

Police Powers (Drug Detection Trial) Act 2003

No 28

[2003-28]



New South Wales

Status Information

Currency of version

Repealed version for 6 July 2009 to 7 July 2011 (accessed 18 November 2024 at 19:16)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Police Powers (Drug Detection in Border Areas Trial) Act 2003
- **Note**
This Act expired on 23.8.2008 — see section 23.
- **Repeal**
The Act was repealed by Sch 4 to the *Statute Law (Miscellaneous Provisions) Act 2011 No 27* with effect from 8.7.2011.

Authorisation

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Contents

Long title	4
Part 1 Preliminary	4
1 Name of Act	4
2 Commencement	4
3 Definitions	4
4 Designated officer	5
Part 2 Drug detection	5
5 Authorisation to exercise powers conferred by Act	5
6 Application for authorisation	6
7 Restrictions on search areas	6
8 Grant of authorisation	7
9 Functions under authorisation	7
10 Check points	9
11 General drug detection using dogs	9
12 Notice to be given to affected persons	10
13 Other requirements relating to functions	10
14 Duration of authorisation	10
15 Revocation of authorisation	10
15A Defects in authorisations	10
15B Report on conduct of operation	11
16 Offences relating to authorisations	11

Part 3 Miscellaneous	11
17 Search records to be kept.....	11
18 Search warrants and other powers not affected.....	12
18A Use of assistants	12
19 Regulations.....	12
20 Onus of proof of reasonable excuse	12
21 Proceedings for offences	13
22 Monitoring of operation of Act by Ombudsman	13
23 Revival and expiry of Act.....	14

Police Powers (Drug Detection Trial) Act 2003 No 28



New South Wales

An Act to confer power on police officers to stop vehicles, and use dogs, for drug detection in outer metropolitan areas; and for other purposes.

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

3 Definitions

(1) In this Act:

authorisation means an authorisation granted and in force under Part 2.

designated officer has the meaning given by section 4.

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*.

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*.

outer metropolitan area means any land within this State that is located outside

the metropolitan area of the State (with the metropolitan area of the State being the area to the east of the State bounded by, and including, the local government areas of Newcastle City, Lake Macquarie City, Wyong, Gosford City, Hawkesbury City, Blue Mountains City, Penrith City, Liverpool City, Camden, Campbelltown City, Wollongong City and Shellharbour City).

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 an authorisation 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 Designated officer

- (1) For the purposes of this Act, a **designated officer** means:
 - (a) the Commissioner of Police, or
 - (b) a Deputy Commissioner of Police, or
 - (c) an Assistant Commissioner of Police, or
 - (d) a police officer authorised by the Commissioner of Police to exercise the functions of a designated officer under this Act.
- (2) No more than 2 police officers may be authorised by the Commissioner of Police at any one time to exercise the functions of a designated officer under this Act.
- (3) Any police officer so authorised must be a police officer of or above the rank of Superintendent.

Part 2 Drug detection

5 Authorisation to exercise powers conferred by Act

- (1) A designated officer may, on application made by a police officer in accordance with

this Act, grant an authorisation that authorises the exercise of the powers conferred by this Act in connection with a drug detection operation.

- (2) In this section, a **drug detection operation** means an operation carried out for the purposes of obtaining evidence of, or frustrating, any criminal activity involving the supply of prohibited drugs or prohibited plants, or for the purposes of arresting any person involved in any such criminal activity, or for any combination of those purposes.

6 Application for authorisation

- (1) A police officer who suspects on reasonable grounds that any part or all of an 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 may apply to a designated officer for an authorisation.
- (2) An 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 authorisation,
 - (b) the grounds on which the authorisation 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) 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 any other application for an authorisation within the last 12 months and, if so, whether the application was granted,
 - (f) a statement outlining the results of any operation carried out pursuant to an authorisation in the proposed search area within the last 12 months,
 - (g) the proposed expiry date for the authorisation,
 - (h) any other particulars prescribed by the regulations.
- (3) The designated officer to whom the application is made may require the applicant to provide such additional information concerning the application as is necessary for the designated officer's proper consideration of the application.

7 Restrictions on search areas

The search area for which an authorisation is granted must consist of not more than 3 areas, each of which must:

- (a) be located in an outer metropolitan area, and
- (b) be not more than 5 square kilometres in area.

8 Grant of authorisation

- (1) A designated officer to whom an application for an authorisation is made may grant the authorisation only if satisfied that:
 - (a) there are reasonable grounds for suspecting that any part or all of the search area proposed for the authorisation 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 nature and extent of the operation proposed to be carried out is appropriate to the suspected criminal activity, and
 - (c) the application has been made in accordance with this Part, and
 - (d) the proposed search area complies with this Part.
- (2) In considering the matters referred to in subsection (1) (a) and (b), the designated officer is to have regard to the following:
 - (a) the reliability of any information on which the application is based,
 - (b) the likelihood of success of the proposed operation compared with the likelihood of success of any other law enforcement operation that it would be reasonably practicable to conduct for the same purposes.
- (3) The authorisation may be granted unconditionally or subject to conditions.
- (4) An authorisation is to be in the form (if any) prescribed by the regulations.
- (5) If a designated officer grants an authorisation, the designated officer is to make a record of the reasons for which the designated officer was satisfied of the matters referred to subsection (1) (a) and (b).
- (6) If an application for an authorisation is refused by a designated officer, the police officer who made the application (and any other police officer who is aware of the application) may not make a further application for the same authorisation to that designated officer or any other designated officer unless the further application provides additional information that justifies the making of a further application.

9 Functions under authorisation

- (1) A police officer may, in accordance with an authorisation, exercise any or all of the following functions in respect of the search area and vehicles and persons in the search area:

- (a) establish one or more check points,
 - (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 authorisation.
- (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) (Repealed)
- (4) If a police officer exercises a function under this Act that involves making a request that a person is required to comply with by law, the police officer must, as soon as is reasonably practicable after making the request, provide the person the subject of the request with:
- (a) a warning that the person is required by law to comply with the request (unless the person has already complied or is in the process of complying), and
 - (b) if the person does not comply with the request after being given that warning, and the police officer believes that the failure to comply by the person is an offence, a warning that the failure to comply with the request is an offence.

10 Check points

- (1) A police officer may, at any time during the period in which an authorisation remains in force, remove a check point from one location and re-establish it at any other location in the search area.
- (2) A police officer who establishes a check point must ensure that adequate measures are taken to ensure the safety of persons and vehicles approaching 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 an authorisation 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 an authorisation 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 an authorisation 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 an authorisation 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 authorisation

- (1) An authorisation has effect, unless sooner revoked, during the period beginning at the time it is given and ending at a time specified in the authorisation by the designated officer who grants the authorisation.
- (2) The period during which an authorisation has effect must not exceed 14 days, beginning with the day on which it is granted.
- (3) An authorisation cannot be extended but a further authorisation may be granted for the same or part of the same area.

15 Revocation of authorisation

- (1) The police officer who gives an authorisation, or a designated officer of a more senior rank, may revoke an authorisation at any time.
- (2) A revocation of an authorisation does not affect anything lawfully done in reliance on the authorisation before it ceased to have effect.

15A Defects in authorisations

An application for an authorisation, and any authorisation granted on the basis of such an application, is not invalidated by any procedural defect, other than a defect that affects the substance of the application or authorisation in a material particular.

15B Report on conduct of operation

Within 14 days after the expiry of an authorisation, the police officer to whom the authorisation was granted must cause a report to be given to the designated officer who granted the authorisation:

- (a) stating whether or not the operation proposed to be carried out under the authorisation was carried out, and
- (b) if the operation was carried out—setting out briefly the result of the operation (including a brief description of anything seized), and
- (c) if the operation was not carried out—setting out briefly the reasons why the operation was not carried out, and
- (d) containing such other particulars as may be prescribed by the regulations.

16 Offences relating to authorisations

- (1) A person must not, without reasonable excuse, obstruct or hinder a person exercising functions under an authorisation.
- (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 authorisations granted, and the number of operations conducted, under this Act and of the following matters in relation to each operation under any such authorisation:
 - (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 the NSW Police Force 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 *Law Enforcement (Powers and Responsibilities) Act 2002*,

(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.

18A Use of assistants

The functions conferred on a police officer under this Act may be exercised by the police officer with the aid of such assistants as the police officer considers necessary, subject to any conditions of the relevant authorisation.

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 the Local Court.

22 Monitoring of operation of Act by Ombudsman

- (1) For the period of 12 months from the date of commencement of Schedule 2 [1] to the *Police Powers Legislation Amendment Act 2006*, 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:
 - (a) require the Commissioner of Police or any public authority to provide information about the exercise of those functions, and
 - (b) inspect the records of the NSW Police Force at any time.
- (3) The Ombudsman must, not later than 3 months after the expiration of that 12-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 12-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 Revival and expiry of Act

(1) On the commencement of Schedule 2 [23] to the *Police Powers Legislation Amendment Act 2006* this Act is revived.

(2) This Act expires on the day that is 18 months after the revival of this Act.

Editorial note—

Schedule 2 [23] to the *Police Powers Legislation Amendment Act 2006* commenced on 23.2.2007.