hand that many patrons 'found the situation uncomfortable and threatening' (pp.12, 20).

There were some striking inconsistencies in the conduct of searches. Some patrons were required to remove some of their clothing; some had to remove everything. Different people had to remove different items. This clearly compromised the effectiveness of searches (pp.21, 23). The duration of searches also varied. Some women were held in the searching room for up to 20 minutes, and it appears most were not searched in the absence of other patrons (p.17). The female complainants interviewed were noted to be particularly outraged. Some thought the lack of visible female officers meant they would be searched by a man. Extra female officers eventually arrived and there was no cross-gender searching, but the intervening period must have been extremely distressing (pp.19, 23).

Most of the men too were searched in the company of others, and many of the searches were clearly visible to other people (pp.19, 61). The Report concluded that the most senior officer decided to proceed with strip searches knowing that the inadequate provisions for privacy directly contravened operational guidelines (p.60). In some cases gloves were not changed between searches (pp.21, 72). No weapons were discovered by the searches, nor was there any evidence that the more intrusive searching yielded drugs that would not otherwise have been found.

As a result of the raid and continued controversy about strip searches, amendments have been made to the guidelines, which are discussed below. Yet at this point it must be noted that the previous guidelines were not followed in the Tasty raid, nor were searches conducted in a uniform, secure or effective manner. Another recurring problem was the inability of complainants to identify individual officers because they did not wear visible identification (p.26). The Report recommended that rules requiring officers to wear visible name tags to be worn be 'reinforced'. This is not enough. A lack of identification allowed some officers to escape responsibility for various actions and there was no mention of any disciplinary action for inadequately identified officers. The requirement of identification must be enforceable. If the officer in charge of a raid was made directly responsible for ensuring that *all* members wear proper identification, and that officer was made punishable by a clear disciplinary offence for a failure to do so, it is submitted the rule would be observed rigorously. It would be difficult for supervising officers to oppose such a rule. If they cannot, or will not, effectively supervise those under their command they should not be conducting raids. The problems enumerated above did not emanate from the content of any guidelines but from the way in which they were applied, or rather in this case, ignored. Unless these problems are addressed, any changes to guidelines might be little more than dental work on a toothless tiger.

The issue and validity of the warrant

There are two related issues that arise from an examination of whether a warrant was correctly issued in this case. First, it is doubtful that the evidence was sufficient to support the issue of a warrant. Second, the issuing magistrate failed to ask the informant any questions (pp.48–9). The Deputy Ombudsman pointed out that under s.13(3)(a) of the *Ombudsman Act 1973* (Vic.) he lacked jurisdiction to directly investigate the propriety of the magistrate's decision to issue the search warrant (pp.48–9).[2] So the magistrate was not interviewed, no direct remarks were made about the decision to issue the warrant, nor was a copy of it included in the Report. However the Deputy Ombudsman felt it was appropriate to investigate the accuracy of the information contained in the affidavit made for the grant of the warrant.

The evidence underlying the raid

The Report examined the methods used to gather evidence in support of the raid in great detail with the purpose of discovering the basis on which the club was raided. In summary the evidence at hand consisted of: an anonymous telephone call alleging drug use and trafficking at Tasty; an information report containing hearsay and opinion from another anonymous source making similar allegations; three information reports recording the smell of cannabis at the club; observations of patrons believed to be smoking cannabis; observation of discarded plastic bags, which were assumed to contain drugs even though none had been tested (pp.52–3). The remarks about the smell of drugs brought the obvious question of why arrests were not made, to which the police replied that the club was too dark, crowded and noisy. In that case, the Report mused, how could the observations have been reliable?

Shortly before the raid, two patrons were arrested in the club for possessing ecstasy, almost by accident. The Report found that similar arrests in other clubs had not precipitated raids, and that in any case the decision to raid Tasty was made prior to these arrests (pp.45–6). Much of the 'evidence' was gained by officers who conducted walking patrols through the club, with the approval of club management. The police had discussed the issue of drug use with club management, who offered to co-operate with any strategy. The police rejected this because they doubted the management could be trusted, though no explicit reason for this was provided (pp.46–7). Immediately prior to the raid some patrons told plainclothes patrolling officers that they knew (correctly by then) that a raid was imminent. The police rejected the idea that the raid was motivated by a desire to identify any gay officers attending the club who might have leaked information. Whatever its source, the leak indicates an appalling lack of security, and reflects badly on the standards of those planning the raid.

At best the evidence gathered was vague and speculative. What it should have done was triggered more investigation. Instead it was used as the basis for an affidavit for a search warrant in which some extraordinary claims were made (Appendix H). The 2¼ page document detailed the assertions about the smell of cannabis recorded by officers but expressed them as statements of fact. It also alleged that the manager told police that the supply of drugs in the club was controlled by 'numerous' drug dealers, that he had no control over this problem, and that drug use was widespread and brazen, especially on Saturday night. It concluded that a search of the premises and the patrons would uncover drugs and drug-related offences, including trafficking.

Clearly the evidence did not support much of the affidavit's contents. Many of the statements were unsubstantiated, others constituted opinions served up as objective fact. The Report found that many remarks made did not withstand scrutiny and the document contained embellishments based on deductions, and misleading or ambiguous statements (pp.48–52). However there was insufficient evidence to find the deponent had knowingly sworn a false affidavit (pp.49, 52). Some of the blame for the poor quality of the affidavit was laid on supervising officers for their failure to properly scrutinise the document (p.52). In his recommendations, the Deputy Ombudsman indicated this was not an isolated problem, and called for a complete review of training, instructions and authorisation of the 'very serious responsibilities' of preparing affidavits (p.71).

What is needed for a warrant?

An application for a search warrant is not itself a trial, so the evidence that can be used does not have to meet the criteria of admissibility under the rules of evidence. Evidence can be collected and collated by a variety of sources, not necessarily by the informant, and hearsay may be used. This evidentiary flexibility recognises the often speculative nature of criminal investigations, but it is not unlimited.[3] In this case some limits emanate from the statutory provisions. Section 81 of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic.) requires that the magistrate be satisfied the premises in question contain something in respect of an offence under the Act that has/is 'reasonably suspected to have been committed' (s.81(1)(a)), or something 'which there is reasonable ground to believe will afford evidence of an offence' under the Act (s.81(1)(b)). Belief requires some factual foundation which tends to favour the existence of a state of affairs. Suspicion, on the other hand, implies a lower standard because, by nature, it is not as solid as a belief. Yet even this must have some factual foundation because there must be a reason in order to rationally have cause to suspect something. The sufficiency of reasonable grounds for either suspecting or believing something are, for practical purposes, judged by reference to the means by which the object of the search is identified. The broader and more general the description of the object, the more difficult it will be to establish that, if found, it will provide evidence of a particular offence. On the other hand the more narrow and precise the description of the object the more difficult it will be to establish grounds for suspecting it is in the designated location.[4] Inthis case there was insufficient evidence to identify the object of the search beyond the broad category of illegal drugs, or to justify any specific suspicion as to which individual patrons might possess drugs.

The consequences of an unduly wide warrant

The original strategy of the raid was to 'pat down' patrons (i.e. running the hands over the person's clothed body) and have them empty their pockets. Anyone found with drugs would then be strip searched (p.53). After noting several empty plastic bags on the floor the police decided that up to one-fifth of patrons might possess drugs, so everyone had to be searched. It was a common practice at the club to add a legal powdered substance to drinks, and though the bags could not be tested on the spot the Report felt it was not unreasonable to assume that some drugs might be present. However that did not mean a *carte blanche* strip search was reasonable — a threshold the Report felt all operational decisions should meet.[5] Reasonableness was said to be best judged by examining the nexus of suspicion between the fact that a person is on premises the subject of a warrant and whether there is any potential they might possess a substance which the warrant was issued to find. To require this assess-

ment is the only way to protect the vast majority of people who would otherwise be subjected to a gross invasion of their privacy in the absence of any proper suspicion against them. Otherwise the only basis on which most would be 'suspected' would be the fact that they were in a place where a warrant happened to be executed. That was not properly considered in this case. It should be added that nowhere in the Report is it noted that the police sought to justify the assertion that one-fifth of patrons might be carrying drugs.

Practical considerations were also relevant to the reasonableness of searches. In this case the poor staffing, undue delays, inadequate provisions for privacy and sloppy manner of searching all militated against a mass search (pp.59–60). Had the Report judged the propriety of the raid by a retrospective examination of the ratio of people searched to the number of offenders found, the conclusion would have been no better. In this case five charges of drug possession were laid, none of trafficking. From a total of 463 searches, that is a 1.3% success rate (p.5).

The role of the issuing magistrate

Although it was not part of the Deputy Ombudsman's investigation, comment must be passed on the role of the magistrate who issued the warrant to raid the Tasty Club. Section 81(1) of the the *Drugs, Poisons and Controlled Substances Act 1981* (Vic.) allows for search warrants to be issued for the purpose of investigating a wide array of drug offences through a procedure used in many statutes. Section 81(1)(b) permits the issue of a warrant by:

> any magistrate who is satisfied by evidence on oath or affidavit [from nominated police officers] . . . that there are reasonable grounds for believing that there is on . . . any premises any thing which there is reasonable ground to believe will afford evidence of the commission of an offence under this Act . . .

Every warrant issued allows the police to search 'any premises . . . or any person found on or in . . . those premises . . .' (s.81(3)(c)).

The execution of a search warrant necessarily involves the invasion of personal liberties, so the issue of a warrant must be attended by strict adherence to any procedural requirements. As the High Court recently stated:

> A search warrant . . . authorises an invasion of premises without the consent of persons in lawful possession or occupation thereof . . . [I]n construing and applying such statutes, it needs to be kept in mind that they authorise the invasion of interests which the common law has always valued highly and which, through the writ of trespass, it went to great lengths to protect.[6]

When a statute requires 'reasonable grounds' for a state of mind (suspicion, belief etc.) this means the existence of facts which are sufficient to induce that state of mind in a reasonable person. The issuing officer does not have to form the same suspicion or belief as the informant, but they must believe that reasonable grounds exist for the informant's state of mind.[7] This approach is designed to ensure that the issue of a warrant is not merely a rubber stamp exercise. The issuing authority must exercise their own judgment because it is *their* state of mind that is paramount to the actual decision to issue a warrant.[8] This independent scrutiny of evidence is the principle means of protection for the rights and interests of those who stand to be affected by the execution of a warrant. The Report strongly endorsed this reasoning as a matter of principle (p.57), which was bolstered by its findings that the internal scrutiny of both the strength of evidence and appropriateness of a raid was clearly inadequate (pp.1, 52, 58, 62, 70).

These cautions were not followed by the magistrate in this case. The warrant was granted on the basis of a two-page affidavit which nowhere indicated how many people might be on the premises. No questions were asked of the informant, which means the magistrate cannot have had any idea how many people might be searched. Had the potential number of people searched been realised by the magistrate, the enormity of the raid should have provoked a very detailed questioning of the informant. It would have been much better for everyone concerned if the flaws in the affidavit had been discovered at this stage. There seems little point imagining questions the magistrate might have asked, but perhaps we can ask some questions of him. Does he feel those hundreds of people who were searched and charged with nothing would believe that their rights were given sufficient weight in his determination? Does he believe that the granting of such a warrant without question provides a basis for Victorians to have confidence in the magistracy?

In a recent Tasmanian case, in the process of examining the validity of a search warrant for a private dwelling, a Supreme Court judge drew a detailed list of the factors relevant to the issue of a warrant in order to provide clarification for the police who sought, and justices who issued, warrants.[9] Perhaps Victoria needs a similarly instructive judge.

Future directions

Many Victorians will not be surprised by the Deputy Ombudsman's reluctance to call police to task over the use of strip searching powers. It is in keeping with earlier precedents. A recent inquiry into the State's Office of Corrections, which investigated numerous complaints from prison visitors and community legal centres about the unnecessary and intimidatory use of strip searching by prison staff, found that there was actually a very low level of searching, and prison governors were too reluctant to order searches. The Report went on to reject complaints that searches were used as a means of harassment and called on the Office of Corrections to counter the 'false and sometimes malicious' allegations about its policies.[10] In his 1990-91 *Annual Report* (p.50), the Victorian Ombudsman satisfied himself that the Minister for Police and Emergency Services was empowered to authorise random searching of visitors and prisoners, so it should be accepted as 'a normal part of prison life'.[11] Yet another recent gem, reported in the *Age* on 25 January, was the strip search of a visiting singer who had placed her feet on the bulk-head during a flight. No-one seemed to have thought that having passed through the standard terminal metal detector, she was unlikely to be carrying a concealed weapon.

However, even an organisation as intransigent as the Victoria Police must have sensed that the unchecked use of search powers could not continue. Perhaps in anticipation of the inevitable need for some public action, the police began reconsidering their own guidelines for the initiation and conduct of searches almost immediately after the Tasty raid. At the end of his Report the Deputy Ombudsman endorsed these new guidelines and recommended that they be implemented as soon as possible (p.69). On 23 January 1995 the latest guidelines, drawn up by a working party of members from the crime and internal investigations units, was released. The new document acknowledges that the need for revisions came from a perceived public concern and confusion in the force about the current state of search powers.

The guidelines are short on detail but the main principles can be easily summarised. The need to consider each case on its circumstances is stressed, and the use of both generalised suspicions and guidelines without full regard to the case at hand is advised against. However, this is tempered by the disturbing assertion that 'where a warrant to search a prem-

ises includes the searching of persons there is no requirement at law that reasonable grounds for the searching of each such person must be established, provided that the legislation itself is silent on the issue'. This demonstrates that the Deputy Ombudsman's Report has not eradicated the possibility of a repetition of the Tasty raid. Nonetheless, there are some positive aspects of the new document. The intrusive nature of searches, especially strip searches, or 'full' searches as they are termed, and the need for clear legal authority before they may be conducted, is repeatedly emphasised. The privacy of suspects is meant to be a prime consideration at all times. Unnecessary people should not be present, and searches within the range of video monitors are to be avoided. Cross-gender searching is not authorised, and all searches must be conducted with due consideration for the privacy, dignity, modesty and rights of the person concerned. All officers are authorised to conduct pat down searches, but strip searches require the approval of a Duty Inspector, District Supervisor or the officer on call in country districts. The express approval of a district or divisional commander is required if the search of a large number of people at a public venue is contemplated. There are lengthy requirements for the recording of details about the conduct of all searches and any requests for strip searches that are refused. Despite the apparent emphasis on privacy, the recurring reasons for the cautious approach espoused in the guidelines seems to be an anxious desire, expressed several times, to avoid allegations of misconduct and any potential personal liability that might flow from a search conducted without proper legal authority.

While these revisions contain many admirable statements, the further guidelines do little more than add another layer of information to an already confusing area. The Deputy Ombudsman's Report stated that he had received legal advice that a warrant issued under s.81 of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic.) was sufficient to authorise strip searches of suspects. He then touched on the confusion about the overlap between s.81 and the investigative powers contained in the *Crimes Act 1958* (Vic.), Part 3, Division 30A, and made a brief suggestion for legislative clarification (p.58). That there is some uncertainty as to how the forensic procedures in that Act interact with s.81 has been discussed recently in this journal ((1994) *Alt.LJ* 19(6) 289). This author disagrees with the view put there that the procedures in the *Crimes Act* are intended to 'cover the field' in regard to the searching of suspects. Neither the legislation itself nor the second reading speech can support that view.[12] However, the idea that those provisions *should* be the sole authority under which suspects in Victoria may be subjected to forensic procedures has a great deal of logical force.

Placing the legal authority for police to take finger and palm prints, blood samples, photographs, and of course strip search, into a single source could serve as the foundation to develop clear and mandatory requirements for each procedure. Different procedures could be subjected to differing standards of proof, suspicion or reasons before they could be performed. The more serious the procedure, the more stringent the proof. The very strictest standards should be reserved for the taking of blood samples because the procedure is so invasive, but searching also merits stringent control. Pat down or frisk searches could be made an incidental power of arrest. Admittedly, frisking can be extremely degrading and intimidating, especially for women, but giving police this power would significantly diffuse their inevitable opposition to stricter criteria for more intrusive forms of searching. Strip searches, being obviously more serious, should require the approval of a magistrate, and a separate application should be lodged for every person it is proposed to search. (This would enable a specific officer to be directly accountable for both the decision to institute a search and the recording of relevant information). The person to be searched should be allowed to have an observer of their choice present, and to insist that searches be performed only at nominated places. (This would prevent the use of random searches on the streets and generalised searches of large groups of people without good and proper reason).[13] The procedures for the conduct of a search should be phrased in clear and mandatory terms. Special provision could be made for emergency situations, with the mandatory proviso that the officer who conducts an emergency search be required to explain to the suspect, and subsequently in writing to a senior officer and a magistrate, the reasons for an emergency search.

Ultimately, however, it is not enough to just centralise and clarify the powers under which intrusive police procedures may be performed. A reconsideration of strip search powers must also clarify the consequences of invalidly exercised powers, for both the use of any evidence gained and the forms of redress available to aggrieved citizens. An attractive option for the latter is to directly transfer any civil liability that police officers might personally incur onto the state. This has been done in other jurisdictions without calamitous results.[14] Such a device defuses the politically explosive issue of liability for the police, but still plainly recognises that legal and financial responsibility for the incorrect and improper exercise of coercive legal powers belongs ultimately to the state. The current Victorian Government wasted little time in conferring more powers on its police force; it must now endow it with more responsibility.

References

1. Kirby, M., 'Civil Liberties - The Challenges Ahead', (1994) 11(1) *Civil Liberty 5,* Victorian Council of Civil Liberties.
2. Issue of a search warrant by a magistrate or justice, though it must be performed in a judicial manner, is an administrative function: *Love v A-G for NSW* (1990) 169 CLR 307, 321; *Macleod* (1991) 61 *A.Crim.R.* 465, 474.
3. George v Rockett (1990) 170 CLR 105, 111-2; *Macleod* above at 472, 474.
4. This formulation draws closely from the unanimous High Court in *George v Rockett* above at 115–8.
5. There is authority that a warrant must be executed in a reasonable manner: *Bartlett v Weir* (1994) 72 A.Crim.R. 511, 518; *Baigent's case* [1994] 3 NZLR 667, 673.
6. *George v Rockett* above at 110. See also *Coco v The Queen* (1994) 169 CLR 427, 437–8.
7. *George v Rockett* above at 115–8; *Tillet; Ex parte Newton* (1969) 14 FLR 101, 106.
8. *Baker v Campbell* (1983) 153 CLR 52, 81.
9. *Macleod* above at 473–5.
10. Lynne, P., *Inquiry into the Victorian Prison System,* VGP, 1993, pp.109–117, 229–230.
11. The police similarly dismissed the strip search of a demonstrator at the Albert Park Grand Prix site as 'just one of those things': *The Melbourne Times,* 25.1.95, p.3.
12. See the 2nd reading speech: *Victoria Parliamentary Debates(Assembly),* 28 October 1993, pp.1456–60.
13. On the former see, for example,. the strip search of two Aboriginal women at 1:30 a.m. behind a shrub next to a highway: NSW Ombudsman, *19th Annual Report (1993–94)* p.62.
14. See, for example, *Statutory Authorities (Protection from Liability of Members) Act 1993* (Tas.) s.4(2); *Correctional Services Act 1982* (SA) ss.60a(1), 86a(2). Arguably s.23(1)(b) of the *Crown Proceedings Act 1958* (Vic.) already achieves this result, but an express provision for the incorrect strip searching would greatly weaken police resistance to reforms.