

**LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT (SNIFFER DOGS—  
REPEAL OF POWERS) BILL 2016**

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**Bill introduced on motion by Ms Jenny Leong, read a first time and printed.**

**Second Reading**

**Ms JENNY LEONG** (Newtown) [10.11 a.m.]: I move:

That this bill be now read a second time.

In New South Wales the use of sniffer dogs by police on public transport, at festivals and in bars is not about effective drug control. It is about police intimidation and harassment. In bringing the Law Enforcement (Powers and Responsibilities) Amendment (Sniffer Dogs—Repeal of Powers) Bill 2016 to this place I am delivering on an election promise made to the people of the electorate of Newtown that if elected I would introduce a bill into this House to repeal the New South Wales drug dog program. The evidence is in and it is clear that this program, first introduced under the former Labor Government and continued and expanded under this Liberal Coalition Government, is a failure. As such, this bill seeks to bring an end to wasting public money on an ineffective program that simply does not work, and is nothing more than this Government, or the government of the day, using the NSW Police Force so that it can look as if it is being tough on drugs and law and order.

The object of this bill is to amend the Law Enforcement (Powers and Responsibilities) Act to limit the use of drug detection dogs to those circumstances where police officers have a warrant for their use. It does this by omitting part 2, division 2 of that Act, which provides for general powers relating to the use of drug detection dogs. This removes the power to use these dogs on public transport, at festivals and in bars unless a warrant is obtained. A warrant for use of dogs can still be obtained in circumstances where a police officer has reasonable grounds for believing people in a public place may be committing drug offences, and makes an application to an authorised officer for a warrant.

The Greens believe the current broad use of drug detection dogs in public places is an infringement of basic civil liberties. We are concerned that the use of police drug dogs is an intimidatory tactic, used to discriminate and to create fear. We are also concerned that funding the Drug Dog Detection Program is a highly ineffective use of public money as the evidence continues to show that drug detection dogs do not work. In 2015 the rate of false positives given by dogs averaged 75 per cent. That means that in three out of every four cases the dogs got it wrong, and members of the public were forced to undergo intrusive and humiliating public searches with no drugs found.

The most recent expansion of the drug dog program was to allow the dogs to operate on the entire Sydney train network. That expansion has been a clear policy failure, with 4,925 searches conducted between 1 January 2014 and 18 May 2015 of which 3,948—or more than 80 per cent—were false positives. Any other police program that was getting it wrong 75 per cent to 80 per cent of the time would be shut down immediately, and that should be the case with the drug dog program. Data obtained by my Greens

colleague in the other place Mr David Shoebridge makes it clear that the effectiveness of the program and the targeting of the program to certain areas are cause for grave concern. This information was reported in the *Huffington Post* in November 2015:

In 2014, 14,593 searches were conducted after a positive indication from a drug dog. Of those searches, only 3,830 found drugs meaning 10,763, or nearly 74 per cent, found no illicit drugs.

In the same year, 624 strip searches were conducted after positive indications from a drug dog, with only 233 yielding illicit drugs. That left 391 strip searches, or almost 63 per cent, where no drugs were found. In searches conducted by the Police Transport Command, only 20 per cent of searches found drugs.

That means more than 10,000 innocent people in this State had their rights violated and faced unjustified harassment in public spaces within the past year and nearly 400 people—391 to be exact—were subjected to the humiliation and trauma of being strip searched by police with no justification. We have been contacted by a former festival director of a national Australian music festival about what this looks like in practice. She described her firsthand experience of police action against drugs at festivals and major music events:

I was present at every festival, always around the gates before and at opening time, and watched every time with absolute dismay and horror as the police and their dogs intimidated the young kids (mostly 18-25 y.o.) coming to the festival to have a good time. So many of those kids were stripped searched by the police as a result of a sniffing dog. And then let go.

In 2013, in cases where drugs were found as a result of this program, most were small amounts for personal use, with only 2.44 per cent of positive searches resulting in a supply conviction. It is not just the ineffectiveness of this program that is of concern in relation to intimidation and harassment; it is also the worrying trend of where the most searches take place. As reported in the *Sydney Morning Herald* in December 2014—again based on data obtained by The Greens—"searches are not spread evenly across the city, with people at Redfern train station far more likely to be searched than those at Central or Kings Cross stations, even though Redfern searches are less likely to identify drugs".

In 2013, 1,000 searches were conducted at Redfern station. This meant that people were 6.5 times more likely to be searched at Redfern than at Central, even though Redfern has the highest false positive rate for sniffer dog indications of any local area command. We need to ask why. Why have successive New South Wales governments failed to act on unjustified drug searches as a result of sniffer dogs? Given that far fewer than 1 per cent of New South Wales illicit drug users are found with drugs during a drug operation—and that from 2007 to 2010, when New South Wales doubled the number of searches, we saw an increase in the rate of illicit drug use from 12.1 per cent to 13.8 per cent—it is clear that this is about something other than drug detection. It is certainly not about harm minimisation and catching the big dealers.

We also need to ask: Why Redfern? Redfern is an area with a long, strong and proud connection with Sydney's Aboriginal community, who have consistently faced the brunt of over-policing and disproportionate law and order agendas. It is also an area with a high proportion of young people and

students, and a station used by many who live in nearby public and community housing, all of whom are more likely to struggle to find the resources available to fight such harassment, intimidation and fear.

It is simply unacceptable. It is unsurprising, though very welcome, that the Redfern Legal Centre has been in contact with our office to express support for the bill. The ineffective nature of the drug dog program is not new and is not unknown. Yet we have seen successive New South Wales governments persist with this program. In 2006 the NSW Ombudsman released a review of the Police Powers (Drug Detection Dogs) Act 2001, which was introduced under Labor Minister for Police Michael Costa. The subsequent review by the NSW Ombudsman recommended decisively an immediate end to the program. The Ombudsman stated:

Despite the best efforts of police officers, the use of drug detection dogs has proven to be an ineffective tool for detecting drug dealers. Overwhelmingly, the use of drug detection dogs has led to public searches of individuals in which no drugs were found, or to the detection of (mostly young) adults in possession of small amounts of cannabis for personal use.

These findings have led us to question whether the drug dogs act will ever provide a fair, efficacious and cost effective tool to target drug supply. Given this, we have recommended that the starting point, when considering this report, is to review whether the drug dogs act should be retained at all.

Shamefully, despite the unambiguous recommendation from the 2006 review to end the drug dog program, successive New South Wales governments have continued to waste public money on it. The New South Wales Council for Civil Liberties has expressed serious concerns about this program. It is supportive of this bill and has written to our office to say:

The NSW Council for Civil Liberties has for years argued that the drug detection dogs program in New South Wales is a costly failure.

It targets users not the criminal suppliers. The dogs have a high rate of false positive causing public embarrassment to many. It provokes persons carrying drugs to consume them sometimes at great risk to health. It results in few convictions. There is no evidence that it deters drug use.

The program continues more for its visibility—police being seen to be doing something. We support this bill.

The impact on people's rights is not just felt by civil liberty advocacy organisations; it is felt by individuals in our community every day. One wrote to our office and said:

On a practical level, there is empirical evidence that the use of sniffer dogs does not meet its declared objectives, and is a waste of public funds and police resources. On a more fundamental level, the use of sniffer dogs—and the policing approach more generally than it signifies—represents an area of irrationality and even insanity in our society, that desperately needs changing. ...we know that guiltless citizens often feel intimidated by such policing, and actually the Police Force are doing themselves a disservice; rather than emphasising "community policing", as they pay lip service to, they are alienating another generation of youth through such practices.

Stories from those subjected to arbitrary searches have found their way into the media. The *Vice* magazine, reporting on the use of the drug dog program at the Sydney Gay and Lesbian Mardi Gras, quoted one individual who was intimidated by the searches inflicted on them by the New South Wales police. I quote:

"The handler was on the other side of the crowd. He made eye contact with me. I was nowhere near the dog, but as I was walking in and joined the line he walked through the crowd towards me. He put his hand on my backpack before the dog even indicated and then sat down."

It goes on to say that the person being searched, Tom, was then:

... led away by police officers to a tent nearby, where he was subjected to persistent questioning and his bag searched. He was then told to take off his clothes and squat before the officers. No drugs were found on him, as he didn't have any.

I am pleased to say that the NSW Gay and Lesbian Rights Lobby has expressed support for The Greens' bill that I have introduced today. It notes the effects that the drug dog program has had on the relationship between the New South Wales police and the lesbian, gay, bisexual, transgender and intersex [LGBTI] community. It writes:

...ensuring that the LGBTI community can maintain confidence in the New South Wales police requires constant efforts at improving responsiveness, both at an operational level and through reforms to policies and legal frameworks, including an end to the use of the drug detection dogs at events and venues, which have been shown to be ineffective in policing and harmful to individuals.

I have heard countless stories from the young, elderly, people with disability, and non-English speaking backgrounds about the fear they have felt when confronted by dark blue overall wearing police with dogs at train stations and on our streets. While it has been a long-term position of The Greens to oppose the use of sniffer dogs in our community, I also have direct experience of why this program just does not work. It was 3 July 2008 and I was having a drink with friends at the Bank Hotel in Newtown. I was due to meet my partner a bit later at the Coopers Hotel in King Street. While we were having a drink a group of police officers with sniffer dogs came into the bar in full uniform. The tension rose, the feeling of threat, fear, guilt and intimidation was palpable within the pub. A short time after the police dogs left the Bank Hotel I received a call from a friend who was with my partner at the Coopers Hotel. He sounded shaken up and said I should come down to the Coopers Hotel straightaway because my partner had been arrested.

I left my drink and raced down to King Street to see my friend standing on the footpath and my partner looking pale, in pain and sitting in handcuffs on the ground outside the pub. There were a number of police around, a few of them searching a man and having him drop his jeans in the public space. At this point you might think I will tell you that my partner had a joint on him, or was carrying a few pills. That is not the case. All he had in his possession was his Law Society of New South Wales solicitor's card. Neither the man in the pub who was searched nor my partner had any drugs on them. My partner was charged and had his rib broken by the police as a result of his offering legal assistance. In this case the charges were dismissed by the magistrate, including the requirement for the police to pay legal costs. We were successful eventually in a Supreme Court action, with a verdict in favour of my partner, and were awarded damages.

What has always concerned me about this incident is that not everybody who suffers this kind of intimidation is a lawyer and has the ability to engage in a fight for justice. The Greens will continue to stand up in Parliament and work with supporters in the community to call for laws that respect our civil liberties

and to end programs that are ineffective and aim to harass and intimidate people. Too many people face this intimidation, and it must stop. It is entirely reasonable for police to use drug dogs operations when necessary, if they are able to get a warrant. It is not reasonable for them to be used without a warrant and in failed programs such as the drug dogs program. It does not serve our community interest and it does not serve an agenda where we should be seeing a harm minimisation approach to drugs rather than a war on drugs that seeks to intimidate young people and cause fear in our community.

I urge those listening to this speech on all sides of the Chamber to consider the evidence in relation to this program and to have the courage to speak out. It does not work. It is not just The Greens who are saying this; a number of organisations are saying it also. The Ombudsman's report in 2006 said that this program does not work. The Greens are committed to ending this ineffective program and call on the Baird Government and the Labor Opposition to join us in recognising the clear reality that the New South Wales drug dogs program does not work. I call on all members to support this bill and put an end to it.

**Debate adjourned on motion by Mr Gareth Ward and set down as an order of the day for a future day.**