



New South Wales

Police Powers (Drug Detection in Border Areas Trial) Act 2003 No 28

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New South Wales

Police Powers (Drug Detection in Border Areas Trial) Act 2003 No 28

Act No 28, 2003

An Act to confer power on police officers to stop vehicles, and use dogs, for drug detection in border areas; and for other purposes. [Assented to 8 July 2003]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Police Powers (Drug Detection in Border Areas Trial) Act 2003*.

2 Commencement

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

3 Definitions

(1) In this Act:

border area means land within this State that is located:

- (a) within 100 kilometres of the border of this State with Victoria or South Australia, or
- (b) within a 20 kilometre radius from the intersection of Lachlan and Moppett Streets, Hay, or
- (c) within a 20 kilometre radius from the intersection of the Newell and Sturt Highways, Narrandera, or
- (d) within a 20 kilometre radius from the place known as the Birdcage and located on the Sturt Highway approximately at latitude 34 degrees 35 minutes 50 seconds South and longitude 145 degrees 56 minutes 4 seconds East.

drug detection warrant means a warrant issued under section 8.

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*.

eligible Judge means a Judge in relation to whom a consent under section 4 (2) and a declaration under section 4 (3) are in force.

exercise a function includes perform a power, authority or duty.

function includes a power, authority or duty.

general drug detection means the detection of prohibited drugs or prohibited plants in the possession or under the 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.

indictable quantity of a prohibited drug or prohibited plant has the same meaning as it has in the *Drug Misuse and Trafficking Act 1985*.

Judge means a Judge of the Supreme Court.

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*.

search area means an area or areas for which a drug detection warrant is in force.

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

vehicle includes a registrable vehicle within the meaning of the *Road Transport (Vehicle Registration) Act 1997*.

- (2) In this Act, a reference to a search of a person or vehicle that a police officer is entitled to carry out is a reference to a search that the police officer is authorised to carry out under any other Act or law.
- (3) Notes included in this Act do not form part of this Act.

4 Eligible Judges

- (1) A Judge is an eligible Judge who may issue a drug detection warrant if the Judge is a Judge in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force.
- (2) A Judge may, by instrument in writing, consent to be nominated by the Attorney General under subsection (3).
- (3) The Attorney General may, by instrument in writing, declare Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of this Act.
- (4) An eligible Judge has, in relation to the exercise of a function conferred on an eligible Judge by this Act, the same protection and immunity as the Judge has in relation to proceedings in the Supreme Court.

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- (5) An eligible Judge who has given consent under this section may, by instrument in writing, revoke the consent.
- (6) The Attorney General may, by instrument in writing, amend or revoke a declaration under this section.

Part 2 Drug detection in border areas

5 Police authorisations for drug detection warrants

- (1) A police officer may apply to the Commissioner or a Deputy Commissioner of Police for an authorisation to apply for a drug detection warrant.
- (2) The application for an authorisation is to be made in writing and contain the following particulars:
 - (a) a statement identifying the search area for the proposed warrant,
 - (b) the grounds on which the warrant is to be sought,
 - (c) a plan of the operation proposed to be carried out, including the number of officers and dogs proposed to be used,
 - (d) a statement setting out the consultation that has taken place with the Roads and Traffic Authority,
 - (e) a statement as to whether the proposed search area has been the subject of earlier applications for an authorisation or warrant and, if so, whether the applications were granted,
 - (f) any other particulars prescribed by the regulations.
- (3) The Commissioner or a Deputy Commissioner of Police may authorise a police officer to apply for a drug detection warrant if the Commissioner or Deputy Commissioner suspects on reasonable grounds that any part or all of the search area is being, or is to be, used on a regular basis for or in connection with the supply of indictable quantities of prohibited drugs or prohibited plants.
- (4) An authorisation is to be in writing and must contain any matters prescribed by the regulations.
- (5) An authorisation has effect for the period specified in the authorisation (being a period not exceeding 72 hours).
- (6) An authorisation may be cancelled by the Commissioner or a Deputy Commissioner of Police, by order in writing, at any time.
- (7) On cancellation of an authorisation, any drug detection warrant to which the authorisation relates is taken to be revoked.
- (8) The Commissioner or a Deputy Commissioner of Police may not delegate a function conferred on the Commissioner or a Deputy Commissioner under this Act.

6 Drug detection warrants

- (1) A police officer may apply to an eligible Judge for a drug detection warrant if:
 - (a) the police officer suspects on reasonable grounds that any part or all of the search area proposed for the warrant is being, or is to be, used on a regular basis for or in connection with the supply of indictable quantities of prohibited drugs or prohibited plants, and
 - (b) the application has been authorised in accordance with this Act by the Commissioner or a Deputy Commissioner of Police.
- (2) An application must contain the following:
 - (a) a statement identifying the search area for the proposed warrant,
 - (b) the grounds on which the warrant is sought,
 - (c) a plan of the operation proposed to be carried out, including the number of officers and dogs proposed to be used,
 - (d) the authorisation to apply for the warrant,
 - (e) the proposed expiry date of the warrant,
 - (f) any other particulars prescribed by the regulations.

7 Search areas

The search area for which a drug detection warrant is issued must consist of not more than 3 areas, each of which must:

- (a) be located in a border area, and
- (b) be not more than one square kilometre in area.

8 Issue of drug detection warrant

- (1) An eligible Judge to whom an application for a drug detection warrant is made may issue a drug detection warrant for a search area if satisfied that:
 - (a) there are reasonable grounds for suspecting that any part or all of the search area proposed for the warrant is being, or is to be, used on a regular basis for or in connection with the supply of indictable quantities of prohibited drugs or prohibited plants, and

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- (b) the application has been authorised in accordance with this Part, and
 - (c) the proposed search area complies with this Part.
- (2) An eligible Judge who issues a drug detection warrant may specify in the warrant conditions for the exercise of functions under the warrant, if the eligible Judge is of the opinion that it is appropriate to do so.
- (3) A drug detection warrant is to be in the form (if any) prescribed by the regulations.

9 Functions under drug detection warrants

- (1) A police officer who is executing a drug detection warrant may exercise any or all of the following functions in respect of the search area and vehicles and persons in the search area:
- (a) establish a check point,
 - (b) stop vehicles at a check point,
 - (c) if a vehicle is stopped at a check point or stopped in the search area, use a dog to carry out general drug detection in relation to a person in or on, or seeking to enter or leave, the vehicle or in relation to the vehicle,
 - (d) seize and detain any prohibited drug or prohibited plant in the possession or under the control of a person in contravention of the *Drug Misuse and Trafficking Act 1985* found as a result of general drug detection using a dog or any search of a person that the police officer is entitled to carry out,
 - (e) seize and detain any thing found in the course of general drug detection using a dog or any such search that the police officer suspects on reasonable grounds may provide evidence of the commission of an indictable offence,
 - (f) give reasonable directions to facilitate the exercise of any powers under this section to any person in the search area.
- (2) The functions conferred by subsection (1) are subject to any conditions specified in the drug detection warrant.
- (3) A police officer must, before exercising a function under subsection (1) (c), provide the person subject to the exercise of the function with the following:
- (a) evidence that the police officer is a police officer (unless the police officer is in uniform),

- (b) the name of the police officer and his or her place of duty,
- (c) the reason for the exercise of the power and the nature of the procedures to be carried out,
- (d) a warning that failure or refusal to comply with a request of the police officer, in the exercise of the function, may be an offence.

10 Check points

A police officer who establishes a check point under this Part must ensure that signs are erected to indicate the presence of the check point.

11 General drug detection using dogs

- (1) In addition to any other authority conferred on a police officer by or under any other Act or law, a police officer is authorised to use a dog to carry out general drug detection as provided by this Part.
- (2) A police officer using a dog to carry out general drug detection under a drug detection warrant must comply with the following:
 - (a) the police officer is to take all reasonable precautions to prevent the dog touching a person,
 - (b) the police officer is required to keep the dog under control,
 - (c) the police officer must not allow the dog to enter any driver or passenger area of a vehicle, except as provided by paragraph (d),
 - (d) the police officer may allow the dog to enter any driver or passenger area of a vehicle only if the police officer is entitled to search it and all persons have left the area to be searched,
Note. For the purposes of this Act, a police officer is taken to be entitled to search a person or vehicle if the officer is entitled to do so under another Act or law (see section 3 (2)).
 - (e) the police officer must not direct a person to open the door of a vehicle unless the police officer is entitled to search the person or vehicle or is otherwise entitled to give such a direction,
 - (f) the police officer must not direct a person to open an area of a vehicle that is not a driver or passenger area of the vehicle, unless the vehicle is used for commercial purposes (including the transport of goods) or is a public passenger vehicle.

- (3) A police officer using a dog to carry out general drug detection under a drug detection warrant may:
- (a) if a vehicle is used for commercial purposes (including the transport of goods), or is a public passenger vehicle, allow the dog to enter an area of the vehicle that is not a driver or passenger area of the vehicle (for example, the boot, back of a goods vehicle or luggage hold of a coach), and
 - (b) use the dog for general drug detection outside any vehicle.

12 Notice to be given to affected persons

- (1) A police officer who exercises a function under a drug detection warrant must give the person subject to the exercise of the function a written notice containing the following particulars:
- (a) the name of the police officer and his or her place of duty,
 - (b) the date, time and place at which the function was exercised.
- (2) The notice must be given before, on or as soon as practicable after exercising the function.

13 Other requirements relating to functions

A police officer who exercises a function under a drug detection warrant must ask for the person's co-operation and carry out the function:

- (a) in a way that provides reasonable privacy for the person subject to the exercise of the function, and
- (b) as quickly as is reasonably practicable.

14 Duration of drug detection warrants

- (1) An eligible Judge who issues a drug detection warrant must specify in the warrant the time when the warrant is to expire.
- (2) The time specified is to be not later than 72 hours after the issue of the drug detection warrant.
- (3) A drug detection warrant ceases to have effect if any of the following events occurs:
- (a) if the time specified in the warrant expires,
 - (b) if the warrant is revoked by the eligible Judge who issued the warrant,
 - (c) if the authorisation to apply for the warrant is cancelled.

- (4) A drug detection warrant cannot be extended but a further drug detection warrant may be issued for the same or part of the same area.

15 Application of provisions of Search Warrants Act 1985

Sections 11 (2) and (3), 12A (2) (a) and (3), 12B, 12C (1), 13, 16, 18 and 21–23 of the *Search Warrants Act 1985* apply to drug detection warrants issued by an eligible Judge in the same way that they apply to search warrants issued under that Act by an authorised justice.

16 Offences relating to drug detection warrants

- (1) A person must not, without reasonable excuse, obstruct or hinder a person executing or assisting in the execution of a drug detection warrant.
- (2) A person must not, without reasonable excuse:
- (a) fail or refuse to stop a vehicle the person is driving when directed to do so by a police officer under this Part, or
 - (b) fail or refuse to comply with any other direction given by a police officer under this Part.

Maximum penalty: 10 penalty units.

Part 3 Miscellaneous

17 Search records to be kept

- (1) The Commissioner of Police must cause a record to be kept of the number of drug detection warrants obtained, and the number of operations conducted, under this Act and of the following matters in relation to each operation under any such warrant:
 - (a) the number of police officers and the number of dogs used,
 - (b) the duration of the operation,
 - (c) the number of vehicles stopped and the number of vehicles searched as a result of the operation,
 - (d) the number of persons searched as a result of the operation,
 - (e) the reason for each search conducted as a result of the operation,
 - (f) the number and nature of things seized and detained under this Act, including the kinds and quantity of any prohibited drugs or prohibited plants found, as a result of each search or other action undertaken.
- (2) A summary of the information recorded under subsection (1) is to be included in the annual report of NSW Police under the *Annual Reports (Departments) Act 1985*.

18 Search warrants and other powers not affected

- (1) Nothing in this Act prevents a police officer from doing any of the following:
 - (a) applying for a search warrant under the *Search Warrants Act 1985*,
 - (b) exercising a function under the *Police Powers (Drug Detection Dogs) Act 2001*, including applying for a warrant under that Act,
 - (c) exercising any other function under this or any other Act or law at, or in relation to, a search area or a vehicle or person in a search area,or affects the exercise of any such function.
- (2) The provisions of this Act do not affect or apply to the search of a person whom a police officer reasonably suspects is committing a drug offence or any other search of a person or a vehicle that a police officer is entitled to carry out.

- (3) Nothing in this Act confers on a police officer:
- (a) except as provided by section 11 (3) (a), a power to enter a vehicle, or
 - (b) a power to search a person.

19 Regulations

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.

20 Onus of proof of reasonable excuse

The onus of proof of reasonable excuse in proceedings for an offence against this Act lies on the person accused of the offence.

21 Proceedings for offences

Proceedings for an offence against this Act are to be dealt with summarily by a Local Court.

22 Monitoring of operation of Act by Ombudsman

- (1) For the period of 9 months from the date of commencement of this section, the Ombudsman is to keep under scrutiny the exercise of the functions conferred on police officers under this Act.
- (2) For that purpose, the Ombudsman may require the Commissioner of Police to provide information about the exercise of those functions.
- (3) The Ombudsman must, not later than 3 months after the expiration of that 9-month period, prepare a report of the Ombudsman's work and activities under this section and furnish a copy of the report to the Attorney General, the Minister for Police and the Commissioner of Police.
- (4) Any such report may, but is not required to, contain information about the exercise of the functions conferred on police officers under this Act that relates to a period after the expiration of that 9-month period.
- (5) The Attorney General is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Attorney General receives the report.

- (6) If a House of Parliament is not sitting when the Attorney General seeks to lay a report before it, the Attorney General may present copies of the report to the Clerk of the House concerned.
- (7) 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.

23 Expiry of Act

This Act expires on the day that is 18 months after the commencement of section 8.

[Second reading speech made in—

Legislative Council on 25 June 2003

Legislative Assembly on 2 July 2003]

BY AUTHORITY