New South Wales

Police Powers (Drug Detection Dogs) Act 2001 No 115

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New South Wales

Police Powers (Drug Detection Dogs) Act 2001 No 115

Act No 115, 2001

An Act with respect to the use of dogs by police officers to detect prohibited drugs and plants. [Assented to 14 December 2001]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Police Powers (Drug Detection Dogs) Act 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

authorised justice has the same meaning as it has in the *Search Warrants Act 1985*.

drug offence means the possession, control or supply by a person of any prohibited drug or prohibited plant in contravention of the *Drug Misuse and Trafficking Act 1985*.

function includes a duty, and ***exercise*** a function includes perform a duty.

general drug detection—see section 5.

premises means any building, structure, vehicle, vessel or aircraft and any place, whether built on or not.

prohibited drug has the same meaning as it has in the *Drug Misuse and Trafficking Act 1985*.

prohibited plant has the same meaning as it has in the *Drug Misuse and Trafficking Act 1985*.

public place includes:

(a) a place (whether or not covered by water), or part of premises, that is open to the public or is used by the public, whether or not on payment of money or other consideration, whether or not the place or part is 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

(b) a road or road related area,

but does not include a school.

4 General authority to use drug detection dogs

(1) If a police officer is authorised to search a person for the purpose of detecting a drug offence, the officer is entitled to use a dog for that purpose.

(2) A police officer is, for the purpose of detecting a drug offence, entitled to be accompanied by a dog under the officer's control if the officer is entitled to enter, or be in or on, particular premises in the exercise of the officer's functions.

(3) Neither the State nor a police officer is liable to any action, liability, claim or demand merely because a dog entered, or was in or on, premises as provided by subsection (2).

Part 2 General drug detection using dogs

5 Meaning of "general drug detection"

For the purposes of this Act, ***general drug detection*** is the detection of prohibited drugs or plants in the possession or control of a person, except during a search of a person that is carried out after a police officer reasonably suspects that the person is committing a drug offence.

6 Use of dogs for general drug detection authorised

A police officer is authorised to use a dog to carry out general drug detection, but only as provided by this Part.

7 General drug detection with dogs in authorised places

(1) A police officer may, without a warrant, use a dog to carry out general drug detection in relation to the following persons:

(a) persons at, or seeking to enter or leave, any part of premises being used for the consumption of liquor that is sold at the premises (other than any part of premises being used primarily as a restaurant or other dining place),

(b) persons at, or seeking to enter or leave, a public place at which a sporting event, concert or other artistic performance, dance party, parade or other entertainment is being held,

(c) persons on, or seeking to enter or leave, a public passenger vehicle that is travelling on a route prescribed by the regulations, or a station, platform or stopping place on any such route.

(2) In this section, ***public passenger vehicle*** means a train, light rail vehicle or bus that is used to provide a public passenger service.

8 General drug detection with dogs by warrant

(1) A police officer may use a dog to carry out general drug detection if authorised to do so by a warrant under this section.

(2) A police officer who has reasonable grounds for believing that the persons at any public place may include persons committing drug offences may apply to an authorised justice for a warrant under this section.

(3) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a warrant authorising any police officer to use a dog to carry out general drug detection in the public place during the period or periods specified in the warrant.

(4) An application for a warrant under this section must disclose whether any general drug detection to be carried out under the warrant will be part of a covert police operation.

(5) Part 3 of the *Search Warrants Act 1985* applies (with any necessary or prescribed modification) to a warrant issued under this section.

9 Provisions relating to general drug detection

(1) A police officer carrying out general drug detection under this Part is to take all reasonable precautions to prevent the dog touching a person.

(2) A police officer is required to keep a dog under control when the officer is using the dog to carry out general drug detection under this Part.

(3) General drug detection under this Part may be carried out as part of a covert police operation, but only if it is authorised by a warrant under section 8.

(4) The provisions of this Part do not affect:

(a) the search of a person whom a police officer reasonably suspects is committing a drug offence, or

(b) any search of premises that does not involve a search of persons in or on the premises.

Part 3 Miscellaneous

10 Act does not confer power of entry or detention

Nothing in this Act confers on a police officer a power:

(a) to enter any premises that the officer is not otherwise authorised to enter, or

(b) to detain a person who the officer is not otherwise authorised to detain.

11 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to the keeping of records relating to the exercise of powers conferred on police officers by this Act.

12 Amendment of Search Warrants Act 1985 No 37

The *Search Warrants Act 1985* is amended by inserting in the definition of ***search warrant*** in section 10, in alphabetical order of Acts:

section 8 of the *Police Powers (Drug Detection Dogs) Act 2001*

13 Monitoring by Ombudsman

(1) For the period of 2 years after the commencement of this section, the Ombudsman is to keep under scrutiny the exercise of the powers conferred on police officers by this Act.

(2) For that purpose, the Ombudsman may require the Commissioner of Police to provide information about the exercise of those powers.

(3) The Ombudsman must, as soon as practicable after the expiration of that 2-year period, prepare a report on the exercise of those powers and furnish a copy of the report to the Minister and the Commissioner of Police.

(4) The Minister is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Minister receives the report.

(5) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.

(6) The report:

(a) is, on presentation and for all purposes, taken to have been laid before the House, and

(b) may be printed by authority of the Clerk of the House, and

(c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and

(d) is to be recorded:

(i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and

(ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day of the House after receipt of the report by the Clerk.

[Minister's second reading speech made in—

Legislative Council on 6 December 2001

Legislative Assembly on 14 December 2001 am]

BY AUTHORITY