

Police Powers (Drug Detection in Border Areas Trial) Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to enable police to stop vehicles, and use dogs, for drug detection in certain border areas for an 18-month trial.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines words and expressions used in the proposed Act. A **border area** means land within this State:

- (a) that is within 100 kilometres of the border of this State with Victoria or South Australia, or
- (b) that is within a 20 kilometre radius of the intersection of Lachlan and Moppett Streets, Hay, or
- (c) that is within a 20 kilometre radius of the intersection of the Newell and Sturt Highways, Narrandera, or
- (d) that is 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.

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

Clause 4 provides for the process by which a Judge of the Supreme Court becomes an eligible Judge who may issue a drug detection warrant under the proposed Act.

Part 2 Drug detection in border areas

Clause 5 enables a police officer to apply to the Commissioner or a Deputy Commissioner of Police for an authorisation to apply for a drug detection warrant for a search area (which must be located in a border area). The application is to include particulars of the proposed search area, the grounds on which the warrant is to be sought, a plan of the proposed operation and particulars of consultations and any earlier applications. Authorisation may be granted if the Commissioner or Deputy Commissioner of Police suspects on reasonable grounds that the area concerned 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. An authorisation may be cancelled and, if it is cancelled, any related drug detection warrant is taken to be revoked. The Commissioner or Deputy Commissioner may not delegate a power conferred under the proposed Act.

Clause 6 enables a police officer to apply for a drug detection warrant if the officer suspects on reasonable grounds that the whole or part of the proposed search area concerned 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.

Clause 7 specifies that a drug detection warrant must be issued in respect of not more than 3 areas located in a border area, each of which does not exceed one square kilometre in area.

Clause 8 enables an eligible Judge to issue a drug detection warrant if the Judge is satisfied that there

are reasonable grounds for suspecting that the area concerned 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 is satisfied that the application has been authorised in accordance with the proposed Part and that each area complies with the proposed Part. A warrant may be subject to specified conditions.

Clause 9 sets out the functions that may be exercised by a police officer executing a drug detection warrant for a search area. They include establishing check points, stopping vehicles, using dogs for drug detection in relation to persons in or on, or entering or leaving, vehicles at check points or stopped in the search area, seizing and detaining prohibited drugs and prohibited plants and things that may provide evidence of the commission of an indictable offence and giving reasonable directions to facilitate the exercise of the functions. Police officers will be required to give reasons and information about their identity when exercising the functions.

Clause 10 requires a police officer who establishes a check point to ensure that signs are erected.

Clause 11 authorises a police officer to carry out general drug detection as provided by the proposed Part. It also requires a police officer using a dog to carry out general drug detection under a drug detection warrant to do the following:

- (a) to take all reasonable precautions to prevent the dog touching a person,
- (b) to keep the dog under control,
- (c) not to allow the dog to enter any driver or passenger area of a vehicle, except as provided by paragraph (d),
- (d) to 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,
- (e) not to 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) not to 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.

A police officer using a dog for drug detection may, in the case of a vehicle used for commercial purposes (including the transport of goods) or that is a public passenger vehicle, allow the dog to enter an area that is not a driver or passenger area (for example, the boot, back of a goods vehicle or luggage hold of a coach) and may use the dog for drug detection outside any vehicle.

Clause 12 requires a police officer who exercises a function under a drug detection warrant to give the person subject to the exercise of the power a written notice containing the police officer's name and place of duty and the date, time and place at which the function was exercised.

Clause 13 requires a police officer exercising a function under a drug detection warrant in relation to a person to seek the person's co-operation and to exercise it in a way that provides reasonable privacy and as quickly as is reasonably practicable.

Clause 14 requires a drug detection warrant to specify when it expires and limits it to a period of 72 hours. A warrant also ceases to have effect if revoked or if the relevant authorisation is cancelled.

Clause 15 applies provisions of the *Search Warrants Act 1985* to drug detection warrants.

Clause 16 makes it an offence, without reasonable excuse, to obstruct or hinder a person executing or assisting in the execution of a drug detection warrant (maximum penalty \$1,100). It will also be an offence, without reasonable excuse, to fail or refuse to stop a vehicle when directed to do so by a police officer under the proposed Act or to fail or refuse to comply with any other direction given by a police officer under the proposed Act (maximum penalty \$1,100).

Part 3 Miscellaneous

Clause 17 requires the Commissioner of Police to keep records of the number of drug detection warrants obtained, and of the operations conducted, under the proposed Act. The matters recorded are to be included in the annual report of NSW Police.

Clause 18 makes it clear that the proposed Act does not prevent a police officer from applying for a search warrant, or exercising any other drug detection function using dogs, or any other function, at, or in relation to, a search area or a vehicle or person in a search area and that it does not affect the exercise of any such function. It also makes it clear that the proposed Act does not confer additional powers of entry (except in relation to commercial and public passenger vehicles) or search powers.

Clause 19 contains a general regulation-making power.

Clause 20 makes it clear that the onus of proof is on an accused person to prove a defence of reasonable excuse.

Clause 21 provides that offences under the proposed Act are to be dealt with summarily by a Local Court.

Clause 22 requires the Ombudsman to keep under scrutiny, for 9 months from the commencement of the proposed section, the exercise of functions under the proposed Act by police officers. The Ombudsman is to report on this to the Attorney General, the Minister for Police and the Commissioner of Police, not later than 3 months after the end of that period and the report is to be laid before both Houses of Parliament.

Clause 23 provides for the expiry of the proposed Act 18 months after the commencement of proposed section 8.