



## Police Powers (Drug Detection In Border Areas Trial)

Bill.

### Second Reading

**The Hon. JOHN HATZISTERGOS** (Minister for Justice, and Minister Assisting the Premier on Citizenship) [3.48 p.m.]: I move:

That this bill be now read a second time.

This bill has been developed as a measured response to ongoing activities of drug traffickers in this State. It establishes a trial of a new power for police to stop vehicles to employ a drug detection dog. The power requires the issue of a Supreme Court warrant and is issued on the basis of information suggesting the area in question is used or will be used for drug trafficking. The trial will be conducted in certain border areas of southern New South Wales. For several years now, NSW Police operations in southern New South Wales have identified that large quantities of cannabis are being smuggled over the border from Victoria and South Australia into New South Wales.

NSW Police has detected persons driving to these States with large amounts of cash and returning with large amounts of drugs. NSW Police has seized cannabis, heroin and amphetamine as well as cash and firearms during these operations. These are not small-time dealers; persons have been caught with as much as 24 kilograms of cannabis, which I am told has a street value of approximately \$500,000. Of course, police currently have a range of powers to stop and search vehicles for drugs. Under the Drug Misuse and Trafficking Act 1985, a police officer may stop and search a vehicle if he or she has a reasonable suspicion that drugs are in the vehicle. The Police Powers (Vehicles) Act 1998 permits a search to be conducted when there is a reasonable suspicion that a vehicle or class of vehicle to which the vehicle belongs is reasonably suspected of having been used in connection with the commission of an indictable offence.

Both these Acts still require a reasonable suspicion to attach to the vehicle before it may lawfully be stopped. This is an appropriate safeguard in our society that recognises that there must be a check on the use of powers by police. Police should not be able to stop and search vehicles completely at random. However, the requirement for reasonable suspicion to attach to the vehicle being searched can prevent police from using generic intelligence about patterns of criminal activity.

Police in southern New South Wales have been running their operations against drug traffickers for some years. During this time they have built up a picture of how the traffickers operate: what routes they use, what vehicles they prefer, the time of day they travel. This kind of generic intelligence will not usually meet the requirement that reasonable suspicion must attach to a vehicle to be stopped and searched. This bill carefully balances the need to retain a check on police powers while giving police the chance to show the value of the generic intelligence they gain by studying the modus operandi of drug traffickers.

The bill therefore maintains the requirement for reasonable suspicion. This provides for the essential process of judicial review of police intelligence material. It prevents there being a random power to stop and search. However the bill requires that the reasonable suspicion must attach not to a particular vehicle but to the geographical area. This means that when police can make a case to a Supreme Court judge that drug dealers are trafficking large quantities of drugs regularly in a given area, a warrant may be issued to permit police to stop any vehicle in that area. If police cannot make out a case, the Supreme Court will refuse to issue the warrant. The bill therefore adopts the approach taken in the Police Powers (Drug Detection Dogs) Act 2001, which permits drug detection dogs to be used under warrant in public places where there is reasonable suspicion that the persons in a public place may include persons committing drug offences. While there is a reasonable suspicion, it does not attach to a specific person in the public area.

I will now outline the major features of the bill. Clause 3 defines the area in which the trial will occur. It is in an area of 100 kilometres along the New South Wales border with Victoria and South Australia, and at three other designated points at Hay, Naranderra and the Birdcage, which is a truck stop on the Sturt Highway. The trial will be conducted in a radius of 20 kilometres around each of these three points.

The dimensions of the trial areas have been determined in consultation with operational police. They give the police flexibility to site checkpoints in a variety of areas to keep the drug traffickers guessing. The three areas at Hay, Naranderra and the Birdcage have been especially requested by police as they are natural choke points

where main roads converge. They also offer hard standing off the side of the road and have strong lighting. These features promote safety for all concerned, particularly in night operations. The depth of the border zone and the 20 kilometre radius around each of the three choke points will reduce the capacity of drug traffickers to bypass these points.

Clauses 5 and 6 provide how a warrant application is to be made. Police must first get approval from the Commissioner of Police or a Deputy Commissioner of Police to apply to the Supreme Court. Police must submit to the commissioner or deputy a proposal showing the area to be affected, the information police have about drug movements in that area, a plan for the operation, including personnel required and a description of consultation with the Roads and Traffic Authority [RTA]. RTA consultation will be important to minimise traffic disruption and promote road safety during searches. The commissioner or deputy may approve the application only if he or she is satisfied there are reasonable grounds to suspect 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.

This test permits police to adduce information relating to drug dealing in the past or in the future. For instance, police could use a telecommunications interception stating that a quantity of drugs is to be moved in the future but not stating precisely the vehicle or time. The term "regular" is not defined in the bill. It has its ordinary meaning and case law will build up over time indicating what type of frequency of drug trafficking must be shown. The term "in connection with the supply of drugs" broadens the test beyond evidence of actual drug seizures. It would permit, for instance, police to adduce evidence of persons who had been picked up carrying large amounts of cash to Victoria or South Australia for the purpose of buying drugs.

The term "indictable quantities of prohibited drugs or plants" refers to the existing system established under the Drug Misuse and Trafficking Act 1985 for classifying different weights of drugs. The weight of a drug that constitutes an indictable quantity varies with the type of drug. For instance, an indictable quantity of cannabis leaf is one kilogram whereas an indictable quantity of heroin is five grams. These amounts are not small. One kilogram of cannabis leaf constitutes 500 to 1,000 street deals, which is worth about \$20,000. Five grams of heroin is about 25 street deals, which is worth about \$1,500. These amounts are too much for a person to have for personal use. This is reflected in section 29 of the Drug Misuse and Trafficking Act 1985, which states that if a person has above a certain quantity of drugs in his or her possession, he or she is deemed to have those drugs with the intention of supplying them to others—that is, the person is deemed to be a drug trafficker. An indictable quantity of drugs is above this quantity.

Under the current law, a person with an indictable quantity of a drug is deemed to have that drug to sell to others. This is a further safeguard under the bill. Police will not be able to adduce evidence of minor seizures of drugs possessed for personal use. This legislation is specifically aimed at detecting the trafficking of indictable quantities of prohibited drugs, not offences of minor possession. Clause 5 also provides that the approval of the commissioner or deputy commissioner to apply for a warrant lasts a maximum of 72 hours. The role of the commissioner or deputy commissioner in this process may not be delegated. Clause 6 provides the procedure for applying to the Supreme Court once the approval of the commissioner or a deputy is gained. The application is to include the area to be subject to the warrant; the information on the basis of which the warrant is sought; a plan of the operation, including the number of officers and dogs to be used; the authorisation given by the commissioner or deputy commissioner; and the proposed expiry date for the warrant.

Clause 7 provides that a warrant permits searches to be carried out in a maximum of three one kilometre square areas. Police will be able to choose where these three search areas are. The limit of three one kilometre search areas gives police the scope to establish multiple checkpoints simultaneously or move them to maintain the element of surprise, but balances this against the need to have traffic moving freely. I note that police can establish multiple checkpoints simultaneously within each of the one kilometre square zones. This permits police to set, for instance, a checkpoint on a main road and simultaneously on a nearby side road, to stop drug traffickers bypassing the checkpoint on the main road. Clause 8 provides that the Supreme Court judge who issues the warrant must be satisfied that there are reasonable grounds to suspect 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.

Clauses 9, 10 and 11 set out the way the warrants operate and what powers are conferred. A police officer may establish checkpoints and stop vehicles at them. All checkpoints must have signage. When a vehicle is stopped at a checkpoint, police are first to provide evidence they are police if they are not in uniform, give their names and places of duty, give the reason for the vehicle being stopped, and inform the passengers that it may be an offence not to comply with police directions.

Once that is done, police are initially to use a drug detection dog to check the vehicle. This is a fast and non-intrusive way of checking the vehicle for drugs. Police are required to keep the dogs under control and to take all reasonable measures to prevent a dog from touching a person. Clause 11 makes it clear that when drug detection dogs check a vehicle they will generally remain outside the vehicle, except in relation to commercial vehicles. Clause 11 states also that dogs are not permitted in the passenger area of a vehicle unless the officer is permitted

to search it. This means that the officer must have formed a reasonable suspicion about the vehicle. This would occur for instance if the dog made a positive detection or if the police officer saw something suspicious about the vehicle.

If a dog is permitted inside the passenger area by reason of there being a reasonable suspicion, the dog may not enter the passenger compartment until all passengers have exited. Clause 11 states also that dogs are permitted in the non-passenger areas of commercial or public passenger vehicles to perform a detection. This is a new power of entry that the bill gives police. It means that, for instance, a police officer could direct that the driver of a heavy goods vehicle or a tourist coach open the hold of the vehicle to permit the dog to enter. No reasonable suspicion would be required for this. This acknowledges that such vehicles are used to transport large quantities of drugs. I am advised by police that drug detection dogs will be able to detect drugs in the sealed boot of a car without having to go inside the boot, but might not detect drugs stored in the hold of a heavy goods vehicle if they are not able to enter the hold.

It is not the Government's intention that drug detection dogs should enter ordinary cars that happen to be used for a commercial purpose unless there is a reasonable suspicion. The dogs are sensitive enough to be able to detect drugs in the sealed boot of a car. The power of entry created here is to apply to larger vehicles that are used for commercial purposes, such as coaches and trucks. Clause 11 notes also that these provisions do not override any existing search powers that police have. So if, for instance, a police officer looks through the window of a stopped car and sees something that creates in his or her mind a reasonable suspicion, a search may be carried out under existing law. Clause 12 requires that police provide a notice to persons who are subject to the powers under the Act. This will note that the person has been stopped under the Act, and provide the date, time, location and the name of the officer in question.

Clause 13 requires functions under the Act to be carried out as speedily as possible and with respect for the privacy of persons subject to the powers, and that police ask persons to co-operate with the use of the powers. Clause 14 stipulates that a warrant has effect for a maximum of 72 hours from the time it commences. Warrants cannot be extended, but fresh applications can be made. Clause 16 establishes offences relating to drug detection warrants. A person must not without reasonable excuse obstruct or hinder a person executing or assisting in the execution of a drug detection warrant. Nor must a person without reasonable excuse fail or refuse to stop a vehicle when directed to do so or fail to comply with any other direction given. The maximum penalty is 10 penalty units, which is the same as for random breath testing station offences.

As this bill is introduced to conduct a trial of these new powers, it also contains various provisions to assist with an objective assessment of the trial. Clause 17 requires that comprehensive records of each warrant operation be kept, including the number of officers and dogs, the number of vehicles stopped and the number searched, the number of persons searched, the reason for each search, and the number and nature of all things seized. A summary of this information is to be included in the NSW Police annual report. Clause 18 makes clear that the bill does not create any new search powers but that it does create a new power of entry.

As I have said, the new powers that the bill creates relate to the power to stop vehicles to permit the use of a drug detection dog, and the power to permit a dog to enter the non-passenger compartments of commercial and public passenger vehicles. However, for a police officer to search a person or vehicle, the search must be lawful under existing legislation: that is, reasonable suspicion must apply to that specific person or that specific vehicle. Clause 22 requires the Ombudsman to monitor the first nine months of the trial and report to the Minister for Police and the Attorney General at the end of the first 12 months of the trial. The Ombudsman's report will be tabled in Parliament. The review period is shorter than normal but the Government wishes to get a clear idea of the results and conduct of the trial as soon as possible. Clause 23 states that the Act expires 18 months after its commencement. This gives the Government six months to consider the Ombudsman's report and the results of the trial. I commend the bill to the House.

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