



NSW Ombudsman

Review of the *Police
Powers (Drug Detection
Dogs) Act 2001*

June 2006



Review of the *Police Powers
(Drug Detection Dogs) Act 2001*

June 2006

Any correspondence relating to this review should be sent to:

Review of the Police Powers
(Drug Detection Dogs) Act
Level 24, 580 George Street
Sydney NSW 2000

Phone (02) 9286 1000
Toll free (outside Sydney Metro Area): 1800 451 524
Facsimile: (02) 9283 2911
Telephone typewriter: (02) 9264 8050
Website: www.ombo.nsw.gov.au
Email nswombo@ombo.nsw.gov.au

ISBN 1 921131 36 5

© Crown Copyright, NSW Ombudsman, June 2006

This work is copyright, however material from this publication may be copied and published by State or Federal Government Agencies without permission of the Ombudsman on the condition that the meaning of the material is not altered and the NSW Ombudsman is acknowledged as the source of the material. Any other persons or bodies wishing to use material must seek permission.



NSW Ombudsman

Level 24 580 George Street
Sydney NSW 2000
Phone 02 9286 1000
Fax 02 9283 2911
Tollfree 1800 451 524
TTY 02 9264 8050
Web www.ombo.nsw.gov.au

June 2006

The Honourable Bob Debus MP
NSW Attorney General
Level 36
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Mr Debus

Under section 13 of the *Police Powers (Drug Detection Dogs) Act 2001* I have been required to keep under scrutiny the exercise of the power conferred on police officers to use dogs for the detection of persons in possession or control of prohibited drugs or plants.

I am pleased to provide you with my report, which details the activities undertaken, and my findings and recommendations that are a result of the review.

I note that NSW Police was provided with a draft of the report. Where appropriate their comments have been incorporated into the report.

I draw your attention to section 13(4) of the Act which requires you to lay a copy of the report before both Houses of Parliament as soon as practicable after receipt.

Yours sincerely

Bruce Barbour
Ombudsman



NSW Ombudsman

Level 24 580 George Street
Sydney NSW 2000
Phone 02 9286 1000
Fax 02 9283 2911
Tollfree 1800 451 524
TTY 02 9264 8050
Web www.ombo.nsw.gov.au

June 2006

Commissioner Ken E Moroney APM
Commissioner of Police
Level 14
201 Elizabeth Street
Sydney NSW 2000

Dear Commissioner

Under section 13 of the *Police Powers (Drug Detection Dogs) Act 2001* I have been required to keep under scrutiny the exercise of the power conferred on police officers to use dogs for the detection of persons in possession or control of prohibited drugs or plants.

I am pleased to provide you with my report, which details the activities undertaken, and my findings and recommendations that are a result of the review.

I note that you were provided with a draft of the report. Where appropriate your comments have been incorporated into the report.

I draw your attention to section 13(4) of the Act which requires the Attorney General to lay a copy of the report before both Houses of Parliament as soon as practicable after receipt.

Yours sincerely

Bruce Barbour
Ombudsman

Foreword

The effective policing of drug supply is a complex and challenging task which involves striking a balance between law enforcement, individual rights, community expectations, health concerns and considerations of cost.

The power to use drug detection dogs to aid police officers in the detection of drug offences, particularly drug supply, was clarified and expanded by the *Police Powers (Drug Detection Dogs) Act 2001* ('the Drug Dogs Act'), which commenced on 22 February 2002. The Drug Dogs Act required my office to monitor the use of drug detection dogs for a period of two years.

Our review of the police use of drug detection dogs attracted unprecedented community interest, as evidenced by the number of telephone enquiries, complaints and submissions that we received. A key challenge was to review not only the effectiveness of drug detection dogs in targeting drug dealers, but to also consider the many impacts and consequences resulting from the use of drug detection dogs.

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 very 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. I trust the research and observations in this report will make a positive contribution to this debate.



Bruce Barbour
Ombudsman



Contents

Executive summary	i
Background to this report	i
Key provisions of the Drug Dogs Act.....	i
Use of drug detection dogs	i
Accuracy of drug detection dogs	iii
Effectiveness of drug detection dogs	iv
Impact of drug detection dogs	v
Intelligence information used to support drug detection dog operations	vi
Harm minimisation	vii
Improvements for police	viii
Conclusion	viii
List of recommendations	ix
Glossary and abbreviations	xiii
Chapter 1. Introduction	1
Chapter 2. Background	3
2.1. Structure of NSW Police	3
2.2. Role of the NSW Ombudsman	4
2.3. Drug detection dog operations before the Drug Dogs Act	4
2.4. Origins of the Drug Dogs Act	4
2.5. Key provisions of the Drug Dogs Act	6
2.6. Implementation of the Drug Dogs Act	8
2.7. SMS alert service	8
Chapter 3. Methodology	11
3.1. Dog Unit records	11
3.2. Computerised Operational Policing System	12
3.3. Court documents	13
3.4. Observational research	13
3.5. Consultation with NSW Police	14
3.6. Community consultation	15
3.7. Complaints about NSW Police	15
3.8. Other information sources	16
3.9. Limitations to methodology	16
Chapter 4. The use of drug detection dogs in other Australian jurisdictions	17
4.1. Queensland	17
4.2. Australian Customs Service.....	18
4.3. Australian Federal Police/Australian Capital Territory Police	18
4.4. Victoria	18
4.5. South Australia.....	18

4.6.	Western Australia	19
4.7.	Tasmania.....	19
4.8.	Northern Territory	19
Chapter 5. Use of drug detection dogs		21
5.1.	The Dog Unit.....	21
5.2.	Drug detection dogs.....	21
5.3.	How are drug detection dogs deployed?.....	21
Chapter 6. Overview of results.....		27
6.1.	How frequently were the drug detection dogs used?	27
6.2.	How many people were indicated by drug detection dogs?	27
6.3.	When were the drug detection dogs deployed?	27
6.4.	Where were drug detection dogs deployed?	28
6.5.	Results of searches following drug detection dog indications	29
6.6.	What drugs were found as a result of drug detection dog indications?	31
6.7.	Actions taken by police following drug detection dog indications and searches.....	34
6.8.	Characteristics of persons searched	35
6.9.	Complaints	36
Chapter 7. Operation Guardian 2004 – A case study in drug detection dog deployment		39
7.1.	Introduction.....	39
7.2.	Results	40
7.3.	Some comments from ‘partygoers’	41
Chapter 8. Accuracy of drug detection dogs		45
8.1.	Training drug detection dogs.....	45
8.2.	Results in the field.....	47
8.3.	Complaints alleging ‘false’ indications	55
8.4.	How do the dogs compare?.....	56
8.5.	Independent accreditation of drug detection dogs.....	57
8.6.	Use of drug detection dogs in crowded environments	58
Chapter 9. Policing issues		63
9.1.	Stationing drug detection dogs and handlers in different regions.....	63
9.2.	Proportion of time spent by drug detection dogs and handlers ‘in the field’	63
9.3.	Officer and drug detection dog safety	67
Chapter 10. Drug detection warrants and police intelligence		73
10.1.	When is a drug detection warrant required?	73
10.2.	Decision making process for deploying drug detection dogs	74
10.3.	Drug detection warrants	74
10.4.	Audit of police intelligence.....	85
10.5.	Prescribed transport routes	92
10.6.	Covert operations and drug detection warrants.....	96

Chapter 11. Obtaining information and how it is recorded and used.....	101
11.1. The nature and function of information reports: NSW Police policy.....	101
11.2. Obtaining information from searched persons	102
11.3. Recording information reports on COPS about searched persons	108
11.4. Police views about recording on COPS	112
11.5. Other views about recording on COPS	114
11.6. Monitoring compliance with the information sheet.....	115
11.7. Our review of compliance with the information sheet	116
11.8. Information reports audit	118
11.9. Where information reports are made, how long do they remain on COPS?.....	120
11.10. Summary of findings and discussion	122
Chapter 12. Privacy, civil liberties and police relations with the community	129
12.1. Behaviour of the drug detection dog.....	129
12.2. Fearful or anxious reactions to the drug detection dog	131
12.3. Privacy of searches, feelings of embarrassment and civil liberties concerns.....	133
12.4. Escalation of incidents following indications by drug detection dogs	142
12.5. Targeting and unfair discrimination	144
12.6. Impact on licensed premises	149
12.7. Reducing fear of crime in the community.....	153
Chapter 13. Targeting drug supply	165
13.1. Objective of the Drug Dogs Act.....	165
13.2. What is meant by 'supply'?.....	166
13.3. Legal definition of 'supply'	166
13.4. Supply charges.....	168
13.5. Successful supply prosecutions.....	173
13.6. Penalties imposed on persons successfully prosecuted for supply.....	176
13.7. Supplying to friends or partners	182
13.8. Judicial attitude to young adults charged with drug offences	182
13.9. Submissions – drug detection dogs and drug supply	183
13.10. Intelligence information leading to supply charges.....	187
13.11. Impact on drug markets	188
13.12. Other strategies to target drug supply?.....	188
13.13. Concluding remarks	189
Chapter 14. Legal interpretation issues	193
14.1. Judicial consideration of the use of drug detection dogs.....	193
14.2. Do drug detection dogs 'search'?.....	193
14.3. Forming a reasonable suspicion	195
14.4. Trespass to the person	205
14.5. Screening persons 'seeking to enter or leave' locations in section 7	210
14.6. Screening of vehicles in public places	212
14.7. Screening of personal property	215
14.8. Consent	217

14.9.	Part 10A of the <i>Crimes Act 1900</i>	220
14.10.	Use of drug detection dogs in the execution of search warrants	223
Chapter 15. Harm minimisation		229
15.1.	Overview	229
15.2.	What is 'harm minimisation'?.....	229
15.3.	Drug detection dogs and harm minimisation.....	232
15.4.	Police officers and their role in harm minimisation.....	233
15.5.	Drug diversion programs and drug detection dogs.....	235
15.6.	Impact of drug detection dogs on health services for drug users	250
15.7.	Harm minimisation education and training for police officers.....	258
15.8.	Prescription drugs	259
15.9.	Medical use of cannabis.....	261
15.10.	Impact of drug detection dogs on the behaviour of drugs users	262
15.11.	Impact of drug detection dogs on recorded crime	267
Chapter 16. Cost effectiveness.....		275
16.1.	Actual costs for police	275
16.2.	Police and other community views about cost effectiveness.....	276
16.3.	Weighing up the costs and benefits	279
Chapter 17. Conclusion.....		281
17.1.	Recommendations	281
Appendix A List of submissions		283
Acknowledgements		285

Executive summary

Background to this report

The *Police Powers (Drug Detection Dogs) Act 2001* ('the Drug Dogs Act'), which authorises and regulates the use of drug detection dogs by police, commenced on 22 February 2002.

The Drug Dogs Act was enacted shortly after a magistrate dismissed two drug charges against a man found in possession of prohibited drugs during a drug detection dog operation. The magistrate held that the actions of the drug detection dog constituted an illegal search.

The Drug Dogs Act required the Ombudsman to review the use of drug detection dogs by police for the first two years after commencement. This report outlines the activities undertaken as part of the review and details our findings and recommendations.

During our review we conducted various research activities including:

- analysis of records kept by police on the use of drug detection dogs
- directly observing police using drug detection dogs
- reviewing court documents in relation to the issuing of warrants authorising drug detection dog operations
- reviewing transcripts and judgments of cases where charges were brought as a result of drug detection dog operations
- consulting with a range of community groups and police officers of various ranks, and
- examining complaints about police utilising drug detection dogs.

Key provisions of the Drug Dogs Act

The Drug Dogs Act authorises police to conduct 'general drug detection' with a drug detection dog in public places. General drug detection is defined as the detection of prohibited drugs or plants in the possession or control of a person. Put simply, the Drug Dogs Act permits police to use drug detection dogs in public places to screen people for drugs.

Police may use drug detection dogs *without a warrant* in certain public places such as licensed premises, prescribed public transport routes, and sporting and entertainment venues. Police may also use drug detection dogs in other public places *with a warrant* where an authorised justice is satisfied that police have reasonable grounds for believing that drug offences are occurring at or in the public place specified in the warrant application.

The Drug Dogs Act also contains a general authority for police to use drug detection dogs in circumstances where officers are already authorised to search. For example, police may use a drug detection dog to assist in the execution of a search warrant on private premises.

The Drug Dogs Act does not give police any new search powers. This means that police must rely on existing powers to stop, search and detain a person indicated by a drug detection dog. The existing search powers require police to form a reasonable suspicion that the person is in possession or control of a prohibited drug or plant before the person can be lawfully searched. The Drug Dogs Act does not confer on police any new powers to enter premises they are not otherwise authorised to enter, or detain persons they are not otherwise authorised to detain.

The Drug Dogs Act contains various safeguards such as the requirement that the dog handler keep the drug detection dog under control and take all reasonable precautions to prevent the dog from touching a person.

Use of drug detection dogs

How often and where were drug detection dogs deployed?

Over the two-year review period police conducted 470 operations in which one or more drug detection dogs were utilised. The vast majority (81%) of these operations occurred in Sydney. During these operations police used drug detection dogs to screen people for drugs on public transport (mostly railway stations), licensed premises, roads/streets (usually in and around entertainment and nightclub strips or Central Business Districts), dance parties, shopping centres, and at outdoor concerts and festivals.

Indications

Drug detection dogs are trained to detect the scent of prohibited drugs, including cannabis, ecstasy, meth/amphetamine, cocaine and heroin. Where a scent is detected, the drug detection dog will give an indication to the police handler, normally by sitting next to the scent.

During the review period 17 different drug detection dogs made 10,211 indications during general drug detection operations. These indications represent a small fraction of people who were actually screened by drug detection dogs during operations. No records of the actual number of people screened are available, but our observational research found that large numbers of people were screened without the dogs indicating the presence of drugs.

The most common place where indications occurred was public transport (62.9%), followed by licensed premises (20.8%), road/street/mall (11.7%), and dance parties (2.4%).

The number of indications differs from the number of individuals searched. At least 641 people were indicated by the dogs more than once during the review period. Of these, 550 were searched twice, 75 were searched three times, 12 were searched four times, three were searched five times, and one person was searched six times.

Recording of gender information was not systematic, however, during our observations we noted that drug detection dogs indicated men much more frequently than women.

About 40% of persons indicated were in the 18 to 25 age group. Persons under 18 years of age accounted for 7% of all indications.

Rate of finding drugs

Almost all persons indicated by a drug detection dog were subsequently searched by police. This is in accordance with police policy which states that an indication by a drug detection dog gives police reasonable suspicion to search a person.

Prohibited drugs were only located in 26% of the searches following an indication. That is, almost three-quarters of all indications did not result in the location of prohibited drugs.

The rate of finding drugs varied from dog to dog, ranging from 7% (of all indications) to 56%. Six of the 17 dogs utilised during the review period had a rate of finding drugs higher than the overall average of 26%. However, a majority (11) of dogs had a rate of finding drugs lower than the overall average.

The rate of finding drugs also varied according to the type of place and location at which the indication occurred. Drugs were more likely to be found during operations at dance parties (39% of all indications at dance parties), followed by road/street (37%), public transport (25%), and licensed premises (23%). Similarly, drugs were more likely to be found in the Flemington (47%), Surry Hills (39%) and Kings Cross (37%) local area commands when compared to Kuring Gai, Wollongong and Ashfield local area commands, which each had a rate of 19%. Flemington local area command includes the Olympic Park precinct where dance parties such as the 'Big Day Out' were held.

Types of drugs found

By far the most commonly detected drug through the review period was cannabis, which was located in approximately 84% of all incidents where one or more drugs were detected. This was followed by ecstasy (8.5%) and meth/amphetamine (7.7%). Cocaine was detected on 17 occasions and heroin on 14 occasions. Small amounts of various prescription drugs were also detected.

In 6.3% (169) of incidents where a drug was found, the person was found in possession of more than one type of drug. Most commonly this was a combination of cannabis and either meth/amphetamine (61 incidents) or ecstasy (53 incidents).

Quantities of drugs found

A total of 9731.31 grams of cannabis was found on 2233 separate occasions during the review period. Police generally located only very small amounts of cannabis, with half of all detections weighing less than 1.61 grams. Only one amount of cannabis exceeded the prescribed quantity of 300 grams required for a 'deemed supply' charge. However, this person, found with 301 grams of cannabis, was only charged by police with possession, and not supply of a prohibited drug. We were unable to find any successful prosecutions of cannabis suppliers who were identified through drug detection dog operations. Almost two-thirds (1466 of 2233) of all incidents where cannabis was located resulted in police issuing a cannabis caution. This demonstrates that a majority of people detected by drug detection dogs in possession of cannabis had little, if any, previous dealings with police. It also demonstrates that police officers generally exercised appropriate discretion in relation to the mostly young persons found in possession of small amounts of cannabis for personal use.

A total of 407.64 grams of ecstasy was found on 226 separate occasions during the review period. In half of these incidents the amount of ecstasy found weighed one gram or less. As the prescribed 'deemed supply' quantity for ecstasy is 0.75 grams, more than half of the people found with ecstasy in their possession could have been charged with supply prohibited drug based on the deeming provision. Ecstasy was involved in 16 of the 19 successful supply prohibited drug prosecutions resulting from drug detection dog operations. A 19-year-old male with no prior convictions was detected in licensed premises with the largest ecstasy find of 116 tablets. The offender received a two-year prison term to be served by way of periodic detention.

A total of 306.2 grams of meth/amphetamine was found on 205 separate occasions during the review period. Generally the amounts of meth/amphetamine located were small, with half of all the amounts weighing less than 0.8 grams. The prescribed 'deemed supply' quantity for meth/amphetamine is 3.0 grams. On 20 occasions (10% of the meth/amphetamine finds) police located persons in possession of 'deemed supply' amounts of meth/amphetamine. Meth/amphetamine was involved in 9 of the 19 successful supply prohibited drug prosecutions. A 24-year-old man with prior drug convictions was found with the largest meth/amphetamine amount of 41 grams on an inner-city street. The offender was sentenced to 450 hours of community service.

A total amount of 25.99 grams of cocaine (17 occasions) and 13.24 grams of heroin (14 occasions) were found during the review period. Usually only small amounts of these drugs were located and no successful prosecutions for supply cocaine or heroin resulted from drug detection dog operations.

Legal action following the detection of drugs during drug detection dog operations

The most common action taken when a drug was located was the issuing of a cannabis caution (57%), followed by the initiation of legal proceedings (38%). There were only 19 successful supply prosecutions. Police also issued a number of juvenile cautions (4%) and a small number of juvenile warnings.

Accuracy of drug detection dogs

No drugs were located in almost three-quarters of searches following indications, raising questions about the accuracy of drug detection dogs. This in turn casts doubt on the legitimacy of police relying on the dogs to determine whether they may reasonably suspect that a person is in possession of a prohibited drug.

Accuracy rate

During the review period almost three-quarters of persons searched in public as a result of an indication by a trained drug detection dog were not found in possession of prohibited drugs.

NSW Police have suggested that the dogs' accuracy is 70%. This takes into account the 26% of searches where drugs were located, and incidents in which no drugs were located but the person made some admission of prior drug contact. Admissions of drug contact included persons admitting to previous drug use (usually cannabis), or indicating that they might have been around others who were using drugs (usually cannabis).

There are a number of difficulties with using the 70% figure as a measure of accuracy. First, it takes into account admissions of drug contact involving cannabis smoke, which a person may have been inadvertently exposed to. In addition, NSW Police say drug detection dogs are not trained to indicate this scent. Second, some admissions of personal drug use were so remote in time they did not provide plausible explanations for the indication. For example, a number of admissions recorded by police in information reports involved drug use dating back days, weeks, months, and in some cases, years. Third, although some admissions may support the accuracy of drug detection dogs in picking up the scent of prohibited drugs, this should not be confused with the accuracy of the dogs detecting persons currently in possession of prohibited drugs, which is the purpose for their use.

The formation of reasonable suspicion to lawfully search a person

The formation of reasonable suspicion to lawfully search a person requires a police officer to reasonably suspect that a person is *currently* in possession or control of a prohibited drug.

Given the low rate of detecting drug offences following a drug detection dog indication, it is our view, supported by Senior Counsel's advice, that it is not sufficient for a police officer to form a reasonable suspicion that a person is in possession or control of a prohibited drug solely on this basis.

We have recommended that NSW Police develop guidelines which outline the factors that, in addition to a drug detection dog indication, may be considered by a police officer when forming a reasonable suspicion to lawfully stop, search and detain a person. In addition, we have recommended that these guidelines be discussed at briefings before operations, and that officers systematically record the factors that led to the formation of reasonable suspicion. We have also recommended the removal of advice contained in current guidelines that police officers have reasonable suspicion to search a person based solely on a drug detection dog indication.

Addressing the high proportion of searches in which no drugs are located

NSW Police do not currently have any real solutions for the high proportion of searches that have resulted in no drugs being located. It appears that a significant proportion of indications in which no drugs were located involved exposure to cannabis smoke. NSW Police state that drug detection dogs are not trained to detect cannabis smoke and that there is no scientific evidence to suggest that the dogs would indicate a person who has been in the presence of other people smoking cannabis. However, we have observed dog handlers and police officers regularly tell people that cannabis smoke was the likely cause of the indication.

We have recommended that NSW Police refine the training of drug detection dogs to better exclude indications on cannabis smoke, residual scents, and prescription drugs, which appear to account for a large number of the indications in which no prohibited drugs were located. We have also recommended that NSW Police hold discussions with other law enforcement agencies with a view to establishing an independent accreditation process for the training of drug detection dogs given that all training and accreditation is currently conducted in house by NSW Police without any external checks or controls.

Effectiveness of drug detection dogs

A key measure of the effectiveness of drug detection dogs is their ability to contribute to the primary objective of the Drug Dogs Act, which is the identification and prosecution of persons involved in the supply of prohibited drugs. Other possible measures of effectiveness include the capacity of drug detection dogs to disrupt low-level street supply; deter people using prohibited drugs; reduce drug-related crime; enhance public perceptions of safety; or provide police with useful intelligence information on drug supply.

Do drug detection dogs effectively target drug supply?

For the two-year review period, we were only able to identify 141 events (1.38% of all indications) where a prescribed 'deemed supply' quantity of a prohibited drug was located as a result of a drug detection dog indication. Our analysis of supply charges, prosecutions and penalties revealed that 19 persons were successfully prosecuted for supply. These persons were mostly young, male, first-time offenders involved in the supply of relatively small quantities of drugs to friends and partners for a specific event (such as a dance party). That is, commercial gain or profit was not the primary motive for the drug supply.

The successful prosecutions for supply represent 0.19% of all drug detection dog indications for the review period. If only the 26% of indications where a drug was located are considered, the figure increases to 0.71%. That is, more than 99% of persons indicated by drug detection dogs either had no drugs, or did not possess the drugs for the purpose of supply. On this measure it is clear that drug detection dogs are not an effective tool for detecting persons involved in the supply of prohibited drugs, which is the primary objective of the Drug Dogs Act.

The dynamics of the illicit drug market may also impact upon the usefulness and effectiveness of drug detection dogs in detecting drug suppliers. This is because research demonstrates that drug users generally purchase drugs from known suppliers or dealers in private locations such as houses rather than in public places where drug detection dog operations occur.

Other measures of effectiveness

We were not able to find, nor were NSW Police able to provide, any evidence that the use of drug detection dogs disrupted low-level street dealing in a sustained manner. Similarly, we were not able to identify any evidence that the use of drug detection dogs has had a deterrent effect on drug users, or led to a reduction in drug-related crime. Nor were we able to measure any appreciable increase in perceptions of public safety as a result of high visibility policing operations utilising drug detection dogs. Further, there was no evidence that police obtained intelligence information during drug detection dog operations that led to further investigation of drug supply.

Cost effectiveness

Another factor in assessing the dogs' effectiveness is the expense of conducting drug detection dog operations to target drug suppliers. In order to get an understanding of the costs associated with staffing and supporting a drug detection dog operation, we reviewed what NSW Police described as a successful operation with 'excellent results' – a two-day operation focussing on Sydney's 'Big Day Out' concerts on 23 and 24 January 2004.

A total of 323 police officers were deployed in teams with drug detection dogs across the CityRail network and at the concert venue at Olympic Park from approximately 8.30am to 3pm on both days. Based on figures provided by NSW Police, the drug detection dog part of the operation cost in excess of \$41,000.

A total of 414 people were indicated and searched during the operation. Of these, 86 people were detected with drugs and charged with drug-related offences, including 18 charges for drug supply. In total, five persons were successfully prosecuted for drug supply. None of the persons successfully prosecuted had any prior criminal convictions (drug-related or otherwise). Three of the five had no conviction recorded and were subject to a good behaviour bond, one received a bond (with conviction recorded), and one received a 16-month suspended sentence. All of the successful supply prosecutions involved supply of drugs to friends and partners.

A further 139 people were issued with cannabis cautions after being detected with small amounts of cannabis.

A similar one-day operation conducted on 26 January 2005 resulted in 11 supply charges of which one successful supply prosecution resulted. In the successful prosecution the offender received a \$1000 fine for supplying ecstasy to his girlfriend.

During the review we also examined whether the current complement of drug detection dogs was being adequately utilised. Questions about the limited time the dogs spent in the field as against administration and training, and the limited deployment of the dogs to regional areas, led us to recommend that police investigate whether the number of drug detection dogs is appropriate given the demand for their use.

Impact of drug detection dogs

Complaints

As part of the review we examined over 50 written complaints from people who were affected by or concerned about the use of drug detection dogs. The principal concerns raised in the complaints related to: 'false' indications or dog behaviour (raised in 47% of complaints); infringements of civil liberties and damage of community confidence in police (47%); feelings of embarrassment, humiliation and anger at being detained and searched (29%); escalation of searches leading to the person being arrested and charged with non-drug related offences such as resist police (24%); concerns about the way police obtained and recorded information from the person searched (16%); and victimisation felt by the person because of their racial or other minority status (12%).

Privacy of searches, feelings of embarrassment, civil liberties concerns and targeting

The inherently public nature of drug detection dog operations meant that most people were indicated and searched in public view. This caused people to feel a range of emotions, which included embarrassment, humiliation and/or anger. Many people who were searched without drugs being located questioned the accuracy and legitimacy of drug detection dogs to aid police in the detection of drugs.

On some occasions police were able to afford privacy to persons being searched, such as a room at a railway station, but protecting privacy was difficult during most operations.

We have recommended that operational orders provide guidance to police about appropriate locations for the conduct of searches. It is our view that, where appropriate, operational commanders ensure that private rooms or facilities are set aside for searches. However, given that it will most often be difficult to ensure the privacy of searches, police should consider whether the current approach to using drug detection dogs justifies the level of intrusion involved – especially given that only 26% of the searches during the review period led to the location of mostly small amounts of drugs, and fewer than 1% of persons found in possession of drugs were successfully prosecuted for supplying prohibited drugs.

A number of individuals and organisations suggested that police deployed drug detection dogs to unfairly target particular groups or communities. However, we did not uncover any solid evidence that police used drug detection dogs in a discriminatory manner.

Recording of personal details and information about admitted drug contact

In circumstances where no drugs are located during the search following an indication, police do not have the power to enforce a request for personal details or other information as no offence has been detected. Nor do police have the power to detain a person after a search to obtain details or conduct radio checks because the reasonable suspicion permitting the detention of the person no longer exists.

During the review police officers often obtained personal details either by requesting them from the person, or copying the details from identification (such as a driver's licence) found during the search. When police requested details they generally did not offer information to the person searched about how their personal details or other information would be used. Nor did police inform the person that they did not have to provide these details. On the other hand, police are under no obligation to inform people that they are not obliged to volunteer their details, and some people freely volunteered this information to police.

Many people appeared to be unaware that information they volunteered to police would be added to records on the police computer system. It also appeared that many people were unaware that they were not under any obligation to remain with police after searches in which no drugs were located.

We have recommended that if police request personal details when no offence has been detected, they advise the person how any details may be used and that there is no obligation to provide the details. We have also recommended that police ensure personal details are not obtained during the search of a person's belongings unless they have explicit and informed consent to record the details. We have further recommended that police inform people that they are free to leave after any search in which no drugs or offence is detected, and if police wish to conduct a radio or other check, they first obtain explicit and informed consent to detain the person.

Creation of police intelligence reports

In addition to obtaining personal details from persons during or after searches, police often sought explanations as to why the drug detection dog may have made the indication. We observed many instances where people searched provided explanations, which included admissions of drug use (usually cannabis) or being around others who were using drugs (usually cannabis). Police would commonly assure the person searched that the information provided would not have any negative or adverse consequences. However, the police practice of recording these admissions in intelligence reports may well prejudice future contact with police. We were also concerned about police creating intelligence reports to record that a person was indicated in circumstances where no drugs were found.

Because of these concerns, an information sheet was developed to guide police officers in determining whether to create an intelligence report following a drug detection dog indication. However, a later audit of intelligence reports found that the practice of recording information that had little or no intelligence value had continued. Further, internal police review mechanisms did not appear to effectively screen out reports that had minimal intelligence value and these remained on the police computer system for a long period. We have therefore recommended that NSW Police provide officers with clear guidelines about when to create intelligence reports. The guidelines should advise that reports be made only when valuable intelligence is available. We have also recommended that police conduct regular audits of intelligence reports and delete those which do not comply with the information sheet.

Fearful or anxious reactions to the drug detection dog

Overall we found that drug detection dogs behaved in an unobtrusive manner. However, there were a small minority of people who appeared to be genuinely fearful of dogs for reasons related to their cultural background. It is important for police not to interpret fearful reactions to drug detection dogs as an indication of guilt or fear of being detected. We have recommended that NSW Police train handlers to ensure they are aware of cultural factors that can influence individual reactions to drug detection dogs and that information about cultural sensitivities is conveyed to other officers during police briefings.

Intelligence information used to support drug detection dog operations

NSW Police advised that all deployments of drug detection dogs were based on intelligence information. However, when we examined the information used to support some of the deployments of drug detection dogs, we found that not all operations were supported by recent, relevant and/or location-specific intelligence information. In some cases, there was no intelligence information to support operations on public transport and licensed premises.

In our view it would be preferable for an authorised justice to objectively assess the intelligence information for *all* proposed operations in order to determine whether the deployment of a drug detection dog is justified. This would

ensure that all deployments had an appropriate and proper basis and may lead to an increase in the rate of locating drugs, which in turn may lead to greater public confidence in the use of drug detection dogs.

It is worth noting that when police were required to obtain warrants for operations on roads/streets, the rate of finding drugs was 37%, which was above the overall average of 26%. However, when police conducted operations on public transport or licensed premises, where warrants are not currently required, the rate of finding drugs was lower, 25% and 23% respectively.

We have recommended that Parliament consider amending the Drug Dogs Act to require police to obtain warrants for *all* general drug detection dog operations.

We have recommended NSW Police develop guidelines in relation to the intelligence material required to support any request for the deployment of a drug detection dog. We have also recommended that NSW Police publish statistics on the use of drug detection dogs in their Annual Report, which would allow broader scrutiny of the results of drug detection dog operations.

Our examination of a small number of warrant applications revealed that police appeared to conduct some covert operations without a warrant required by the Drug Dogs Act. It seems that the lack of a definition as to what constitutes a 'covert police operation' may be causing some confusion. We have therefore recommended that Parliament consider amending the Drug Dogs Act to include a definition of 'covert police operation' to clarify the term and avoid further confusion.

Harm minimisation

The impact of drug detection dogs on the behaviour of drug users

The police use of drug detection dogs in public places where drug users either consume drugs, or access health services, may actually encourage harm, albeit unintentionally. We received various reports suggesting that drug users were engaging in risky drug taking strategies in an attempt to avoid detection. Such strategies included: the consumption of larger amounts of drugs at once instead of taking smaller amounts over a period of time; consuming drugs at home and then driving to entertainment venues; purchasing drugs from unknown sources at venues to avoid carrying drugs; and switching to potentially more harmful drugs such as GHB in the belief that these drugs are less likely to be detected by drug detection dogs.

We also received reports that the use of drug detection dogs in the vicinity of health services such as needle and syringe exchange programs, methadone clinics, and the Medically Supervised Injecting Centre, deterred people from using these health services and may have resulted in some drug users engaging in risky drug taking practices such as needle sharing. It was also suggested that, as a result of drug detection dog operations, some drug users were less likely to return used injecting equipment, undermining strategies to encourage the safe disposal of needles and syringes.

Also of concern were reports of police confiscating prescription drugs located during drug detection dog operations.

We have recommended that NSW Police:

- specifically consider and outline harm minimisation issues in operational orders
- continually assess the impact of drug law enforcement strategies, such as drug detection dog operations, on access to health services
- implement a harm minimisation education and training program for all officers, and
- develop guidelines which detail various considerations to be taken into account before a police officer decides to confiscate prescription drugs.

Drug detection dogs overwhelmingly detect young people in possession of small amounts of prohibited drugs for personal use who may attempt to avoid detection by engaging in risky behaviours. In our view, the key challenge for NSW Police is to ensure that drug law enforcement objectives do not unnecessarily impact on important harm minimisation objectives.

Diversionsary schemes

NSW Police demonstrated their commitment to drug diversion programs during the review period by issuing a large number of cannabis cautions. Unfortunately, when police detected small amounts of drugs other than cannabis, they were not able to divert users away from the criminal justice system due to the lack of an appropriate diversionsary scheme.

Most people detected with small amounts of drugs other than cannabis during the review period had little or no previous contact with the criminal justice system and generally received a fine or no recorded conviction when their matters were determined at court. These people received little or no referral to drug information, education and/or treatment services consistent with harm minimisation objectives. We have recommended that the Attorney General's Department consult with NSW Police and NSW Health with a view to trialling a pre-court diversion scheme for persons found in possession of small amounts of drugs other than cannabis with an emphasis on drug assessment, treatment and education.

Improvements for police

During our observations of drug detection dog operations, we noted a number of safety issues associated with working in crowded environments where people are intoxicated and/or drug affected. We have recommended that police commanders ensure that police dog handlers are not left unaccompanied during operations given the potential for danger when a handler in control of a drug detection dog is left alone. We have also recommended that NSW Police provide reflective vests or employ other methods to ensure drug detection dogs are visible during overt operations given the risk of accidental harm when operating in dimly lit and/or crowded environments.

A number of legal ambiguities contained in the Drug Dogs Act have been brought to our attention during the review. For example, the issue of whether any slight or unintentional touching by a drug detection dog constitutes a trespass under the Drug Dogs Act appears to be open to interpretation. Given this uncertainty, we have recommended that the Parliament consider clarifying the legal consequences that may flow from contact between a drug detection dog and the person being screened.

It also appears that the Drug Dogs Act may not permit the screening of persons in vehicles or the screening of unattended property in public places. We have recommended that Parliament consider amending the Drug Dogs Act to deem a person inside a vehicle to be in the public place and to consider the legal position in relation to the screening of unattended property in public places.

Conclusion

The use of drug detection dogs in general drug detection operations does not significantly assist police in targeting drug suppliers. Overwhelmingly, the use of drug detection dogs led to searches where no drugs were found, or to the identification of mostly young adults in possession of very small amounts of cannabis for personal use.

There is little or no evidence to support claims that drug detection dog operations deter drug use, reduce drug-related crime, or increase perceptions of public safety. Further, criticisms of the cost-effectiveness of general drug detection operations appear to be well founded.

We have made recommendations aimed at increasing the effectiveness of drug detection dog operations. We have also made recommendations aimed at enhancing and improving police practice, clarifying ambiguities in the Drug Dogs Act, and encouraging police to consider the impact that drug detection dog operations have on harm minimisation objectives.

However, we have misgivings about whether the Drugs Dogs Act will ever equip police with a fair, efficacious and cost-effective law enforcement tool to target drug supply. In light of this, we have recommended that the starting point when considering our report is a review of whether the legislation in its present form, or amended as suggested, should be retained at all.

List of recommendations

	Recommendation	Paragraph number
1	NSW Police refine the training of drug detection dogs to better exclude the indication by the dogs of: <ul style="list-style-type: none"> • cannabis smoke • other residual scents, and • prescription drugs. 	8.2.8
2	NSW Police hold discussions with those responsible for the training of drug detection dogs in other Australian jurisdictions with a view to establishing an independent accreditation process for the training of drug detection dogs.	8.5
3	NSW Police develop procedures to guide the use of drug detection dogs in licensed premises and other crowded situations, emphasising strategies on how to seek cooperation from individuals affected by these operations and setting out advice on when the dogs should not be taken into crowds. Pre-operation briefings should be used to highlight relevant parts of the procedures or guidelines to officers involved in the operation.	8.6
4	NSW Police conduct a review, by a person or group independent of the Dog Unit, and in consultation with drug detection dog handlers, to investigate the proportion of time handlers are spending on various aspects of their work. This investigation should assess whether there is currently an appropriate balance between time spent 'in-the-field' and time spent on administration and training.	9.2
5	Part of any such investigation should involve consideration of: <ul style="list-style-type: none"> • whether an element of regional stationing of handlers would increase utilisation of drug detection dogs and handlers, and • whether the current number of drug detection dogs is appropriate given the demand for the drug detection dogs. 	9.2
6	Police commanders ensure the safety of drug detection dog handlers by reinforcing guidelines that state that handlers are not to be left unaccompanied during operations. If necessary, the operation commander should be made responsible for allocating a police officer to remain with the handler at all times.	9.3.1
7	NSW Police provide reflective vests or use other appropriate methods to ensure drug detection dogs are visible during overt operations.	9.3.2.2
8	Information about the public inspection provisions in the Drug Dogs Regulation, together with information about 'Clause 10 certificates', be forwarded to any officer requesting use of a drug detection dog for general drug detection as soon as possible after the request is made known to the Dog Unit.	10.3.4.1
9	Parliament consider amending the Drug Dogs Act to provide for the inspection of the drug detection warrant at any time during an operation.	10.3.6
10	NSW Police provide information regarding the public inspection provision in the Drug Dogs Regulation to any person who requests to inspect the drug detection warrant during an operation.	10.3.6
11	Parliament consider amending the Drug Dogs Act requiring police to obtain a drug detection warrant for <i>all</i> deployments of drug detection dogs in public places for the purpose of carrying out general drug detection.	10.4.5

12	If the current legislative scheme is maintained, NSW Police develop guidelines regarding intelligence material to be provided to the Dog Unit before the deployment of a drug detection dog in a public place is approved. At a minimum, requests to the Dog Unit should include intelligence information that is recent, relevant and location specific.	10.4.5
13	NSW Police publish summary statistics of the use of drug detection dogs in their Annual Report. The following data should be included: <ul style="list-style-type: none"> • number of operations conducted (including number of police officers and drug detection dogs utilised) • geographic locations and type of premises involved • the number of people indicated by a drug detection dog • the number of people searched as a result of an indication • the result of each search (drug or no drug located) • the quantities of prohibited drugs and other items seized, and • the nature and number of charges and other legal processes resulting from operations. 	10.4.5
14	Parliament consider amending the Drug Dogs Act requiring the publication of summary statistics of the use of drug detection dogs in the NSW Police Annual Report.	10.4.5
15	Parliament consider amending the Drug Dogs Act to include a definition of 'covert police operation'.	10.6
16	NSW Police ensure that all covert police operations in public places using drug detection dogs are authorised by a warrant under section 8 of the Drug Dogs Act.	10.6
17	If police request personal details when no offence has been committed, they advise the person: <ul style="list-style-type: none"> • that they are not obliged to provide their personal details, and • how any details provided may be used. 	11.2.3
18	NSW Police ensure officers do not obtain personal identification details during a search of a person's wallet or other items by using personal identification (such as a driver's licence), unless they have explicit and informed consent to do so.	11.2.3
19	NSW Police ensure officers do not detain a person to conduct a CNI or other check where police no longer have a reasonable suspicion that an offence has been committed, unless they have explicit and informed consent to do so.	11.2.3
20	NSW Police ensure that police officers inform searched persons that they are free to leave where no evidence of an offence has been detected.	11.2.3
21	NSW Police ensure officers formally caution persons that they are not obliged to answer questions immediately prior to the first question.	11.2.3
22	NSW Police conduct an audit of information reports related to drug detection dog incidents and delete all records which do not comply with the information sheet. Records that are inappropriate, unnecessary or misleading should also be deleted. This auditing should occur on a regular basis.	11.10.2
23	NSW Police provide clear guidelines to officers about when to create information reports. Such guidelines should advise that where no drugs are found, information reports are to be made only when valuable intelligence is available. Guidelines should include examples of what is NOT considered to be valuable intelligence information.	11.10.2

24	NSW Police provide training to intelligence practitioners and police officers about the correct recording procedures in relation to searches following indications by drug detection dogs.	11.10.2
25	If police officers are to record on COPS the personal details of individuals not found to be committing any offence, police must have first informed the person: <ul style="list-style-type: none"> • that they are not required to provide personal details, and • of the purpose for which those details are being obtained, i.e. making a record of the incident on COPS. 	11.10.2
26	NSW Police advise officers of the correct way to record on COPS searches where the person searched did not provide personal details.	11.10.2
27	NSW Police provide training to drug detection dog handlers to ensure they are aware of cultural factors that can influence individual reactions to the drug detection dogs.	12.2.1
28	Prior to operations, dog handlers convey information to police briefings about cultural sensitivities to the drug detection dogs.	12.2.1
29	Operation commanders ensure that operational orders for operations using drug detection dogs provide guidance to police about appropriate locations for the conduct of searches.	12.3.2
30	Where available, operation commanders ensure that private rooms or other private facilities are set aside for searches.	12.3.2
31	Operational police regularly consult with operators of licensed premises about the manner, frequency and results of drug detection dog operations conducted on licensed premises.	12.6.4
32	Upon arrival at licensed premises, one police officer be required to seek out the manager or other person in charge, to advise of their presence and answer any questions about the operation.	12.6.4
33	NSW Police develop guidelines setting out the factors that may be considered by a police officer when forming a reasonable suspicion to stop, search and detain a person during drug detection dog operations.	14.3.5.3
34	NSW Police require senior officers to outline and discuss the guidelines at briefings conducted before all drug detection dog operations.	14.3.5.3
35	NSW Police require police officers to systematically record on COPS all of the subjective and objective factors that led to the formation of reasonable suspicion to stop, search and detain a person.	14.3.5.3
36	NSW Police remove from guidelines the advice that police have reasonable suspicion to search a person based solely on a drug detection dog indication.	14.3.5.3
37	NSW Police collate performance statistics on each individual drug detection dog and handler to assist in ongoing evaluation and training. The statistics should include variables such as time and location of each individual indication, and the result of any search carried out as a consequence of the indication.	14.3.6
38	NSW Police require dog handlers to make available performance statistics of individual dogs to police officers involved in drug detection dog operations. The statistics should highlight the rate of finding drugs at different locations and settings.	14.3.6
39	Parliament consider amending the Drug Dogs Act to clarify the ambiguity that currently exists in relation to the consequences that flow from any slight or unintentional touching that may occur between a drug detection dog and the person being screened during general drug detection.	14.4.4

40	Parliament consider amending section 7 of the Drug Dogs Act to clarify the ambiguity created by the expression 'seeking to enter or leave'. Alternatively, Parliament consider removing the expression 'seeking to enter or leave' in section 7 altogether.	14.5
41	Parliament consider amending the Drug Dogs Act to deem a person inside a vehicle in a public place to be in the public place.	14.6.1
42	Parliament consider clarifying the legal position in relation to the screening of unattended property in public places. In the meantime, NSW Police ensure officers take all reasonable steps to avoid screening unattended property.	14.7.3
43	If screening of unattended property in public places is to occur, safeguards should be developed to address the situation where property is searched without the owner being present.	14.7.3
44	NSW Police require police officers to obtain explicit consent, which involves informing persons that they have the right to refuse, in circumstances where police do not have the lawful authority to compel a person to comply with a request.	14.8.2
45	Police comply with the requirements of Part 10A of the <i>Crimes Act 1900</i> unless and until an appropriate legislative amendment is made.	14.9.2
46	Parliament consider the application of Part 10A of the <i>Crimes Act 1900</i> to the processing of persons in the field to determine whether amendments ought be made to allow for alternative arrangements to those set out in Part 10A.	14.9.2
47	Parliament consider amending the Drug Dogs Act to explicitly state that police authorised to be on premises may conduct 'general drug detection' with a drug detection dog.	14.10.1.2
48	The Attorney General's Department consult with NSW Police and NSW Health to consider the formation of a steering committee to formulate a trial of a pre-court diversion program for persons found in possession of small amounts of drugs other than cannabis with an emphasis on drug assessment, treatment and education.	15.5.4.7
49	When conducting drug detection dog operations in the vicinity of drug health services, police should specifically consider and outline harm minimisation issues in operational orders.	15.6.5
50	NSW Police continually assess the impact of drug law enforcement strategies (including drug detection dog operations) on access to drug health services, including regular consultation and liaison with health service providers.	15.6.5
51	NSW Police implement a harm minimisation education and training program for all police officers.	15.7
52	NSW Police provide specific harm minimisation education and training for police officers in areas where drug health services operate.	15.7
53	NSW Police develop guidelines in relation to the discovery of prescription drugs as a result of person searches. The guidelines should outline various considerations to be taken into account before a police officer decides to confiscate substances that may be prescription medication. In particular, the guidelines should acknowledge that there might be legitimate reasons for persons carrying prescription drugs out of its usual packaging and that there is no legal requirement for a person to carry evidence that prescription drugs in their possession were lawfully obtained or supplied.	15.8
54	NSW Parliament consider whether the Drug Dogs Act in its present form, or with recommended amendments, should be retained at all.	17.1
55	NSW Parliament consider providing for a further period of monitoring of the use of drug detection dogs similar to that contained in section 13 of the Drug Dogs Act.	17.1

Glossary and abbreviations

ACS	Australian Customs Service
BOCSAR	NSW Bureau of Crime Statistics and Research
CAN	Court Attendance Notice
CIN	Criminal Infringement Notice
CNI	Central Names Index (on COPS)
COPS	Computerised Operational Policing System (NSW Police)
CRIME	Custody, Rights, Investigation, Management, Evidence (NSW Police Code of Practice for arrest, detention and investigation)
Drug Dogs Act	<i>Police Powers (Drug Detection Dogs) Act 2001</i>
Drug Dogs Regulation	<i>Police Powers (Drug Detection Dogs) Regulation 2002</i>
ERD	Ecstasy and Related Drugs
ERISP	Electronic Record of Interview of Suspect Person
FCAN	Field Court Attendance Notice
GHB	Gamma-hydroxy butyrate (also known as GBH)
Hon.	Honourable
HVP	High Visibility Policing
Intel	Intelligence material held by NSW Police which is usually contained in Information Reports
IR(s)	Information Report(s)
LAC(s)	Local Area Command(s)
LEPRA	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>
meth/amphetamine	Refers to either methylamphetamine or amphetamine.
MLC	Member of the Legislative Council
MOGs	Management Operational Guidelines
MP	Member of the Legislative Assembly
MSIC	Medically Supervised Injecting Centre
NSP(s)	Needle & Syringe exchange Program(s)
NSWPD	New South Wales Parliamentary Debates (Hansard)
POI	Person Of Interest (generally used by police to describe a potential suspect, a suspect, an accused or an offender)
SOPs	Standard Operating Procedures
VKG	Police radio

Chapter 1. Introduction

The *Police Powers (Drug Detection Dogs) Act 2001* ('the Drug Dogs Act') and the *Police Powers (Drug Detection Dogs) Regulations 2002* ('the Drug Dogs Regulation') commenced on 22 February 2002 and 10 May 2002 respectively.

The Drug Dogs Act and Regulation establish a legislative scheme which confers on police the power to use drug detection dogs *without a warrant* to assist in the identification of persons committing drug offences in certain public places such as licensed premises, prescribed public transport routes, and sporting and entertainment venues. Police may also use drug detection dogs in other public places *with a warrant* where an authorised justice issues a warrant after being satisfied that police have reasonable grounds for believing that drug offences are occurring at or in the public place specified in the warrant application.

Section 13 of the Drug Dogs Act required the NSW Ombudsman to review the exercise of the powers conferred on police for a period of two years. This report details the work undertaken for the purposes of the review.

Where appropriate, recommendations aimed at enhancing and improving police practice have been made in the relevant chapters. Recommendations aimed at providing more certainty and clarity in the legislation have also been made.

Chapter 2. Background

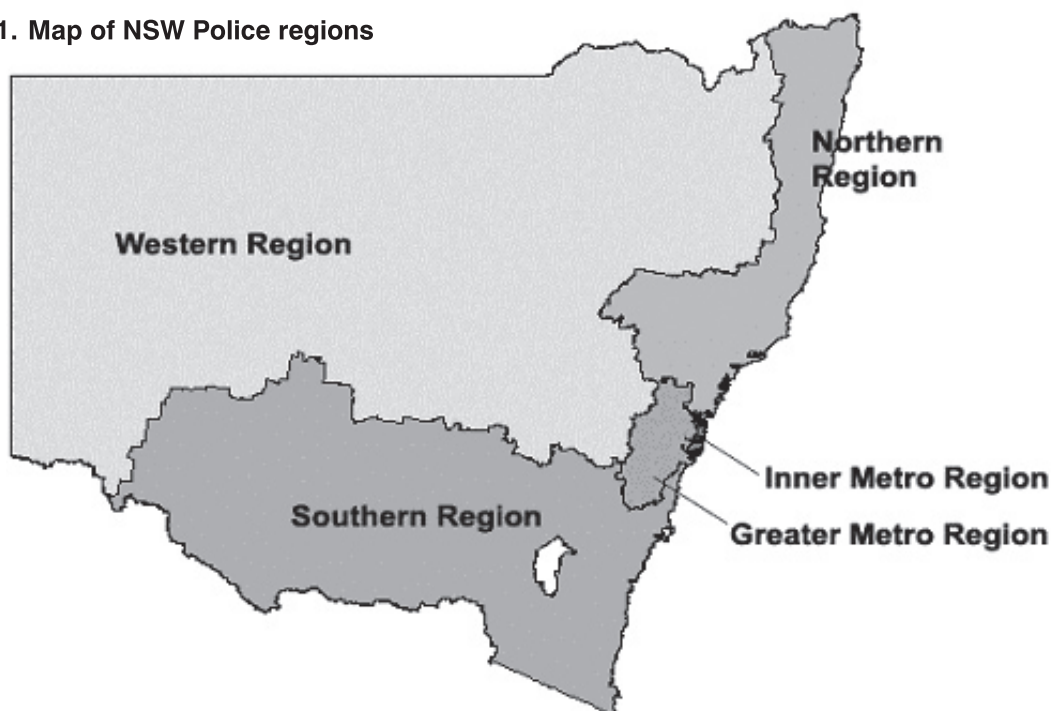
This chapter details the background to the introduction of the Drug Dogs Act and notes some of the issues relevant to the review of the legislation. Also included is an outline of the key provisions of the Drug Dogs Act.

2.1. Structure of NSW Police

NSW Police consists of 80 Local Area Commands ('LACs'). Local area commands are the primary management units of NSW Police and are responsible for strategic and business planning at a local level. During the time of our review, each LAC was located within one of five designated NSW Police regions:

- Inner Metro Region
- Greater Metro Region
- Northern Region
- Southern Region
- Western Region.¹

Figure 1. Map of NSW Police regions



Source: NSW Police Intranet.

NSW Police also has a number of specialist units that have been involved in the implementation and operation of the Drug Dogs Act:

- **Dog Unit** – This unit is situated within the State Protection Group of NSW Police and provides specialist dog services. Dogs are trained and utilised in relation to general purposes (assisting officers in the execution of their duties), critical incidents, firearms and explosive detection, urban search and rescue, cadaver detection, and drug detection.
- **Vikings Unit** – ‘Operation Vikings’ are high visibility policing operations that seek to reduce street offences and criminal activity, with a particular focus on anti-social behaviour, alcohol-related crime, street level drug possession and traffic offences. Prior to the formation of the Public Order and Riot Squad in late 2005, the Vikings Unit conducted most Vikings operations. It is worth noting that local area commands can also seek funding to conduct their own high visibility policing operations under the umbrella of ‘Operation Vikings’.²
- **Target Action Groups (TAG)** – Teams of police officers that concentrate on specific crime issues within designated police regions.

2.2. Role of the NSW Ombudsman

The Ombudsman is an independent body that deals with complaints about most government departments and public sector agencies, and some private organisations in New South Wales. Each year we receive a large number of telephone inquiries and written complaints concerning NSW Police. Most of these are referred to NSW Police for investigation, with our role being to independently oversee and review the manner in which these complaints are investigated.

In addition to oversight of complaint handling, the New South Wales Parliament sometimes requires the Ombudsman to review the implementation and operation of new legislation. Often the legislative provisions under review involve new or enhanced police powers.

Section 13 of the Drug Dogs Act required the Ombudsman to keep under scrutiny the exercise of the powers conferred on police officers for two years.³ To facilitate this monitoring role, the Ombudsman could require the Commissioner of Police to provide information about the exercise of the powers.⁴ After the expiration of the two-year review period, the Ombudsman was required to prepare a report as soon as practicable on the exercise of the powers and furnish a copy of the report to the Attorney General and the Commissioner of Police.⁵ The Attorney General is responsible for laying a copy of the report before both Houses of Parliament as soon as practicable after receiving it.⁶

2.3. Drug detection dog operations before the Drug Dogs Act

Since the inception of the NSW Police Dog Unit, dogs have been trained in the detection of prohibited drugs. Initially, these dogs were not specialist drug detection dogs but general purpose dogs that were also trained in drug detection. In 2001 fourteen specially trained drug detection dogs began operational duties.⁷ These dogs had previously been part of the pool of dogs trained in the lead up to the 2000 Olympic Games held in Sydney.⁸

In early 2001, NSW Police began using drug detection dogs in various locations including public transport, licensed premises, nightclubs, and in public places such as streets. However, until the commencement of the Drug Dogs Act, no specific legislation was in place to regulate the use of drug detection dogs.

2.4. Origins of the Drug Dogs Act

2.4.1. Criticism of the use of drug detection dogs

The use of drug detection dogs in public places and other areas where large numbers of people congregate was criticised by various organisations. For example, the NSW Council for Civil Liberties stated, 'It is the view of the [Council] that it is an invasion of privacy, harassment, and an illegal search to use dogs to sniff people chosen randomly.'⁹ The Council and others also argued that use of drug detection dogs breached international obligations, particularly those contained in the *International Covenant on Civil and Political Rights*.¹⁰ Other critics suggested the police use of drug detection dogs involved the targeting of drug users rather than drug suppliers; that some groups like the gay and lesbian community were unfairly targeted in such operations; and that use of drug detection dogs negatively impacted upon measures undertaken to minimise the harms associated with drug use.¹¹

As a result of these concerns the NSW Council for Civil Liberties, in conjunction with the AIDS Council of NSW, the NSW Council of Social Service, the Redfern Legal Centre, and other organisations established a website enabling people to discuss the issue of drug detection dogs, and provide updates about people's rights in relation to the use of the drug detection dogs.¹²

As well as receiving attention from certain community groups and stakeholders, the use of drug detection dogs in public places received a significant amount of media attention. This was particularly the case following high visibility policing operations. For example, when police conducted operations using drug detection dogs on a number of nightclubs in Sydney's inner-eastern suburbs on a single night in October 2001, one newspaper report stated:

About 200 police converged on two Oxford Street clubs, while 100 other officers raided three other clubs at Kings Cross and Double Bay.

More than 1,000 nightclub patrons were searched by police accompanied by nine drug detection dogs in the simultaneous raids that began at 1am.

Some bleary-eyed clubbers shouted abuse and booed as they watched police frisking men and women as they emerged from the clubs.

...

Police warned of further raids and that other nightclubs faced shutdowns if they did not get rid of drug dealers and users.¹³

2.4.2. Legal challenge to the use of drug detection dogs

Legal challenges to the use of drug detection dogs also received significant media attention.¹⁴ This was particularly the case in relation to the decision in *Police v Darby*.¹⁵

The brief facts of *Police v Darby* are as follows. In February 2001, police searched Mr Darby after a drug detection dog indication. A small amount of cannabis and methylamphetamine was located during the search and Mr Darby was charged with two counts of possess prohibited drug.

At the hearing in November 2001, the magistrate held that the drug detection dog's 'sniffing', 'nudging' and 'bunting' of Mr Darby before making the indication amounted to an 'illegal search' because it was conducted without the requisite reasonable suspicion. The magistrate did not exercise the discretion to admit the illegally obtained evidence and dismissed both charges.

The decision in *Police v Darby* was appealed to the Supreme Court and then again to the Court of Appeal. The Court of Appeal, after determining various questions of law, sent the matter back to the Local Court for further hearing of the facts. However, the Director of Public Prosecutions withdrew all charges against Mr Darby. For a more thorough discussion of the legal issues raised in the *Darby* trilogy of cases, see Chapter 14 'Legal interpretation issues'.

2.4.3. Reaction to the decision in *Police v Darby*

Following the decision of the magistrate in *Police v Darby*, the (then) Minister for Police, the Hon. Michael Costa MLC, announced that not only would NSW Police appeal against the decision to the Supreme Court, but that the Attorney General was examining the law in relation to drug detection dogs, and that 'if legislation is required I would certainly support it.'¹⁶ At the time, the Opposition Leader, Mrs Kerry Chikarovski MP, also announced that a private member's bill would be introduced in Parliament to clarify the use of sniffer dogs.¹⁷

The private member's bill introduced by the Opposition, the Drug Misuse and Trafficking Amendment (Sniffer Dogs) Bill 2001, sought to amend section 37 of the *Drug Misuse and Trafficking Act 1985*:

- (a) *to provide that a member of the police force may, by using a dog to detect prohibited plants or prohibited drugs, form a reasonable suspicion that a person is in possession of a prohibited plant or prohibited drug*
- (b) *to provide that a member of the police force does not have to form a reasonable suspicion that a person has contravened that Act before using a dog to search for prohibited plants or prohibited drugs, and*
- (c) *to provide that evidence obtained by a member of the police force as a result of stopping, searching or detaining a person who the member reasonably suspects is in possession of a prohibited plant or prohibited drug, on the basis of the member using a dog for the detection of prohibited plants or prohibited drugs, is not, for the purposes of section 138 of the Evidence Act 1995, evidence that was improperly obtained.*¹⁸

The private member's bill was not supported by the Government, which on 6 December 2001 introduced the Police Powers (Drug Detection Dogs) Bill 2001 into the Legislative Council. This bill concerned the use and regulation of drug detection dogs by NSW Police and contained detailed provisions about the circumstances and locations in which dogs could be used. In particular, it proposed that police be permitted to use drug detection dogs without a warrant to detect drug offences in relation to persons in places such as licensed premises, prescribed public transport routes, and some entertainment venues. It also provided that police could apply for a warrant to use dogs to detect drug offences in other public places.

The bill further specified that all reasonable precautions should be taken by a police officer to prevent the dog from touching a person, and that the operation of the legislation would be monitored by the NSW Ombudsman for two years following commencement.

2.4.4. Parliamentary debate on the Police Powers (Drug Detection Dogs) Bill 2001

During the second reading speech on the Police Powers (Drug Detection Dogs) Bill 2001, the (then) Minister for Police, the Hon. Michael Costa MLC, stated that '[t]he bill is drafted to recognise the need for police to use drug detection dogs to assist in identifying persons involved in the illicit drug trade and particularly those supplying prohibited drugs.'¹⁹

The Opposition supported the bill, however, a number of members of Parliament raised concerns about its provisions. Some of the concerns raised in the parliamentary debates include:

- police resources would be dedicated to catching recreational drug users, people with addictions and the occasional small time dealer²⁰
- the targeting of recreational drug users, rather than dealers and traffickers, is contrary to progressive drug policy that seeks to channel users into health and rehabilitation services²¹
- the legislation would primarily impact upon young people²²
- 'ordinary people should be able to walk down the street, catch a train or go to the pub without being arbitrarily searched when there is no reasonable suspicion that they have committed an offence'²³
- the dogs may make false-positive indications²⁴
- there is a lack of information available on the reliability and accuracy of the dogs at detecting drugs,²⁵ and
- the bill would not decrease rates of serious crime and drug-related problems.²⁶

In order to address these concerns, a number of amendments to the Police Powers (Drug Detection Dogs) Bill 2001 were moved during the parliamentary debates. For example, it was proposed that provisions be removed from the bill 'so that a person could not be prosecuted for an offence of possession or control as a result of general drug detection using a dog.'²⁷ In other words, evidence of prohibited drugs or plants found on a person as a result of a drug dog indication would only be admissible against the person in relation to the offence of supplying prohibited drugs. Ms Lee Rhiannon MLC, who moved this amendment, noted that '[b]y agreeing to the amendments, the Government – and the Opposition ... will demonstrate that it is after the big suppliers and drug pushers, not the small users, who will be the only ones being picked up by the bill as it is presently constructed.'²⁸

The Hon. Richard Jones MLC proposed that the bill be amended to provide that if a drug detection dog is used to search a person for the purpose of detecting a drug offence, and no prohibited drugs or plants are found as a result of the search, 'the State is liable to compensate the person for any loss or damage incurred by the person as a consequence of the search.'²⁹ In addition, Mr Jones proposed removing the provisions permitting general drug detection of people on public transport, on certain routes as 'it is particularly offensive for the Government to target the poorer section of the community and not those who drive their private cars ...'³⁰

The Hon. Peter Breen MLC proposed that the legislation require detailed records to be kept by police officers about the number of people searched, the number of occasions where the drug detection dog indicates the presence of a drug and where no drug is found on the person, and the action taken in respect of people found to be in possession or control of a prohibited drug or plant as a result of general drug detection. In addition, Mr Breen proposed that the bill be amended to specify:

The Commissioner of Police is to report annually to the Minister in relation to the following matters:

- (a) the costs associated with exercising the powers conferred on police officers by this Act,*
- (b) the total number of police officers and dogs involved in the exercise of those powers,*
- (c) the extent to which other police resources are involved in the exercise of those powers,*
- (d) the overall time spent by police officers in exercising the powers conferred on police officers by this Act.'*³¹

Other proposed amendments included a requirement that unless being used in a covert operation authorised by a warrant, drug detection dogs should wear a jacket displaying the words 'NSW Police Service' to ensure that they are easily identifiable as police dogs.³² It was also proposed that all searches as a result of a drug detection dog indication be conducted in a place out of public view.³³

None of the proposed amendments were passed by the Parliament.

2.5. Key provisions of the Drug Dogs Act

The Drug Dogs Act outlines how police are able to utilise drug detection dogs.

2.5.1. What are police authorised to do with drug detection dogs?

The Drug Dogs Act authorises police to conduct 'general drug detection', or put more simply, screen people with a drug detection dog, but only as prescribed by the Act.³⁴

'General drug detection' is defined as the detection of prohibited drugs or plants in the possession or control of a person.³⁵

The Drug Dogs Act also contains a general authority to use drug detection dogs in conjunction with other police powers. The general authority authorises a police officer:

- to use a drug detection dog to search a person if the officer is authorised to search the person for the purpose of detecting a 'drug offence',³⁶ or
- to take a drug detection dog under their control, for the purpose of detecting a 'drug offence', into premises if the officer is entitled to enter, or be in or on, the particular premises in the exercise of the officer's function.³⁷

A 'drug offence' means the possession, control or supply by a person of any prohibited drug or plant.³⁸ However, it does not include self-administration of prohibited drugs.³⁹

The Drug Dogs Act authorises police to conduct general drug detection *without* a warrant in relation to:

- persons at, or seeking to enter or leave, any part of premises being used for the consumption of liquor that is sold at the premises (other than any part of premises being used primarily as a restaurant or other dining place)⁴⁰
- persons at, or seeking to enter or leave, a public place at which a sporting event, concert or other artistic performance, dance party, parade or other entertainment is being held,⁴¹ or
- persons on, or seeking to enter or leave, a 'public passenger vehicle' that is travelling on a route prescribed by the regulations, or a station, platform or stopping place on any such route.⁴²

'Public passenger vehicle' includes trains, light rail or buses used to provide a public passenger service.⁴³

In all other circumstances, police must obtain a warrant to conduct general drug detection in a 'public place'.⁴⁴

The definition of a 'public place' is very broad and includes roads but not schools.⁴⁵

The Drug Dogs Act also stipulates that any general drug detection conducted as part of a covert police operation must be authorised by a warrant.⁴⁶

2.5.2. How do police obtain a warrant to conduct general drug detection in a public place?

A police officer who has reasonable grounds for believing that any person in a public place may be committing drug offences may apply to an authorised justice for a warrant to conduct general drug detection.⁴⁷

Any application for a warrant must disclose whether any general drug detection to be conducted under the warrant will be part of a covert police operation.⁴⁸

An authorised justice to whom the warrant application is made may, if satisfied that there are reasonable grounds for doing so, issue a warrant authorising any police officer to conduct general drug detection in the public place, at the times specified in the warrant.⁴⁹

2.5.3. Police powers not in the Drug Dogs Act

The Drug Dogs Act does not create any new search powers, and it specifically states that police are not carrying out general drug detection during the search of a person that is conducted after a police officer has formed a reasonable suspicion that the person is committing a drug offence.⁵⁰

The power to search persons reasonably suspected of being in possession or control of a prohibited drug or plant is contained in the *Drug Misuse and Trafficking Act*⁵¹ and the *Crimes Act*.⁵²

The Drug Dogs Act provisions in relation to general drug detection do not affect:

- the search of a person whom a police officer reasonably suspects is committing a drug offence,⁵³ or
- any search of premises that does not involve a search of persons in or on the premises.⁵⁴

2.5.4. Safeguards

The Drug Dogs Act states that a police officer conducting general drug detection:

- is to take all reasonable precautions to prevent the drug detection dog touching a person,⁵⁵ and
- is required to keep the drug detection dog under control.⁵⁶

The Drug Dogs Act does not confer power on a police officer:

- to enter any premises that the officer is not otherwise authorised to enter,⁵⁷ or
- to detain a person who the officer is not otherwise authorised to detain.⁵⁸

2.5.5. Legislative changes

Much of this report was drafted prior to the commencement of the *Law Enforcement (Powers and Responsibilities) Act 2002* ('LEPRA') on 1 December 2005. Consequently, most of the legislative provisions referred to in the report are now in LEPRA, which contains the majority of law enforcement powers commonly used by police in NSW.

For example, the provisions of the Drug Dogs Act are now contained in Division 2, Part 11 of LEPRA. Similarly, the provisions of the *Search Warrants Act* can now be located in Part 5 of LEPRA, the power to search a person without a warrant is now contained in section 21 of LEPRA, and the safeguards previously located in Part 10A of the *Crimes Act* have been moved to Part 9 of LEPRA.

2.6. Implementation of the Drug Dogs Act

Shortly after the commencement of the Drug Dogs Act in February 2002, NSW Police revised the Dog Unit's Standard Operating Procedures ('SOPs'). The Management Operational Guidelines ('MOGs'), which form part of the SOPs, were developed to provide guidance to police officers on the efficient, effective, safe, ethical and lawful deployment of drug detection dogs.⁵⁹

On 10 May 2002 the Drug Dogs Regulation was gazetted.⁶⁰ The regulation prescribed certain forms in relation to the warrants required to conduct general drug detection⁶¹ and made certain modifications to the manner in which the *Search Warrants Act* applied to warrants under the Drug Dogs Act.⁶² The regulation also prescribed seven train and two bus routes on which general drug detection could be conducted without a warrant.⁶³

In April 2004, the Drug Dogs Regulation was amended to include the North Shore rail line, enabling police to conduct general drug detection on that line without a warrant.⁶⁴

2.7. SMS alert service

After the commencement of the Drug Dogs Act certain individuals and groups continued to oppose the use of drug detection dogs.⁶⁵ In May 2002 the NSW Council for Civil Liberties and Redfern Legal Centre established a website where people could register their mobile telephone number in order to be sent SMS messages advising them where drug detection dogs were patrolling.⁶⁶

When the website was established, Cameron Murphy, President of the NSW Council for Civil Liberties stated that the website 'is a world first, an information service that will tell people that illicit drugs are illegal and tell them exactly where the sniffer dogs are'.⁶⁷ Mr Murphy likened the website to radio stations which alert drivers to the location of speed cameras.⁶⁸

After the website was established the (then) Minister for Police, the Hon. Michael Costa MLC, sought legal advice on the site.⁶⁹ The Minister was subsequently reported as acknowledging that it was unlikely that the site could be shut down for legal reasons.⁷⁰

Certain technical difficulties resulted from the 'overwhelming demand' created by 37,000 people logging onto the site during the first few weeks of operation.⁷¹ It is unclear for how long following the difficulties the website and SMS alert service were operating.

Endnotes

- ¹ From 1 January 2006 a new regional structure commenced. Inner and Greater Metro Regions were divided into three new regions: Central Metro; North West Metro; and South West Metro, resulting in six regions.
- ² After the formation of the Public Order and Riot Squad the Vikings Unit ceased to operate as a distinct operational unit with seconded police officers.
- ³ *Police Powers (Drug Detection Dogs) Act 2001*, s.13(1).
- ⁴ *Police Powers (Drug Detection Dogs) Act 2001*, s.13(2).
- ⁵ *Police Powers (Drug Detection Dogs) Act 2001*, s.13(3).
- ⁶ *Police Powers (Drug Detection Dogs) Act 2001*, s.13(4).
- ⁷ Parkin R, 'Police Powers (Drug Detection Dogs) Act 2001', *Policing Issues & Practice Journal*, October 2002, p.47.
- ⁸ Duff E, 'Sniff of victory in drugs battle', *The Sun Herald*, 4 March 2001.
- ⁹ Civil Liberty Update: The Electronic Newsletter of the New South Wales Council for Civil Liberties Inc, Number 1, January 2002, p.2.
- ¹⁰ Civil Liberty Update: The Electronic Newsletter of the New South Wales Council for Civil Liberties Inc, Number 1, January 2002, p.2. See also: Maher S, 'Lassie Go Home', *Sydney Star Observer*, Issue 599, 28 February 2002.
- ¹¹ See for example: Redfern Legal Centre Annual Report 2000-2001, Chapter on 'Drugs Policy Project', and Redfern Legal Centre Annual Report 2001-2002, p.30. These issues were also raised with us in an interview with an HIV Treatments Policy Officer, April 2004.

- ¹² Civil Liberty Update: The Electronic Newsletter of the New South Wales Council for Civil Liberties Inc, Number 1, January 2002, p.2. The website address was www.snifferdogs_info/noticeboard.htm.
- ¹³ Kennedy L, 'Nightclubs ordered closed after drug raids by police', *Sydney Morning Herald*, 22 October 2001. Other media reports about this police operation include: Maguire T & Pollard K, 'Police to apply for closure of drug-raid clubs', *Daily Telegraph*, 22 October 2001; 'Raided clubs could shut for good', *Sydney Morning Herald*, 23 October 2001; and Mercer N, 'Police drug raids leave bitter taste in clubs', *Sydney Morning Herald*, 13 September 2002.
- ¹⁴ Kennedy L, 'Drug-detecting dogs breach civil, political rights, magistrate finds', *Sydney Morning Herald*, 22 November 2001; 'Challenge to sniffer dogs', *Daily Telegraph*, 14 August 2001; Kennedy L, 'Costa committed to police use of drug sniffer dogs', *Sydney Morning Herald*, 23 November 2001.
- ¹⁵ Jerram DCM, Unreported, Downing Centre Local Court, 21 November 2001.
- ¹⁶ Kennedy L, 'Costa committed to police use of drug sniffer dogs', *Sydney Morning Herald*, 23 November 2001.
- ¹⁷ Kennedy L, 'Costa committed to police use of drug sniffer dogs', *Sydney Morning Herald*, 23 November 2001.
- ¹⁸ Explanatory note, Drug Misuse and Trafficking Amendment (Sniffer Dogs) Bill 2001.
- ¹⁹ NSWPD, Legislative Council, 6 December 2001, p.19745.
- ²⁰ Ms Moore MP, NSWPD, Legislative Assembly, 6 December 2001, p.19879.
- ²¹ Ms Moore MP, NSWPD, Legislative Assembly, 6 December 2001, p.19879.
- ²² Mr Barr MP, NSWPD, Legislative Assembly, 6 December 2001, p.19881.
- ²³ Ms Lee Rhiannon MLC, NSWPD, Legislative Council, 13 December 2001, p.20206.
- ²⁴ The Hon. Peter Breen, NSWPD, Legislative Council, 13 December 2001, p.20213. See also: The Hon. Ian Cohen MLC, NSWPD, Legislative Council, 13 December 2001, p.20220.
- ²⁵ Ms Moore MP, NSWPD, Legislative Assembly, 6 December 2001, p.19879.
- ²⁶ Ms Moore MP, NSWPD, Legislative Assembly, 6 December 2001, p.19878.
- ²⁷ Ms Lee Rhiannon MLC, NSWPD, Legislative Council, 13 December 2001, p.20228.
- ²⁸ Ms Lee Rhiannon MLC, NSWPD, Legislative Council, 13 December 2001, p.20228.
- ²⁹ NSWPD, Legislative Council, 13 December 2001, p.20229.
- ³⁰ NSWPD, Legislative Council, 13 December 2001, p.20230.
- ³¹ NSWPD, Legislative Council, 13 December 2001, pp.20236-7. Note that the Hon. Richard Jones subsequently proposed that the bill be amended to state that the regulations may require the keeping of detailed records about the outcome and cost of operations involving drug detection dogs: See NSWPD, Legislative Council, 13 December 2001, p.20238.
- ³² Ms Lee Rhiannon MLC, NSWPD, Legislative Council, 13 December 2001, pp.20231-2.
- ³³ The Hon. Dr Arthur Chesterfield-Evans MLC, NSWPD, Legislative Council, 13 December 2001, p.20232.
- ³⁴ *Police Powers (Drug Detection Dogs) Act 2001*, s.6.
- ³⁵ *Police Powers (Drug Detection Dogs) Act 2001*, s.5. Section 3 provides that prohibited drug and prohibited plant have the same meaning as in the *Drug Misuse and Trafficking Act 1985*.
- ³⁶ *Police Powers (Drug Detection Dogs) Act 2001*, s.4(1).
- ³⁷ *Police Powers (Drug Detection Dogs) Act 2001*, s.4(2). Further, neither the State nor a police officer is liable to any action, liability, claim or demand merely because a dog entered, or was in or on, premises provided for in s.4(2): *Police Powers (Drug Detection Dogs) Act 2001*, s.4(3).
- ³⁸ *Police Powers (Drug Detection Dogs) Act 2001*, s.3.
- ³⁹ Which is an offence under s.12 of the *Drug Misuse and Trafficking Act 1985*.
- ⁴⁰ *Police Powers (Drug Detection Dogs) Act 2001*, s.7(1)(a).
- ⁴¹ *Police Powers (Drug Detection Dogs) Act 2001*, s.7(1)(b).
- ⁴² *Police Powers (Drug Detection Dogs) Act 2001*, s.7(1)(c).
- ⁴³ *Police Powers (Drug Detection Dogs) Act 2001*, s.7(2).
- ⁴⁴ *Police Powers (Drug Detection Dogs) Act 2001*, s.8(1).
- ⁴⁵ *Police Powers (Drug Detection Dogs) Act 2001*, s.3.
- ⁴⁶ *Police Powers (Drug Detection Dogs) Act 2001*, s.9(3).
- ⁴⁷ *Police Powers (Drug Detection Dogs) Act 2001*, s.8(2).
- ⁴⁸ *Police Powers (Drug Detection Dogs) Act 2001*, s.8(4).
- ⁴⁹ *Police Powers (Drug Detection Dogs) Act 2001*, s.8(3).
- ⁵⁰ *Police Powers (Drug Detection Dogs) Act 2001*, s.5.
- ⁵¹ *Drug Misuse and Trafficking Act 1985*, s.37(4).
- ⁵² *Crimes Act 1900*, s.357E.
- ⁵³ *Police Powers (Drug Detection Dogs) Act 2001*, s.9(4)(a).
- ⁵⁴ *Police Powers (Drug Detection Dogs) Act 2001*, s.9(4)(b).
- ⁵⁵ *Police Powers (Drug Detection Dogs) Act 2001*, s.9(1).
- ⁵⁶ *Police Powers (Drug Detection Dogs) Act 2001*, s.9(2).
- ⁵⁷ *Police Powers (Drug Detection Dogs) Act 2001*, s.10(a).
- ⁵⁸ *Police Powers (Drug Detection Dogs) Act 2001*, s.10(b).
- ⁵⁹ NSW Police, *Drug Detection Dogs Management Operational Guidelines*, March 2002, p.2.
- ⁶⁰ NSW Government Gazette, No 85, 10 May 2002, p.2745.
- ⁶¹ *Police Powers (Drug Detection Dogs) Regulation 2002*, Schedule 1.
- ⁶² *Police Powers (Drug Detection Dogs) Regulation 2002*, Part 3.
- ⁶³ *Police Powers (Drug Detection Dogs) Regulation 2002*, Part 2.
- ⁶⁴ NSW Government Gazette, No 77, 30 April 2004, p.2233. See below (at paragraph 10.5.) for further discussion of the addition of the North Shore rail line to the prescribed transport routes.
- ⁶⁵ For example, Ms Clover Moore MP and the AIDS Council of NSW condemned the use of drug detection dogs in May 2002 in the gay and lesbian press: Maher S, 'They're back – Sniffer dogs return in weekend raids', *Sydney Star Observer*, 16 May 2002, p.1.

-
- ⁶⁶ New South Wales Council for Civil Liberties, 'Launch of Sniffer Dog Alert Service', Media Release, 21 May 2002. See also: Paterson J, 'Where my dog's at', *TRM Australia*, July 2002, p.12; Gibbs S, 'Free message service will dog drug patrols', *Sydney Morning Herald*, 22 May 2002; Lebihan R, 'Update: Drug sniffer-dog alert site strains under pressure', 23 May 2002, *ZDNet Australia*, http://www.zdnet.com.au/news/communications/soa/UPDATE_Drug_sniffer_dog_alert_site_strains_under_pressure/0,2000061791,20265435,00.htm, (Accessed 1 April 2004).
- ⁶⁷ New South Wales Council for Civil Liberties, 'Launch of Sniffer Dog Alert Service', Media Release, 21 May 2002.
- ⁶⁸ New South Wales Council for Civil Liberties, 'Launch of Sniffer Dog Alert Service', Media Release, 21 May 2002.
- ⁶⁹ Lebihan R, 'Costa seeks to shut down sniffer-dog alert site', 22 May 2002, *ZDNet Australia*, http://www.zdnet.com.au/news/communications/soa/Costa_seeks_to_shut_down_sniffer_dog_alert_site/0,2000061791,202653399,00.htm, (Accessed 1 April 2004).
- ⁷⁰ Lebihan R, 'Update: Drug sniffer-dog alert site strains under pressure', 23 May 2002, *ZDNet Australia*, http://www.zdnet.com.au/news/communications/soa/UPDATE_Drug_sniffer_dog_alert_site_strains_under_pressure/0,2000061791,20265435,00.htm, (Accessed 1 April 2004); O'Neill J, 'Sniffer dog alert website proves popular', *AAP*, 22 May 2002, <http://news.f2.com.au/2002/05/22FFXGJH6VHTC.html> (Accessed 21 February 2003).
- ⁷¹ New South Wales Council for Civil Liberties, *Civil Liberty*, Issue 190, September 2002, p.3; Lebihan R, 'Update: Drug sniffer-dog alert site strains under pressure', 23 May 2002, *ZDNet Australia*, http://www.zdnet.com.au/news/communications/soa/UPDATE_Drug_sniffer_dog_alert_site_strains_under_pressure/0,2000061791,20265435,00.htm, (Accessed 1 April 2004).

Chapter 3. Methodology

This chapter briefly summarises the research activities we undertook for our review and details the various information sources we have relied on.

3.1. Dog Unit records

Data and records kept by the Dog Unit constituted one of the main sources of information for the review.

3.1.1. Drug detection dog spreadsheets

Prior to the commencement of the review, the Dog Unit kept data on the use and results of all its drug detection dogs in spreadsheet format. The Dog Unit maintained two main spreadsheets:

- 'Results Spreadsheet' – containing information about the results of indications by the dogs, and
- 'Requests Spreadsheet' – containing information about requests made for use of the dogs by local area commands and police units across NSW.

3.1.1.1. Results spreadsheets

The Results Spreadsheet is maintained by intelligence officers at the Dog Unit. For each operation at which a dog and handler are deployed, police working on the operation manually complete a form setting out the result of each drug detection dog indication. This form is then returned to the Dog Unit where the data is entered into the Results Spreadsheet.

At the beginning of the review period the Dog Unit added some new fields to this spreadsheet at our request. These additional fields assisted us in analysing the use of the drug detection dogs. The Dog Unit agreed to supply us with an updated spreadsheet for each month of the review period. At the end of the review period the Dog Unit provided us with a consolidated spreadsheet containing data for the entire two-year review period.

The Results Spreadsheet contains information about each indication, such as the date and time of the indication; location; suburb; local area command; dog; handler; name and date of birth of person searched (if obtained); result of the search and details (drug type and weight) of any drug/s located; and any COPS record numbers (such as information report or event numbers).

It is important to note that the Results Spreadsheet records information about *indications*. An indication is not the same as a search, and the number of indications will not exactly match the number of searches, although our research has demonstrated they are likely to be very similar, as most people indicated were subsequently searched. An indication denotes that the drug detection dog signalled to its handler (usually by sitting down) that it has detected on a person the scent of one of the prohibited drugs it has been trained to detect. However, on some occasions a scent may have been located on the street or in a garbage bin. On other occasions a single record in the Results Spreadsheet may relate to an incident where more than one person was searched as a result of one or more indications occurring very close together.

In addition, while the Results Spreadsheet is a good source of information about the use of the drug detection dogs, it is not always accurate or comprehensive. This is due to a number of factors including difficulties reading the handwriting on the manually completed forms, misunderstandings of terminology, and partially completed forms. Further, the spreadsheet may not present a true picture of the use of the dogs because it does not, for example, record any instances where a dog is deployed at a particular operation but does not make any indications. However, this would seem to be a rare occurrence.

The Results Spreadsheet does not contain demographic details about the person searched such as gender, Aboriginality, nationality/ethnicity, or suburb of residence.

3.1.1.2. Requests spreadsheet

The Requests Spreadsheet is also maintained by intelligence officers at the Dog Unit. The Requests Spreadsheet records each time a request is made by a local area command or other police unit for the use of a drug detection dog. Each request is allocated a discrete request number.⁷² The spreadsheet records the proposed date of the operation(s); details of the requesting police officer and the local area command; intelligence information supporting the request; whether any type of warrant will be sought; whether the request was approved or denied by the Dog Unit and the reason for this action; and the proposed handler and dog allocated to the operation. A single request could relate to an operation held on one day or night, or an operation held over multiple days/nights. A single request might involve one or more dogs and handlers at one or more locations.

3.1.1.3. Terminology

The Results Spreadsheet employs particular terminology to record the results of searches where no drugs are found. Because these terms are not easily understood, we used our own terms in this report. Our terms are explained in Table 1 below.

Table 1. Terminology used when no drugs are found

Dog Unit Term	Term used in this report	Meaning
Residual Admitted	Drug contact admitted	The person searched told police that they have had, or may have had some contact with drugs. This includes being around other people who may have used drugs, particularly cannabis.
Residual Denied	Drug contact denied	The person searched told police that they have not had any contact with drugs.
Residual	No information about drug contact	The person did not say anything to police about their drug contact.

3.1.2. Audit of requests for deployment of a drug detection dog

We conducted an audit of the intelligence information contained in 61 request applications made to the Dog Unit. The purpose of the audit was to assess the intelligence information used to support the deployment of drug detection dogs. We examined the intelligence information to determine if it was recent, relevant and specific to the proposed location of the operation.

3.2. Computerised Operational Policing System

The NSW Police Computerised Operational Policing System ('COPS') is the primary computer system used by police officers to record and retrieve information in their day-to-day work. For any given incident a police officer may record some or all of the following information on COPS: date; time; location; offence detected (if any); and offender and victim details. A police officer may also record further information about the incident in the free text 'narrative' field, including a description of the incident in the officer's own words.

3.2.1. COPS records

There is currently no reliable method of extracting all drug detection dog related records from COPS. However, we were usually able to examine individual drug detection dog incidents on COPS by using the record numbers provided in the Results Spreadsheet.

There are many different types of COPS records. For this review we mostly examined:

- Event records – records of incidents at which police were in attendance
- Information Reports (IRs) – records containing intelligence information about a person, place and/or entity, and
- Charge records – records detailing offences a person has been charged with and the outcome of legal proceedings.

Extracts from narratives recorded on COPS are quoted in this report. These extracts, as with all quoted text, have been transcribed literally and have not been corrected for spelling, grammatical or other similar errors. In considering these entries it should be appreciated that COPS narratives are made from notebook entries and the recording officer's recollection, and are often entered in relatively unfavourable circumstances such as at the end of a shift following a patrol.

3.2.2. Audit of demographic details recorded on COPS

We conducted an audit of 169 COPS records to look at how police recorded demographic information of persons searched after indications by drug detection dogs.

3.2.3. Audit of Information Reports

We also conducted an audit of 509 Information Reports that were created after police searched a person but no drugs were located, to assess compliance with NSW Police policies regulating the type of information to be included in a report, and the circumstances in which a report is created.

3.3. Court documents

3.3.1. Transcripts of legal proceedings

As part of our analysis to determine what impact drug detection dogs had on drug supply, we examined 135 court transcripts where the person could have been charged with the serious offence of supply prohibited drug. Our examination allowed us to gain an insight into the types of charges preferred by NSW Police, the circumstances in which charges were withdrawn, court outcomes, penalties imposed and the judicial attitude towards some of the young adults charged with drug offences.

We also examined a further 80 transcripts of matters where police only preferred charges of possess prohibited drug. These 80 matters were randomly chosen from persons charged in the first year of our two-year review. The purpose of examining these transcripts was to gain some insight into the range of sentences imposed on persons found with small amounts of prohibited drugs.

We examined a further four transcripts involving cruelty to animal charges brought as a result of attacks on drug detection dogs during the review period.

3.3.2. Inspection of warrant documents at Local Courts

We conducted a small 'mystery shopper' research project to provide a snapshot of how the provisions in the Drug Dogs Regulation regulating public inspection of prescribed warrant documents were operating in practice. The mystery shoppers attended six local courts and endeavoured to inspect warrant documents for specified drug detection dog operations.

In addition to the mystery shopper project, we examined 21 drug detection warrants, 14 warrant applications and seven execution reports.

3.4. Observational research

Direct observation of policing activity is one way to obtain an independent and first-hand understanding of the use of police powers in the field.

3.4.1. Overt observations

We conducted most of our direct observation of police in an overt manner and sought police co-operation to allow us access to police briefings, documentation of operations, and interactions with members of the public. We provided police and our observers with information about the conduct of the research prior to overtly observing any police operation.

We overtly observed a total of 24 drug detection dog operations over the two-year review period. Ten were conducted in 2002 and 14 in 2003. A total of 505 drug detection dog indications and 263 police searches were observed. We observed ten different drug detection dogs in action.

Most often we observed operations at railway stations (13 operations), on streets (14 operations) and at licensed premises (12 operations). We also observed three operations at dance parties and two operations at markets or festivals. More than half the operations we observed patrolled more than one type of location. Just over half the operations we attended commenced after 6pm and many extended into the early hours of the morning.

We observed operations in 18 different local area commands in inner-metropolitan Sydney, inner-western Sydney, western Sydney, north-western Sydney, southern Sydney, and southern and northern NSW.

Our observers generally worked in teams of two with one observer staying with the drug detection dog and handler, and the other observer observing searches with accompanying police. Observers took notes of what they saw including comments by police and members of the public.

3.4.2. Covert observations

In addition to our overt observations, we also conducted a small number of covert observations where we did not inform police that we would be observing their behaviour. These observations were intended to provide some insight into whether police changed any aspect of their operation or behaviour, either consciously or unconsciously, because of the presence of the Ombudsman observers.

3.5. Consultation with NSW Police

We canvassed the views of a wide cross section of police officers in a variety of ways.

3.5.1. Interviews

We conducted a number of interviews with both senior police involved in the implementation and operational planning of drug detection dog operations, and more junior officers directly involved in operations. We also conducted interviews with police officers with specialist knowledge of policing and/or drug law enforcement.

Our interviews were semi-structured and in some cases focussed on the particular knowledge, operational experience or expertise of the officer. With all interviews we undertook to protect the anonymity of the officer in order to elicit frank views and opinions. Where an officer's title was likely to identify them, we sought permission to refer to their title in this report and also provided an opportunity to comment on the accuracy of any quote attributed to them.

3.5.2. Focus groups

We conducted a total of five focus groups with police who had direct experience with drug detection dog operations. Each group had between seven and twelve officers present. Again we undertook to protect the anonymity of the officers who participated in the focus groups so as to ensure they felt comfortable discussing both positive and negative aspects of the use of drug detection dogs and the Drug Dogs Act.

Four of the focus groups were conducted with groups of officers from distinct local area commands or operational units within NSW Police. One focus group was conducted with drug detection dog handlers.

3.5.3. Informal contact

A number of police officers also made informal contact with our office to discuss operational issues or concerns that they had. This was usually by telephone or email.

3.5.4. Consultation on final report

A draft copy of this report was provided to NSW Police. The purpose of the consultation was to give NSW Police an opportunity to comment on the accuracy of the material presented and to provide us with comments on the findings and recommendations.

The response from NSW Police, in general, dealt with our recommendations. The comments can be found immediately following the various recommendations throughout this report. The Police Commissioner also made the following remarks:

NSW Police supports the majority of the recommendations. I am pleased to say that many recommendations are already in practice with the remainder supported for implementation as recommended or a variation thereof.

Since approximately May 2005, the NSW Police Dog Unit has been undergoing a review process and has project teams examining business processes; dog acquisition; breeding and welfare; home kennelling; motor vehicles, uniforms and equipment; structure; and training.⁷³

3.6. Community consultation

Various methods were adopted to elicit community views on the use and impact of drug detection dogs.

3.6.1. Initial stakeholder consultation

During the initial stages of the review we met with representatives from the NSW Council for Civil Liberties, Redfern Legal Centre, NSW Council of Social Service, NSW Users and AIDS Association, and the AIDS Council of NSW to discuss and outline our legislative review role and to seek their views in relation to the issues that might arise as a result of the use of drug detection dogs under the Drug Dogs Act.

3.6.2. Interviews

We conducted a wide range of interviews with community members who had some interest and/or expertise in relation to the use and/or potential impact of drug detection dogs. For example, we interviewed 27 operators of licensed premises in relation to their experiences of drug detection dog operations on their premises.

We also interviewed a number of experts in drug treatment and education to canvass their views on the potential impact of drug detection dog operations on health services and policies directed at drug users. For example, we interviewed the director of the Medically Supervised Injecting Centre ('MSIC'), the director of St Vincent's Hospital Drug and Alcohol Unit, the manager of an inner-city needle and syringe exchange program, the manager of an inner-city methadone clinic, the Information/Media Liaison Manager at the National Drug and Alcohol Research Centre, and an HIV treatments policy officer at the AIDS Council of NSW. In addition, we interviewed a number of experts working in the drug and alcohol field at two harm minimisation conferences we attended.

3.6.3. Focus groups

We conducted two focus groups with members of the public. One focus group, which was organised with the assistance of the AIDS Council of NSW, was attended by members of the public who responded to an advertisement to attend a meeting to discuss their experiences with drug detection dogs. The other focus group, which was organised with the assistance of the NSW Users and AIDS Association, was attended by intravenous drug users who discussed their experiences with drug detection dogs and the impact that the dogs had on their drug use behaviour and their access to health services such as the MSIC.

3.6.4. Surveys of members of the public

To canvass public perceptions of the use of drug detection dogs we surveyed 230 persons across six local area commands during drug detection dog operations. A survey instrument containing a set of questions was administered to people who were in the vicinity of an operation. The survey questions explored perceptions of the use of the dogs and whether the presence of police made them feel any safer. People surveyed included those who had some interaction with police as well as those who merely observed the operation from a distance.

3.6.5. Discussion paper and submissions

In June 2004 we released a discussion paper that canvassed many of the issues that had been brought to our attention during the review period. The discussion paper posed a number of questions for consideration and invited submissions from a range of stakeholders and interested persons. The discussion paper was distributed widely to over 540 individuals and organisations. We received a total of 57 submissions. Appendix A contains a full list of persons and organisations who made submissions.

3.7. Complaints about NSW Police

NSW Police and the Ombudsman receive a range of inquiries and complaints in relation to police conduct. As part of the review we examined over 50 written complaints that arose out of, or were a direct result of the use of drug detection dogs by police. The complaints allowed us to identify issues of concern for members of the public. Where appropriate, these have been documented throughout this report.

3.8. Other information sources

We have relied on various research studies and reports as part of the review. In particular, we obtained specific data on drug offences from the NSW Bureau of Crimes Statistics and Research ('BOCSAR'). We also examined data in relation to drug offences and sentencing from the Judicial Information Research System, which is maintained by the Judicial Commission of NSW.

We also briefed a senior counsel for expert legal advice on certain aspects of the use of drug detection dogs and the Drug Dogs Act.

3.9. Limitations to methodology

In conducting this review we have attempted to obtain information and data from a wide and diverse range of sources. We are cognisant of the fact that there may be inherent limitations to some of the information sources that we have relied on. Where possible we have endeavoured to use more than one source to verify observations, data and information used in this report.

Endnotes

⁷² The Results Spreadsheet also records the request number for each indication and the two spreadsheets can be cross-referenced.

⁷³ NSW Police response to draft final report, 10 March 2006.

Chapter 4. The use of drug detection dogs in other Australian jurisdictions

The use of drug detection dogs by law enforcement agencies in Australia and other countries is well established. However, very few Australian or foreign jurisdictions have enacted legislation to specifically regulate the use of drug detection dogs in a manner similar to the Drug Dogs Act. Only Queensland has a similar legislative scheme.

The paucity of legislative regulation of the use of drug detection dogs appears to be based on the following views. One view is that drug detection dogs, not being police officers in their own right, are merely an extension of their handler who is already subject to various laws and regulations as a police officer. On this view, all actions of the dog are seen as actions of the police officer in control of the dog.

Another view is that regulation is unnecessary because drug detection dogs are just tools or instruments to aid police officers in the formation of reasonable suspicion that a person is in possession or control of a prohibited drug or plant. On this view, the focus is on the formation of the reasonable suspicion by the police officer and it is of no consequence whether the officer uses a tool such as a drug detection dog, or their own olfactory or other senses in the formation of reasonable suspicion.

This chapter briefly outlines the use of drug detection dogs in Australia and details how their use is regulated.

4.1. Queensland

In early 2005 the Queensland Government announced its intention to expand police powers and legislate for the use of drug detection dogs in licensed premises, nightclubs, and sporting and entertainment venues. The decision to introduce drug detection dogs was part of a 17-point plan to improve public order and safety.⁷⁴

According to the Queensland Police Minister, the Hon. Judy Spence, '[p]utting [drug detection dogs] into the nightclub and hotel precincts will enable police to better detect powder drugs such as amphetamine which, combined with alcohol, create a dangerous cocktail that can lead to violence.'⁷⁵

The Queensland Parliament passed legislation to regulate the use of drug detection dogs in late 2005,⁷⁶ although police were using drug detection dogs in public places such as railway stations before the legislation was passed.⁷⁷

The legislative scheme in Queensland appears to be modelled on the Drug Dogs Act although there are some notable differences.

4.1.1. Key provisions of the legislative scheme in Queensland

The Queensland legislation authorises police to use a drug detection dog to conduct 'drug detection' without a warrant on persons, vehicles and things in public places, licensed premises, and sporting and entertainment events.⁷⁸

'Drug detection' is defined as walking or placing a drug detection dog in the vicinity of a person, vehicle or thing to ascertain whether the dog can detect the scent of an 'unlawful dangerous drug' on the person, or in or on the vehicle or thing.⁷⁹

An 'unlawful dangerous drug' includes: amphetamine; cocaine; heroin; lysergide; methylamphetamine; and phencyclidine.⁸⁰ It also includes: Gamma hydroxy butyric acid, commonly known as GBH; and 3,4-Methylenedioxyamphetamine (MDMA), commonly known as ecstasy.⁸¹ Notably, cannabis is not included in the definition of 'unlawful dangerous drug'.

The legislation permits police officers to enter and remain on premises and places where they are authorised to conduct drug detection.⁸²

The legislation states that reasonable suspicion to search a person, vehicle or thing may be based on the indication of a drug detection dog.⁸³

The legislation protects the drug detection dog handler from civil or criminal liability for acts done by the dog, except attacks on persons that were intentionally caused by the handler. The State of Queensland is protected from liability for acts done by the dog except where 'bodily harm' results from an act of the dog or handler.⁸⁴ However, the legislation is silent in regard to the consequences of any slight or unintentional contact between the drug detection dog and the person being screened.⁸⁵

'Bodily harm' includes physical injury, grievous bodily harm, and death but does not include mental, psychological or emotional harm.⁸⁶

The legislation does not affect the use of drug detection dogs by police when conducting a search of a place under a search warrant or without a warrant.⁸⁷

4.1.2. Differences between the Queensland and NSW legislative schemes

One of the key differences between the Queensland and NSW legislative schemes is that the Queensland scheme does not target cannabis. Cannabis is not an 'unlawful dangerous drug' under the Queensland scheme and nor are the dogs used for 'drug detection' trained to detect cannabis.⁸⁸

Other differences include the fact that the Queensland legislation is directed at persons, vehicles and things whereas the focus of the Drug Dogs Act is on persons (and things within their control). The Queensland scheme does not require police to obtain a warrant to carry out 'drug detection' in public places not specifically mentioned in the legislation. The Queensland legislation also provides that an indication by a drug detection dog is sufficient to form a reasonable suspicion to search a person.

The Queensland legislation does not specifically prescribe safeguards in relation to keeping the drug detection dog under control, and nor does the legislation specifically address the issue of whether a person can be detained for the purpose of 'drug detection'.

4.2. Australian Customs Service

The Australian Customs Service ('ACS') has a Detector Dog Program which 'plays an important role in helping to protect Australia from prohibited imports.'⁸⁹

The ACS detector dog teams have been trained to find odours of goods (like prohibited drugs) concealed in baggage, parcels, cargo containers, vessels, aircraft and on people.

The ACS detector dogs are trained to find narcotics on people and in cargo and give a passive 'sit' response when they locate the scent of a prohibited import such as a prohibited drug.⁹⁰

The ACS detector dogs are mainly deployed at ports of entry to Australia but they also assist Federal and State police and some government agencies.⁹¹

The *Customs Act* authorises the use of dogs to assist in the examination of goods.⁹²

4.3. Australian Federal Police/Australian Capital Territory Police

The Australian Capital Territory Police are part of the Australian Federal Police ('AFP'). The AFP has a Canine (K9) Operations Team, which utilises drug detection dogs to screen premises, bushland, open areas, vehicles, vessels, aircraft and mail centres.⁹³

The drug detection dogs are not trained to screen persons and are only utilised in searches of places and things.⁹⁴

The use of police dogs is regulated by the *Australian Federal Police Act* which provides that a police officer who is entitled to be on particular premises or at a particular place may be accompanied by a dog under his or her control.⁹⁵

4.4. Victoria

The Victorian Police Dog Squad possesses dogs trained for drug detection. Up until 2004, Victoria Police used drug detection dogs for searching premises, vehicles and personal belongings. In May 2004 the Victorian Government announced that drug detection dogs trained in NSW would begin operations to detect persons carrying illicit drugs into Melbourne nightclubs.⁹⁶ The dogs are also utilised for street operations⁹⁷ and at dance party events.⁹⁸

The use of drug detection dogs in Victoria is not regulated by legislation based on legal advice suggesting that legislative regulation is not necessary.⁹⁹ A person in a public place may be searched where a police officer has reasonable grounds for suspecting that the person is committing a drug offence.¹⁰⁰

4.5. South Australia

The South Australian Police Dog Operations Unit possesses dogs trained for drug detection. The dogs are not trained to screen people although South Australia is considering the acquisition of dogs capable of screening persons from the ACS.¹⁰¹

The use of drug detection dogs in South Australia is not regulated by legislation. In 1998 the Supreme Court of South Australia held that the actions of a drug detection dog did not constitute a search.¹⁰² A person may be searched by a police officer where the officer believes on reasonable grounds that the person is in possession of a substance in contravention of the *Controlled Substances Act*.¹⁰³ A person can insist that he or she be taken before a justice to have the search authorised, but as there is no obligation on police to inform a person of this right, it is rarely exercised.¹⁰⁴

4.6. Western Australia

Western Australian Police Canine Section possesses dogs trained for drug detection. The dogs are not trained to screen people and there are no current proposals to commence screening people in public places.¹⁰⁵

The use of police dogs in Western Australia is not currently regulated by legislation.¹⁰⁶

4.7. Tasmania

Tasmania Police does not currently possess drug detection dogs. Tasmania Police and the ACS have a Memorandum of Understanding, which allows Tasmania Police to request a Customs dog for the purpose of drug detection during the execution of search warrants.¹⁰⁷

Tasmania Police does not currently screen people in public places with drug detection dogs.

The use of police dogs in Tasmania is not specifically regulated by legislation, although the *Police Service Act* provides for the use of a police dog where an officer is permitted to be at a particular place in the performance of their duties.¹⁰⁸

4.8. Northern Territory

In 2004 the Northern Territory Government announced the establishment of their own Drug Dog Detection Unit.¹⁰⁹ Before the establishment of the unit, Northern Territory Police relied on Customs dogs for drug detection.

Northern Territory Police now use their own drug detection dogs during the execution of search warrants, and to screen people and vehicles.¹¹⁰ The drug detection dogs are also utilised to detect drugs destined for remote communities.¹¹¹

The use of drug detection dogs in the Northern Territory is not currently regulated by legislation.¹¹²

Endnotes

⁷⁴ 'Police dogs will be used to sniff out drugs in nightclubs under a plan to curb escalating violence in the Brisbane CBD', *NEWS.com.au*, <http://www.news.com.au/story/print/0.10119.12408958.00.html>, (Accessed 2 March 2005); 'Brisbane CBD gets curfew, sniffer dogs', *ninemsn*, <http://news.ninemsn.com.au/article.aspx?id=44982&print=true>, (Accessed 2 March 2005); 'Civil liberties group howl down Beattie sniffer dog plan', *ABC News Online*, <http://www.abc.net.au/news/>, (Accessed 2 March 2005); Cole M, Viellaris R & Odgers R, 'Lockdown to tackle violence', *The Courier Mail*, 2 March 2005; Giles D, 'Premier stands firm on dog patrols for city nightclubs', *The Sunday Mail*, 6 March 2005, p.2; Odgers R & Wenham M, 'Sniffer dog laws unleashed on hotels', *The Courier Mail*, 21 April 2005; Griffith C, 'Sniffer dogs take to the streets', *The Courier Mail*, 13 June 2005; Cole M, 'No bite on dog patrol issue', *The Courier Mail*, 14 June 2005, p.2; Editorial, 'Police over the top with sniffer dogs', *The Courier Mail*, 14 June 2005, p.14; Griffith C, 'Lawyer warns of drug dog overuse', *The Courier Mail*, 18 June 2005; Griffith C, 'Club drugs targeted by police dog squads', *The Courier Mail*, 20 June 2005; Sundstrom K, 'Drugs crackdown: Sniffer dogs to patrol nightclubs and licensed venues', *Sunshine Coast Daily*, 6 September 2005.

⁷⁵ Odgers R & Wenham M, 'Sniffer dog laws unleashed on hotels', *The Courier Mail*, 21 April 2005.

⁷⁶ The *Police Powers and Responsibilities (Drug Detection Dogs) Amendment Act 2005* inserted Part 2A 'Use of drug detection dogs without a warrant' into the *Police Powers and Responsibilities Act 2000* (Qld). Part 2A commenced on 9 December 2005. See also: Watson P, 'Police to let the drug dogs out', *The Courier Mail*, 16 December 2005, p.13.

⁷⁷ Griffith C, 'Club drugs targeted by police dog squads', *The Courier Mail*, 20 June 2005.

⁷⁸ *Police Powers and Responsibilities Act 2000* (Qld), s.31B.

⁷⁹ *Police Powers and Responsibilities Act 2000* (Qld), s.31A.

⁸⁰ *Drugs Misuse Regulation 1987* (Qld), Schedule 1.

⁸¹ *Police Powers and Responsibilities Act 2000* (Qld), s.31A.

⁸² *Police Powers and Responsibilities Act 2000* (Qld), s.31C.

⁸³ *Police Powers and Responsibilities Act 2000* (Qld), s.31D.

⁸⁴ *Police Powers and Responsibilities Act 2000* (Qld), s.31E.

⁸⁵ For a discussion of the potential implications of any slight or unintentional touching under the Drug Dogs Act, see paragraph 14.4 'Trespass to the person'.

⁸⁶ *Police Powers and Responsibilities Act 2000* (Qld), s.31E(7).

-
- ⁸⁷ *Police Powers and Responsibilities Act 2000* (Qld), s.31F.
- ⁸⁸ For further discussion on the rationale for not including cannabis, see paragraph 8.2.8.
- ⁸⁹ Australia Customs Service, 'Detector Dog Program', Fact Sheet, Australian Government, August 2004.
- ⁹⁰ Australia Customs Service, 'Detector Dog Program', Fact Sheet, Australian Government, August 2004.
- ⁹¹ Australia Customs Service, 'Detector Dog Program', Fact Sheet, Australian Government, August 2004.
- ⁹² *Customs Act 1901*, s.186(3)(f).
- ⁹³ Australian Federal Police, 'Canine (K9) operations', Fact Sheet, 2 November 2004.
- ⁹⁴ Telephone conversation with Team Leader of the Dog Unit, 27 September 2005.
- ⁹⁵ *Australian Federal Police Act 1979* (Cth), s.12A.
- ⁹⁶ Berry J, 'Sniffer dogs to patrol clubs', *The Age*, 12 May 2004.
- ⁹⁷ Hodgson S, 'Dogs sniff out street drugs', *Herald Sun*, 1 July 2004.
- ⁹⁸ AAP, 'Dance party drug crackdown', *The Age*, 14 March 2005; Murphy P, *NEWS.com.au*, 'Cocaine switched for talcum powder', 20 May 2005, <http://www.news.com.au/story/print/0.10119.15344997.00.html>, (Accessed 20 May 2005); 'Sniffer dogs succumb to the heat', *Herald Sun*, 30 January 2006; Kerbaj R & Davies S, 'Fears drug dogs tactic with revellers could backfire', *The Australian*, 3 January 2006, p.5.
- ⁹⁹ Telephone conversation with head of the Victorian Police Dog Unit, 26 June 2003 & 12 September 2005.
- ¹⁰⁰ *Drugs, Poisons and Controlled Substances Act 1981* (Vic), s.82.
- ¹⁰¹ Telephone conversation with head of the Dog Operations Unit, 9 September 2005.
- ¹⁰² *Questions of Law Reserved (No. 3 of 1998)* (1998) 71 SASR 223; 101 A Crim R 395.
- ¹⁰³ *Controlled Substances Act 1984* (SA), s.52(6).
- ¹⁰⁴ *Controlled Substances Act 1984* (SA), s.52(7).
- ¹⁰⁵ Telephone conversation with a senior officer attached to Western Australia Police Canine Section, 12 September 2005.
- ¹⁰⁶ Telephone conversation with a senior officer attached to Western Australia Police Canine Section, 12 September 2005.
- ¹⁰⁷ Telephone conversation with senior officer attached to Tasmania Police, Drug Investigation Services, 12 September 2005. See also: <http://www.police.tas.gov.au/on-the-beat/cib/drug-investigation>, (Accessed 12 September 2005).
- ¹⁰⁸ *Police Service Act 2003* (Tas), s.85.
- ¹⁰⁹ Lim L, 'New police dogs to sniff out drug deals', *Northern Territory News*, 21 June 2004; Media Release, 'Building our Police Force – A New Era in Territory Policing', 9 August 2004, http://www.nt.gov.au/ocm/media_releases/2004/20040809_building_our_police_force.shtml, (Accessed 11 May 2005).
- ¹¹⁰ McLean G, 'Scent shows he nose what he's doing', *Northern Territory News*, 20 September 2005, p.6.
- ¹¹¹ McLean G, 'Sniffer dogs on nose for drug traffickers', *Northern Territory News*, 9 February 2005, p.3.
- ¹¹² Telephone conversation with a senior officer of the Territory Support Division, 12 September 2005.

Chapter 5. Use of drug detection dogs

5.1. The Dog Unit

The Dog Unit is a distinct unit within the State Protection Group of NSW Police. It is located at Menai Police Station and is comprised of separate sections for drug detection dogs, firearms and explosives detection dogs, cadaver detection dogs, and general purpose dogs.

The drug detection dog section has 14 operational drug detection dogs and handlers.¹¹³ They may be deployed:

- during the execution of search warrants on private premises
- to assist police in the search of vehicles, buildings or persons when police have a reasonable suspicion that prohibited drugs may be present, and
- for use in general drug detection, with or without a warrant.

5.2. Drug detection dogs

All drug detection dogs utilised by the Dog Unit are Labradors. Each handler generally works with a single drug detection dog. With the guidance of the drug detection dog trainer, the handler conducts the initial training of his or her own dog.

The drug detection dogs are trained to identify the odour of illegal drugs and 'indicate' to their handler when the odour is present. In NSW, drug detection dogs are trained using a system of food rewards. In training, and when possible in live operations, dogs are fed and praised by their handler when they detect the odour of an illegal drug. The dogs are only to be fed when they have indicated the presence of an illegal substance. Each dog is allocated a certain amount of food per day. If insufficient food rewards are eaten 'on the job' the dog is to be fed during training exercises conducted by the handler.

The drug detection dogs are known as 'passive' response dogs. Although they may nudge, touch, push past or run towards a person, the dogs are not trained to be aggressive. Contact with members of the public is generally discouraged. We have never observed a drug detection dog to be aggressive in any way.

5.3. How are drug detection dogs deployed?

Police deploy the drug detection dogs in a variety of contexts. However, there are common factors that make it possible to provide general descriptions of how the dogs are deployed.¹¹⁴

5.3.1. Requests from police

Drug detection dogs are only deployed when the Dog Unit receives a request from another NSW Police unit, such as a local area command. If a local area command wishes to include a drug detection dog and handler in a local operation, for example, an officer from that command must make a written request to the Dog Unit.¹¹⁵ The request must include enough intelligence about drug supply in particular locations to satisfy the Commander of the Dog Unit that the use of the drug detection dog in that area is justified. We audited 61 requests for the use of drug detection dogs to examine the type and quantity of intelligence information provided. The results are discussed in Chapter 10 'Drug detection warrants and police intelligence'.

The Dog Unit also assesses the requests to ensure that they are consistent with the relevant legislation and internal police guidelines.

The Commander of the Dog Unit is responsible for approving requests for a drug detection dog in metropolitan areas. The Commander must consult with the State Protection Group Commander if any requests are declined. The State Protection Group Commander is also responsible for authorising the deployment of drug detection dogs to areas outside the Sydney metropolitan area.

Usually only one drug detection dog will be requested for an operation. However, on some occasions more than one dog is requested and approved.

5.3.2. Warrants

The Drug Dogs Act provides for general drug detection with a dog to be carried out in specified places without a warrant and in other public places only if police have obtained a warrant under section 8. To apply for a warrant a police officer must have:

*reasonable grounds for believing that the persons at any public place may include persons committing drug offences.*¹¹⁶

Police from local area commands apply for warrants and provide a copy of the warrant for the Dog Unit's records.

Police must specify certain details in the warrant application, including:

- the location of the operation
- the time(s) it will be conducted
- the 'reasonable grounds' which the officer believes justify the issue of the warrant, and
- details of any previous refusal of an application for the warrant and the reason why a further application is justified.

The warrant application must also disclose whether any general drug detection conducted under the warrant will be carried out as part of a covert police operation and the reason the warrant is to be part of a covert operation. 'Covert police operation' is not defined in the Drug Dogs Act.

Section 9 of the Drug Dogs Act further requires that general drug detection may only be conducted as part of a covert operation if it is authorised by a warrant under section 8. This means that, for example, although ordinarily police would not require a warrant to conduct general drug detection in licensed premises, if they do so as part of a covert operation, a warrant is mandatory.

The Drug Dogs Act provides that Part 3 of the *Search Warrants Act 1985* 'applies (with any necessary or prescribed modification) to a warrant issued under' the Drug Dogs Act.¹¹⁷ The Drug Dogs Regulation specifies that section 15A and 16 of the *Search Warrants Act* do not apply to warrants issued under the Drug Dogs Act.¹¹⁸ Section 15A is a requirement that police must announce their authorisation to enter premises and give a person on premises an opportunity to allow entry.¹¹⁹

Section 16 of the *Search Warrants Act* states:

A person executing a search warrant shall produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

Since this section does not apply to warrants issued under the Drug Dogs Act, it would seem that police have no obligation to show a copy of the warrant to persons they search during its execution. However, the Drug Dogs Regulation does provide for inspection by any member of the public of the warrant application and the report on the execution of the warrant at the local court where the warrant was issued.¹²⁰ Public inspection of these documents is discussed later in this report (at paragraph 10.3.4).

5.3.3. Police briefing

Usually all officers involved in an operation utilising a drug detection dog are briefed immediately before the operation. As part of our observational research we attended 30 such briefings. Typically, the commander of an operation will use the briefing to advise participating officers of:

- the nature and purpose of the operation
- the areas covered by any warrant
- information about any locations or individuals pertinent to the operation
- the duration of the operation and any meal or other breaks
- appropriate recording (on COPS or elsewhere) of information about incidents during the operation
- procedures to be followed for searching, arrest and evidence
- information about common places where drugs may be secreted on a person, and
- tactics for the operation, for example placement of police in premises and timing of police entry to venues.

Often police will also be advised not to rely solely on the drug detection dog, but to also make use of other police powers where appropriate.

The dog handler usually speaks to police at the briefing. Handlers explain how the drug detection dog does its job and often provide information about how and when to record incidents in which people are searched. Handlers commonly stress that police should:

- wait for the handler to acknowledge an indication by the drug detection dog before approaching a person
- thoroughly search a person even if the person hands over a small amount of drugs or admits that they have recently smoked cannabis
- ensure that the handler is not left alone but is always accompanied by several police, and
- keep in mind the privacy of persons searched.

5.3.4. Police operations

The way police run operations using a drug detection dog varies slightly depending on the location of the operation, its purpose and the decisions of the police officer commanding the operation. Operations are held at a range of times. Around three-quarters of the operations we observed were held in the evening and about half of these went into the early hours of the morning.

The police operations we observed had many similarities.

5.3.4.1. Street patrol operations

To use the drug detection dog on a public street, police must first have obtained a warrant under section 8 of the Drug Dogs Act. The warrant will specify the areas where the drug detection dog may be used and the dates and times during which the dog may be used.

Generally, the handler and drug detection dog will walk ahead of other police involved in the operation. Usually, a couple of officers will try to stay close to the handler and other police may spread out. The drug detection dog walks beside or in front of the handler. If the dog indicates a person, that person may be searched on the spot or taken to a nearby but slightly more private position. For example, if a person is on a busy street when indicated by the drug detection dog, police may take the person around the corner into a quieter side street to conduct the search in an area with fewer passers-by.

Below is an example of an indication which occurred on a public street and the following searches witnessed by one of our observers.

9.50pm: Bottom of [name of street], near cnr of [name of street]. Dog touches girl on hands with its nose and follows rapidly behind the two girls as they walk away. Handler gives caution. [Police Officer 1] asks if one girl has smoked anything. He explains about the warrant and that it will be a basic search not an intrusive search. [Officer 1 says] "First of all, I might just grab your details. Have you got any ID on you?" Name and address given, DOB given. [Officer 1 asks] "Have you smoked in the last couple of days?" She says 'Yes'. [Police Officer 1]: "But you've got nothing on you now?" [Girl replies] "No". [Police Officer 1] asks her where she is from and she says just across the road.*

Other girl has a bag of speed. [Police Officer 2 says] "Do you realise you are under arrest for possession of speed ... Have you got some ID on you?" [Girl] shakes her head. Details given. Searched by female police officer [2]. Girl agrees it is speed. After search she moves to the side and is asked to sit on the step.

The other girl is called over. [Police officer 2] introduces herself. Goes through girl's bag. Empties everything out under the streetlight. All containers in the bag are opened and inspected. Area is very open but there are not many people around – just a few walking past.

Both searches completed by 9.58pm. [Police Officer 1] asks if either of them have any questions about "this whole process" and both say "No".¹²¹

** Date of birth*

5.3.4.2. Operations at railway stations and trains

Police may use drug detection dogs on railway stations or trains along most CityRail routes without obtaining a warrant. Police often patrol in station ticketing areas and on station platforms. When a train arrives the handler will often position the dog in a place where passengers need to walk past the dog to exit the railway station. Once a person is indicated by a drug detection dog, the person might be searched on the spot, or police might conduct the search in nearby toilets, a room allocated for police use, or another area of the station away from public view.

Sometimes police will patrol a train while it is stationary at the platform. Alternatively, they might patrol the train as it travels between stations. The handler will usually direct the drug detection dog through the train in a systematic

manner to maximise the number of passenger areas screened. If the drug detection dog indicates a particular passenger, the passenger may be searched on the train or police may escort the passenger from the train to conduct a search at the next station.

The following is a description of an incident at a railway station witnessed by one of our observers:

Northern Sydney, December 2002, 4.22pm

Dog indicates an 18-25 year old man. Explanation and caution given by handler. Handler: "We are going to have to search you." Man: "OK". The man is searched by a lone police officer in the corner of the station. He is visible to passing commuters. He empties his small backpack on the ground for the officer to go through. His CD case is examined. He repacks his bag and then empties his own pockets and is allowed to go.¹²²

5.3.4.3. Operations involving licensed premises

Police do not need a warrant to use drug detection dogs at licensed premises. Once in the premises, it is common for one police officer to speak with the manager or licensee of the premises. Sometimes police will also conduct a licensing check while they are at the premises.¹²³ If the venue is very crowded, dark and loud, this can present difficulties for the handler and the drug detection dog. Sometimes handlers will not take their dogs into particularly crowded premises.

Our observations showed that licensed premises sometimes proved to be difficult venues for police operations especially when police needed to search intoxicated persons indicated by the dog.

If a drug detection dog makes an indication of a person in a pub or club, police generally conduct the search:

- in a quiet or more private area of the venue
- in the toilets, or
- outside the premises.

Our observations have shown that it is less common for police to search the person 'on the spot' if the drug detection dog indicates a person in the busier areas of licensed premises – although it does occur sometimes.

The following is an example of a search we observed after a drug detection dog indicated a person on licensed premises.

Northern NSW, August 2003, 6.35pm

Location: [Regional city], pub

Person: Male, late 50s

Circumstances: Male sitting in middle of main bar. Approx. 20 others in the area, all watching.

Search: Escorted outside onto footpath in front of busy intersection. Officers explained [drug detection dog] procedures and cautioned him. Requested ID, same provided. Recorded in notebook. Asked if he had drugs on him, denied this. Asked to empty pockets and turn them inside out. Slammed belongings onto ground, stating, "I hate this, I'm gonna do something about this." Police responded, "I'm not saying you've got drugs, just that the dog identified you."

Shoes removed and also slammed onto ground. Police stated, "I know it's a bit embarrassing." Person replied, "Fucking oath it is. I don't see why I have to be persecuted. Persecution in a public place is what it is."

Demeanour: Intoxicated, quite upset and aggressive. Final comment was, "You'll be hearing from me."¹²⁴

5.3.4.4. Operations at dance parties

Police may use drug detection dogs without a warrant at dance parties. We observed two police operations at dance parties. One dance party had a number of indoor dance venues and a large outdoor area with stalls, food outlets and areas to 'hang out'. At that operation, police patrolled the queues of people seeking to enter the party as well as outdoor areas using the drug detection dog. If the drug detection dog indicated a person, police generally either took the person to a more private area of the grounds or took the person to a room allocated for police use to search the person. Rarely was a person searched where the indication occurred.

At the second dance party operation we observed, police only searched persons in a room allocated for this purpose. Persons found in possession of drugs were not allowed back into the party.

The following is a police information report narrative about a search conducted during a dance party operation.

Narrative: About 23:25 hrs [date] drug detection dog [dog name] had indicated a positive sent (sic) upon the POI [Person Of Interest] who was standing in line at the [location] to attend a Rave Party. The POI was separated and taken to a secure area. The POI admitted to police that he had smoked some cannabis between 4 and 5pm that day, he also admitted to being a social smoker of cannabis. The POI was searched with nil find and was allowed to attend the Rave Party.¹²⁵

5.3.4.5. Operations in other locations

The definition of 'public place' in the Drug Dogs Act is broad enough to include a wide range of public locations. We have observed operations which spent some time in retail stores, shopping arcades and malls, a Centrelink Office, car parks, and residential and commercial streets. We have also attended operations held at community markets and festivals.

In addition to bars, pubs, night clubs, streets, railway stations, trains and dance parties, the Results Spreadsheet also lists a range of premises that the dogs have patrolled, including: Ex-servicemen's Clubs, Strip Clubs, Bowling Clubs, Golf Clubs, Amusement Parlours, an Internet café, parks, a tennis club, a convention centre and bus terminals.

5.3.5. Indications by drug detection dogs

Police distinguish the *screening* of people by the drug detection dog from the *searching* of people conducted by police. The distinction is important because the Drug Dogs Act does not require police to have a reasonable suspicion about a person in order to use the drug detection dog for screening. To search a person, police must have a reasonable suspicion that a person is in possession or control of a prohibited drug.

During a police operation, a drug detection dog will often sniff at objects on the ground or people passing by. Handlers tell us that this sniffing can be distinguished from the behaviour of the dog when it detects the odour of a prohibited substance. Although each drug detection dog behaves slightly differently, a typical indication would involve the dog sniffing near a person and then sitting down next to them. Occasionally, the dog's nose may touch a person or their property.

Justice O'Keefe's description, in *DPP v Darby*, of that drug detection dog's behaviour is informative:

The evidence established that Rocky [the drug detection dog] had been trained to detect the scent of cannabis. When he did so his training caused him to put his nose in the air, flair his nostrils, and sniff rapidly. He would then follow the scent to its source. When he reached the source of the scent, he was trained to put his nose on such source and sit down beside it. If the scent emanated from a person's pocket, Rocky was trained to put his nose on the pocket and then sit down beside the person.¹²⁶

Some handlers have said that their drug detection dog becomes 'excited' when it detects the odour of a substance in the air. Handlers can pick up the behavioural signs exhibited by their dog when the dog is in the presence of an illegal substance.

Our observations indicate that the initial indication of a person happens quickly. After the indication, the handler will almost always explain to the person what has happened and give the person a 'criminal caution'. The Management Operational Guidelines advise that when a person is stopped because of a positive indication by a drug detection dog, the handler should say:

I am constable ... from the New South Wales Dog Unit. This is a drug detection dog that has indicated the scent of an illegal substance emitting from you. I want you to understand that you do not have to say or do anything unless you wish, but anything you say or do may later be given in evidence, do you understand that?¹²⁷

Our observations show that a search in which a person is compliant with police requests and which results in no illegal substances being found, usually takes about five minutes.

The following two descriptions of initial contact between a drug detection dog and handler, and a member of the public have been taken from our observational research.

Northern NSW, August 2003, 9.00pm

Dog indicates a man seated with a group of other people at a table. The handler taps him on the shoulder and explains about the dog and cautions him. The man says that he had a smoke about three hours ago. He is given an explanation about the scent of the cannabis still being on him. Police officer says, "Just come out with me, mate. We'll get it sorted." The man says he is "freaked".¹²⁸

Southern NSW, July 2003, 2.08am

Dog indicates a young man (15-18 years old) on the street. He is with another man. He is given a caution and explanation by the handler. He is asked if he has any drugs on him and says, "No." Police tell him, "You are going to be searched, OK?" He is taken into an alcove.¹²⁹

After this initial contact the handler will usually move the drug detection dog away and other police will step forward to conduct the search.

Endnotes

¹¹³ Correspondence from NSW Police, 1 April 2005.

¹¹⁴ These are based on our discussions with officers from the Dog Unit; the NSW Police, *Drug Detection Dogs Management Operational Guidelines*, March 2002; and observations of police use of the dogs during operations.

¹¹⁵ In emergency situations requests may be made verbally.

¹¹⁶ *Police Powers (Drug Detection Dogs) Act 2001*, s.8(2).

¹¹⁷ *Police Powers (Drug Detection Dogs) Act 2001*, s.8(5).

¹¹⁸ *Police Powers (Drug Detection Dogs) Regulation 2002*, cl.8.

¹¹⁹ *Search Warrants Act 1985*, ss.15A(1)(a) & (b). Section 15A(2) provides for an exception to this requirement in circumstances where immediate entry is required to ensure the safety of any person or to ensure that the effective execution of the search warrant is not frustrated.

¹²⁰ *Police Powers (Drug Detection Dogs) Regulation 2002*, cl.11.

¹²¹ Ombudsman observer notes, July 2002.

¹²² Ombudsman observer notes, December 2002.

¹²³ A check that the establishment is meeting the requirements of liquor licensing laws.

¹²⁴ Ombudsman observer notes, August 2003.

¹²⁵ Information Report 5.1.

¹²⁶ [2002] NSWSC 1157 at [8].

¹²⁷ NSW Police, *Drug Detection Dogs Management Operational Guidelines*, March 2002, p. 9.

¹²⁸ Ombudsman observer notes, August 2003.

¹²⁹ Ombudsman observer notes, July 2003.

Chapter 6. Overview of results

This chapter provides an overview of the data we have analysed from the Results Spreadsheet. The spreadsheet documents every occasion on which a drug detection dog indicated to its handler that it detected the odour of an illicit drug: that is, the spreadsheet records *indications*. A subset of these indication records are actual *detections*, where drugs are located as a result of police searching the person indicated by the dog.

Our earlier explanation of research methods in Chapter 3 'Methodology' noted some of the data limitations of the Results Spreadsheet. Where relevant, data limitations are also discussed throughout this chapter. Notwithstanding these limitations, this spreadsheet is the only consolidated and comprehensive information available about the use of the drug detection dogs.

6.1. How frequently were the drug detection dogs used?

During the two-year review period there were 470 operations making use of at least one drug detection dog.¹³⁰ A single operation may have occurred over more than one day and on some occasions spanned a number of different locations and local area commands.

6.2. How many people were indicated by drug detection dogs?

Drug detection dog indications occurred on 10,211 occasions between 22 February 2002 and 21 February 2004, comprising 4,084¹³¹ indications in the first year of the Drug Dogs Act and 6,127 in the second.

The 10,211 indications does not represent 10,211 different individuals stopped by police. Some people were indicated by drug detection dogs on more than one occasion. At least 641 individuals were searched more than once. Of these, 550 were searched twice, 75 were searched three times, 12 were searched four times, three were searched five times and one person was searched six times.¹³²

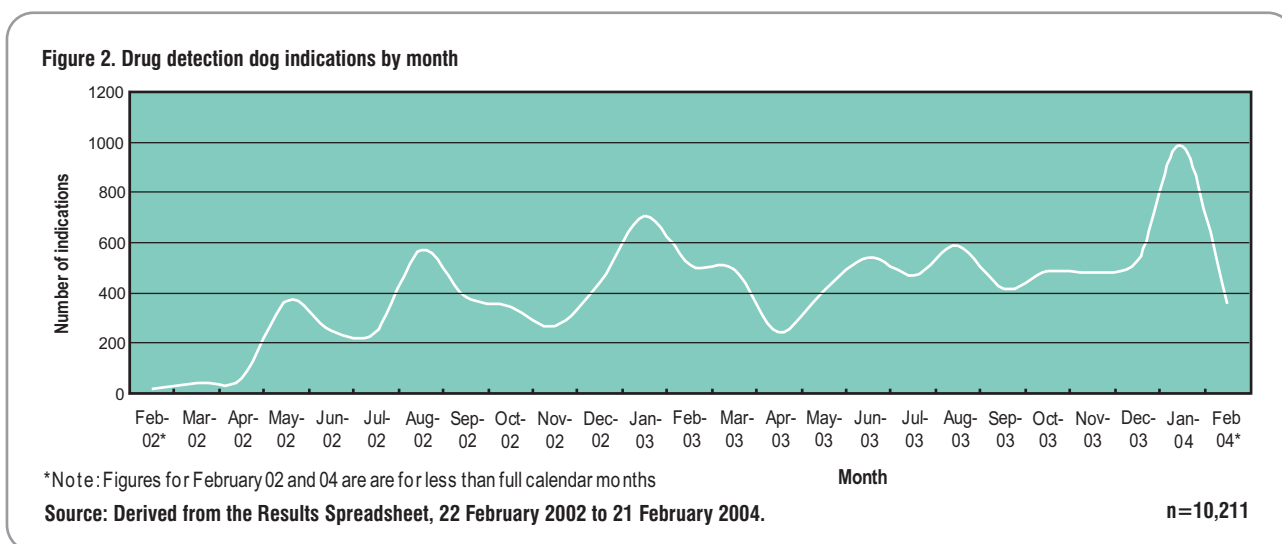
In addition, on a small number of occasions a single record on the spreadsheet includes the details of more than one person indicated by the dog and searched by police. Eleven records show more than one person was indicated and searched by police.

On some occasions an indication is recorded on the spreadsheet which does not relate to the screening of a person (even though the spreadsheet records the incident type as a person screen). For example, occasionally the drug detection dog indicated the presence of a drug scent in a pot plant, on the floor or on the street.

Our analysis found that at least 9,400 different individuals were indicated by a drug detection dog on at least one occasion during the review period.

6.3. When were the drug detection dogs deployed?

Figure 2 shows the number of drug detection dog indications from each month of the review period.



One reason for the lower number of indications recorded in the first year of the Drug Dogs Act was the delayed introduction of the Drug Dogs Regulation which commenced in May 2002. It specified public transport routes where police could use the drug detection dogs without a warrant. Only 12 drug detection dog indications were recorded on the spreadsheet as occurring on public transport prior to the introduction of the Drug Dogs Regulation.

The sharp increase in January 2004 may be due to the deployment of up to four drug detection dogs per day over the weekend of the 'Big Day Out' concert at Homebush on 23 and 24 January. More than 400 searches were conducted in that two-day operation. Police did not deploy drug detection dogs at the 'Big Day Out' in the previous year.¹³³

6.4. Where were drug detection dogs deployed?

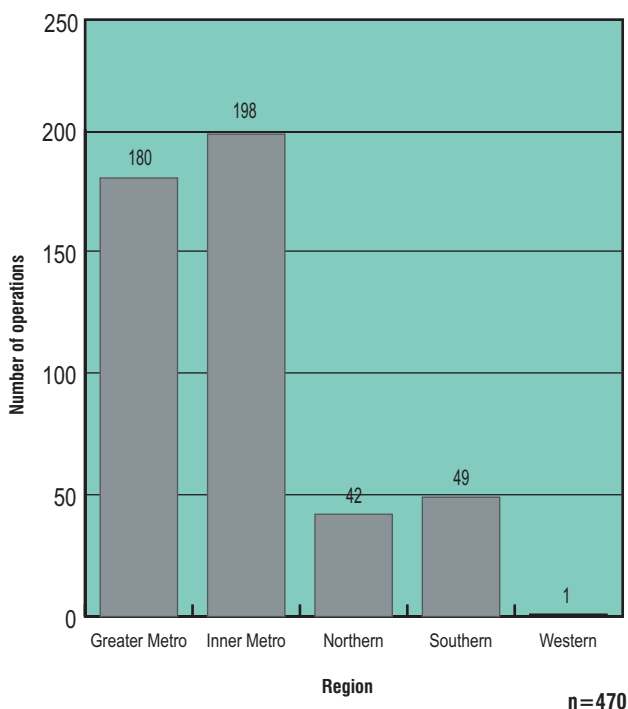
6.4.1. Regions, Local Area Commands and suburbs

Figure 3 shows that most operations using drug detection dogs for general drug detection were conducted in the Greater Metropolitan or Inner Metropolitan Regions.¹³⁴

A single operation may have been conducted over a number of days and in more than one region. Because of this, Figure 3 above does not give an accurate picture of the amount of *time* drug detection dogs spent in different regions.

The local area commands with the most operations tended to also have a higher number of indications. Table 2 shows the commands which most frequently conducted operations and the number of indications in those commands over the review period.

Figure 3. Drug Detection Dog operations by NSW Police region



Note: Some operations were held in more than one region and have been counted in each region category. Adding the column totals will not provide the total number of operations.

Source: Derived from the Results Spreadsheet, 22 February 2002 to 21 February 2004.

Table 2. Operations conducted at selected Local Area Commands¹³⁵

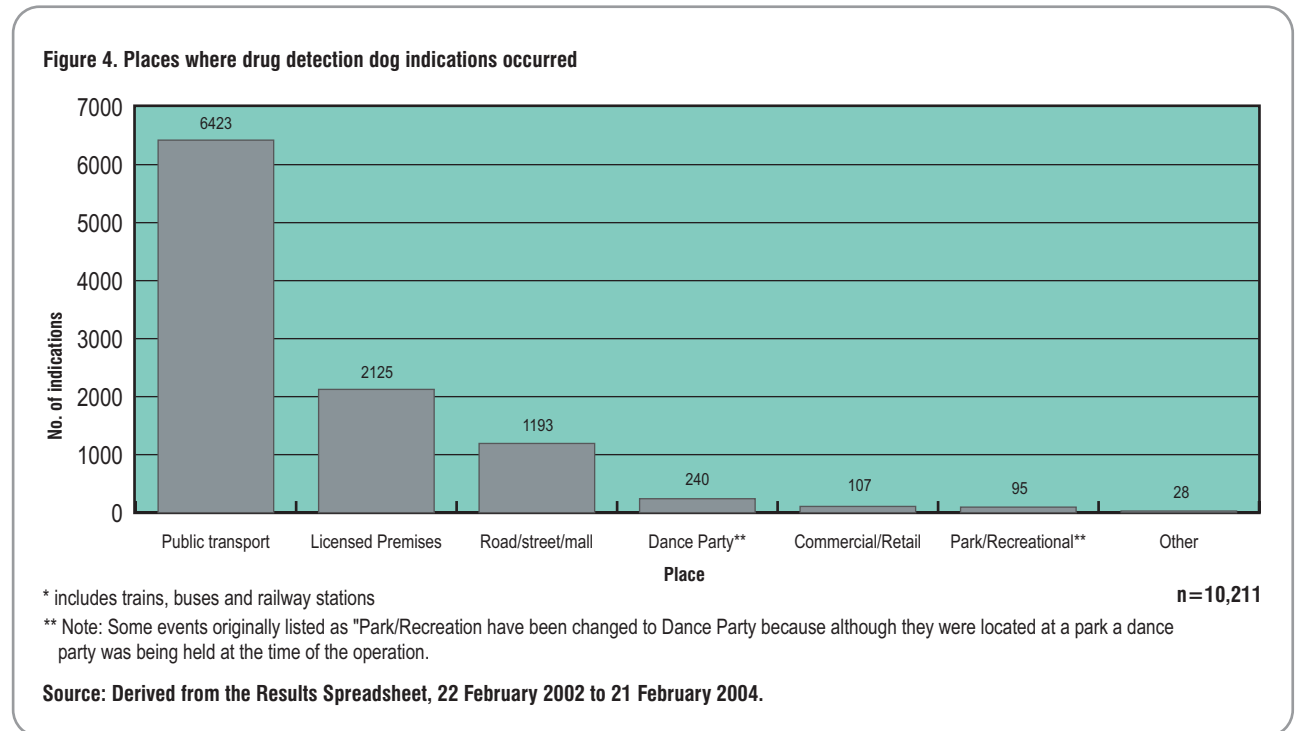
Local Area Command	Number of operations	Number of indications (rank)
Kings Cross	53	1009 (2)
Kuring Gai	40	1216 (1)
Burwood	33	584 (5)
Flemington	26	841 (3)
Wollongong	25	596 (4)
Rosehill	23	395 (7)
Bankstown	21	230 (15)
Blacktown	19	496 (6)
Ashfield	18	324 (12)
Marrickville	18	216 (16)
Redfern	18	298 (13)

Source: Derived from the Results Spreadsheet, 22 February 2002 to 21 February 2004.

The indications rank shows that Kuring Gai LAC had the highest number of indications even though it had fewer drug detection dog operations than Kings Cross. Newtown, Newcastle, Surry Hills and Parramatta LACs all had fewer than 16 operations over the review period, yet recorded between 327 and 344 indications.

6.4.2. Type of place

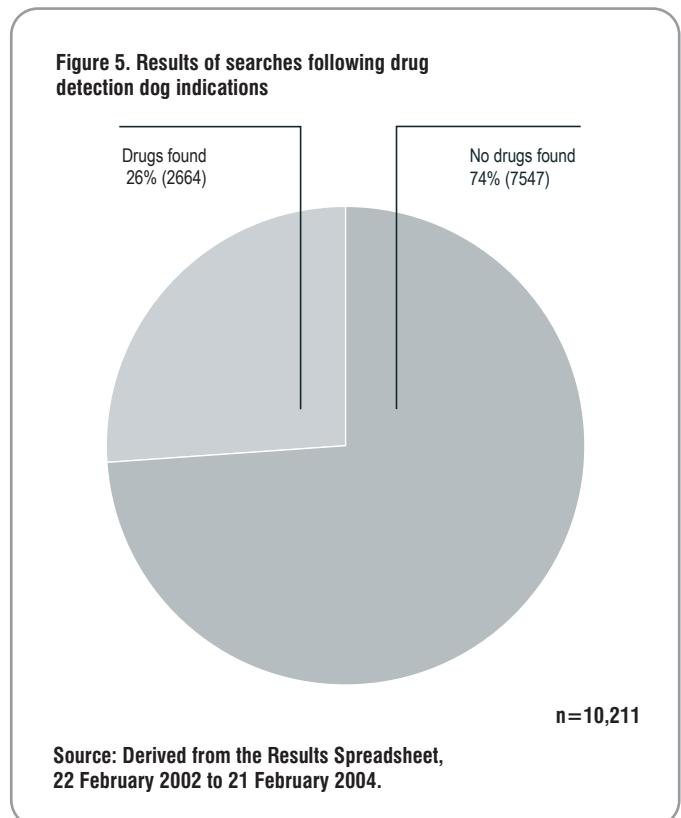
Figure 4 shows the types of locations where drug detection dogs most commonly indicated people suspected of carrying drugs.



As a single operation can target multiple locations, the number of indications provides a guide to where the dogs were most frequently used. Our discussion paper noted an apparent emphasis on conducting operations at railway stations and on trains during the first year of the Drug Dogs Act.¹³⁶ This continued throughout the second half of the review period. In the first year of the operation, 62% (2531 of 4084) of indications occurred on public transport and in the second year this increased slightly to 63.5% (3892 of 6127) of all indications.

6.5. Results of searches following drug detection dog indications

Figure 5 shows that during the two-year review period police located drugs following an indication by a drug detection dog on 2,664 occasions. This amounts to approximately 26% of all indications.



In 7,547 incidents no drugs were found and in 99% (7,497) of these nothing at all was found. In the remaining 1% of incidents police noted finding knives, scissors and other non-drug related implements. Figure 6 summarises information recorded about searches where nothing was found.

In many circumstances where no drug was found, the person searched admitted to having had some contact with cannabis or to being at a place where cannabis was smoked. This accounted for almost 60% (4,456) of the 'no drugs found' group. Admissions were not necessarily statements of illegal activity by the person searched. It included any explanation for why the dog might have indicated the presence of a drug, such as the person having visited a venue where drug use might have occurred and other inadvertent contact with drug users or illegal drugs.

Table 3 shows that the ratio of 'drugs found' to 'no drugs found' varied according to the type of location where the indication occurred.

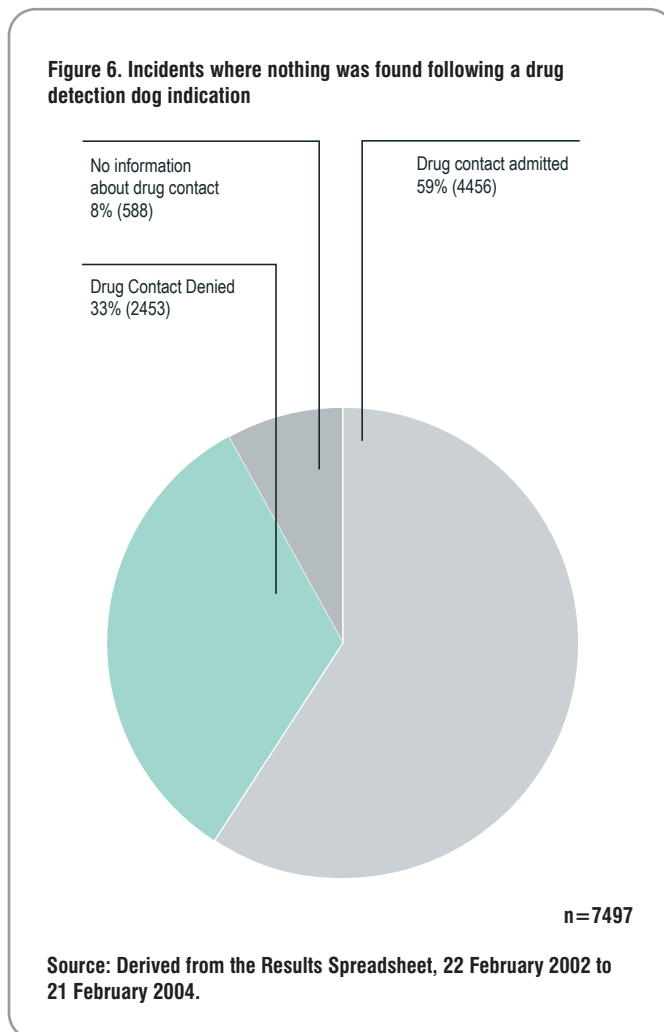


Table 3. Comparison of 'drugs found' / 'not found' by main location type

Location	Total indications	% Where drugs found	% Where no drugs found
Public Transport	6423	25% (1586)	75% (4837)
Licensed Premises	2125	23% (484)	77% (1641)
Dance Party	240	39% (94)	61% (146)
Road/street	1193	37% (436)	63% (757)

Source: Derived from the Results Spreadsheet, 22 February 2002 to 21 February 2004.

Although police were much less likely to find illegal drugs following an indication on public transport or licensed premises, the 'total indications' data shows that these locations were actively targeted, with 84% of all indications occurring at these location types. Conversely, the 1,433 drug detection dog indications at dance parties and on the road or street make up just 14% of all indications, yet these were the places where an indication was more likely to lead to drugs being found. In the case of dance parties this may be because there may be fewer of these events to patrol than other venue types.

Table 4 shows that drugs were much more likely to be found in some local area commands than others.

Table 4. Proportion of drugs found by selected Local Area Commands

Local Area Command	Number of indications	% Drugs found	% No drugs found
Kuring Gai	1216	19% (225)	81% (991)
Kings Cross	1009	37% (372)	63% (637)
Flemington	841	47% (397)	53% (444)
Wollongong	596	19% (111)	81% (485)
Burwood	584	15% (89)	85% (495)
Blacktown	496	26% (128)	74% (368)
Ashfield	324	19% (63)	81% (261)
Rosehill	395	21% (81)	79% (314)
Newtown	344	21% (73)	79% (271)
Newcastle	330	33% (110)	67% (220)
Parramatta	327	24% (77)	76% (250)
Surry Hills	327	39% (129)	61% (198)

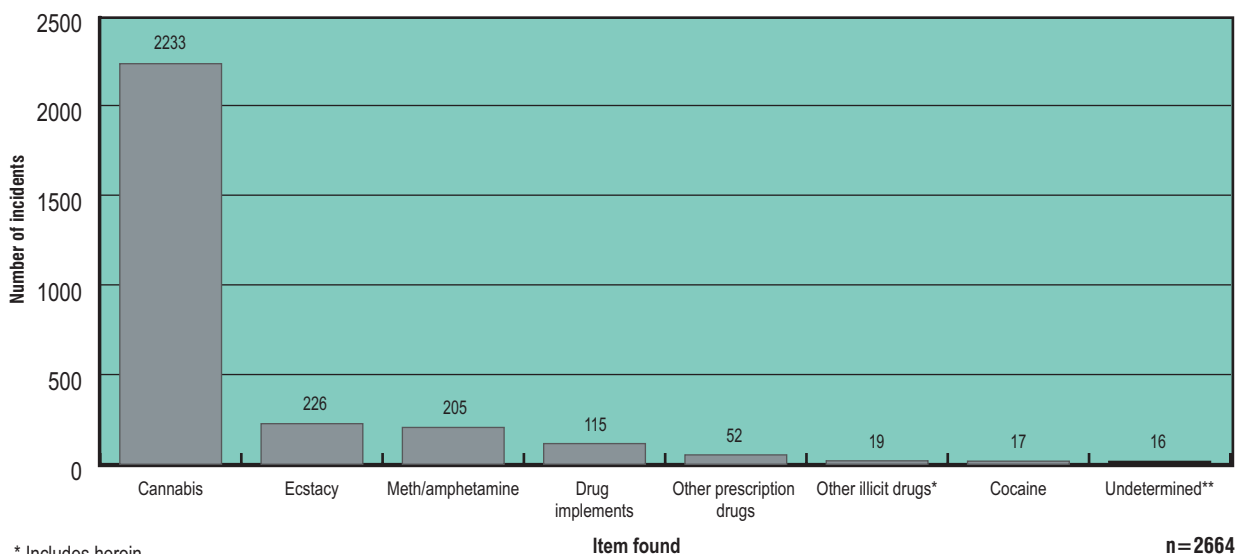
Source: Derived from the Results Spreadsheet, 22 February 2002 to 21 February 2004.

The higher proportion of drugs found following indications at Flemington (47%), Surry Hills (39%) and Kings Cross (37%) is related to the type of locations where operations took place. Much of the Flemington data relates to an operation coinciding with the 'Big Day Out' concert at Homebush on 23 and 24 January 2004. It is also worth noting that about 60% of indications on the road or street occurred in Surry Hills or Kings Cross.

6.6. What drugs were found as a result of drug detection dog indications?

Figure 7 shows that by far the most common drug found by police was cannabis.

Figure 7. Incidents in which drugs or drug-related items were found



* Includes heroin

** Includes: 'caps, powder, pills, tablets' and similar descriptions

Note: More than one item/drug was found in some incidents

Source: Derived from the Results Spreadsheet, 22 February 2002 to 21 February 2004.

Cannabis was located in approximately 84% of incidents where drugs were found. In 6.3% (169) of incidents where a drug was found, the person was found carrying more than one type of drug. Most commonly, this was a combination of cannabis and either meth/amphetamine (61) or ecstasy (53).

Note that throughout this report, the term 'meth/amphetamine' refers to either methylamphetamine or amphetamine.

Table 5 summarises information about drug weights from the spreadsheet maintained by the Dog Unit. It provides an indication of the quantities of drugs found on each occasion.

Table 5. Gross weights* of drugs located by drug detection dogs – main drug types

Drug**	Total (g)	Highest recorded amt (g)	Median (g)	Average (g)
Cannabis	9731.31	301	1.61	4.38
Meth/amphetamine	306.2	41g (31.3g net)	0.8	1.49
Cocaine	25.99	5.2g (0.49 g net)	1	1.53
Ecstasy	407.64	30.9g (1.5g net)	1	1.87
Heroin	13.24	4.3g (1.27g net)	0.46	0.95

* These amounts are taken from the Results Spreadsheet and may represent the weight of both the drug and its packaging.

** Only includes amounts measured in grams.

Source: Derived from the Results Spreadsheet, 22 February 2002 to 21 February 2004.

This data should be viewed with some caution. The figures are entered manually by intelligence officers, using information provided by police at drug detection dog operations. Although we have not systematically checked the 10,211 relevant records in this spreadsheet for accuracy, our review of the information provided noted a number of discrepancies, particularly in relation to drug weights.

A common recording anomaly in the spreadsheet resulted from the weighing of drugs together with the packaging the drugs were found in. This is standard police practice. This weight is referred to as the 'gross' weight. On many occasions the net weight (without the packaging) was substantially lower than the gross weight. This sometimes resulted in an original charge of supply being withdrawn due to lack of evidence – the only evidence of supply being the weight of the drug. This is discussed further in our analysis of the usefulness of the dogs in catching drug suppliers in Chapter 13 'Targeting drug supply'.

6.6.1. Cannabis

Of all the drugs located by police, cannabis was found in the greatest quantity. Generally the amounts located were small, with half of all amounts found weighing less than 1.61 grams.

Only one of the more than 2233 cannabis finds weighed more than the 'deemed supply' amount for cannabis leaf (300 grams). The offender in this incident was a man of 24 years of age with no prior convictions, and was apprehended at a railway station with 301 grams of cannabis leaf. However, he was only charged with a possession offence. The matter was determined ex parte. The offence was proven and the offender convicted and penalised with a \$200 fine.¹³⁷

6.6.2. Meth/amphetamine

The Results Spreadsheet notes that most amounts of meth/amphetamine found were small and half weighed less than 0.8 grams. On 20 occasions (10% of the meth/amphetamine finds) police found amounts of meth/amphetamine weighing 3.0 grams or more, which is the prescribed quantity for a supply charge relying on the deeming provision. (See paragraph 13.3.1 for more information on the operation of the deeming provision.)

The Results Spreadsheet records the largest amount of meth/amphetamine located as weighing 41 grams. The entry refers to a 24-year-old man found with a 'deemed supply' amount of methylamphetamine in an inner-city suburb. The net weight was 31.3 grams.

He was charged with supply and pleaded guilty on the basis that he was going to give the meth/amphetamine to his friends if they asked for some. The man worked as an instructor at a gym and gave evidence that he was using meth/amphetamine to stay awake and lose weight. He also gave evidence that he was 'in with a crowd' who were using steroids and meth/amphetamine.

He had prior convictions for possession of cannabis and was sentenced to 450 hours of community service.¹³⁸

6.6.3. Cocaine

A total of almost 26 grams of cocaine was located over the two-year review period. Half the cocaine located weighed one gram or less. According to the Results Spreadsheet, two amounts of cocaine were above the amount (3.0 grams) required for a supply charge relying on the deeming provision.

The largest gross weight of cocaine of 5.2 grams was found on a 29-year-old man with no prior convictions who was apprehended at a railway station on his way to the Big Day Out concert at Homebush, Sydney. The gross weight recorded included the glass vial in which the cocaine was contained. The net weight was actually 0.49 grams, which is insufficient for a charge of supply relying on the deeming provision.

The same man was also found in possession of six ecstasy pills, with a net weight of 1.54 grams, and eight cannabis 'joints' with a gross weight of 4.2 grams.

The original supply charge was withdrawn in satisfaction for the plea of guilty to the three possession charges. No conviction was recorded and the man was given a 12-month good behaviour bond.¹³⁹

6.6.4. Ecstasy

The Results Spreadsheet records that a total of more than 400 grams of ecstasy was found by the drug detection dogs. In more than half the incidents where ecstasy was located, less than one gram was found.

According to the spreadsheet, the largest amount of ecstasy found weighed almost 31 grams. The offender, a 29-year-old man, was apprehended at a dance party with six ecstasy tablets in a small silver metal container. He had prior convictions for possession and administration of a prohibited drug, and possession of a drug implement. Although the weight was listed in the Results Spreadsheet as 30.9 grams, the analyst's certificate records that the six ecstasy tablets had a net weight of 1.5 grams, which is still in excess of the amount required for a supply charge relying on the deeming provision.

The supply charge was withdrawn. The offender pleaded guilty to possession, was convicted and penalised with an \$800 fine.¹⁴⁰

The largest *net* weight of ecstasy found totalled 23.6 grams (116 tablets). The offender, who pleaded guilty, was a 19-year-old male with no previous convictions. He was sentenced to two years imprisonment to be served by way of periodic detention.¹⁴¹

6.6.5. Heroin

Heroin was located on 14 occasions over the two-year period, totalling 13.24 grams. Less than 0.5 grams of heroin was found on half of these occasions.

The spreadsheet recorded that the largest single amount of heroin found weighed 4.3 grams gross. This was the only quantity exceeding the amount required for a supply charge relying on the deeming provisions. The offender was a 26-year-old male who was apprehended at an inner-city railway station with the heroin in 20 small, clear, resealable bags.

Upon analysis the net weight of heroin was found to be 1.27 grams. The offender was also found in possession of 0.24 grams of ecstasy and 2.0 grams of methylamphetamine. He was originally charged with three counts of supply, and three counts of possession as back-up charges. There were no 'deemed supply amounts' and thus the prosecution had to prove supply without reference to the deeming provisions. The offender pleaded not guilty to supply.

The offender gave evidence that the drugs in his possession were for his own personal use. When asked in evidence why he had the heroin in the form of 'street deals', he responded that he had purchased them in this form early in the evening, and was on his way home. He stated that he smoked two or three points of heroin each night to go to sleep.

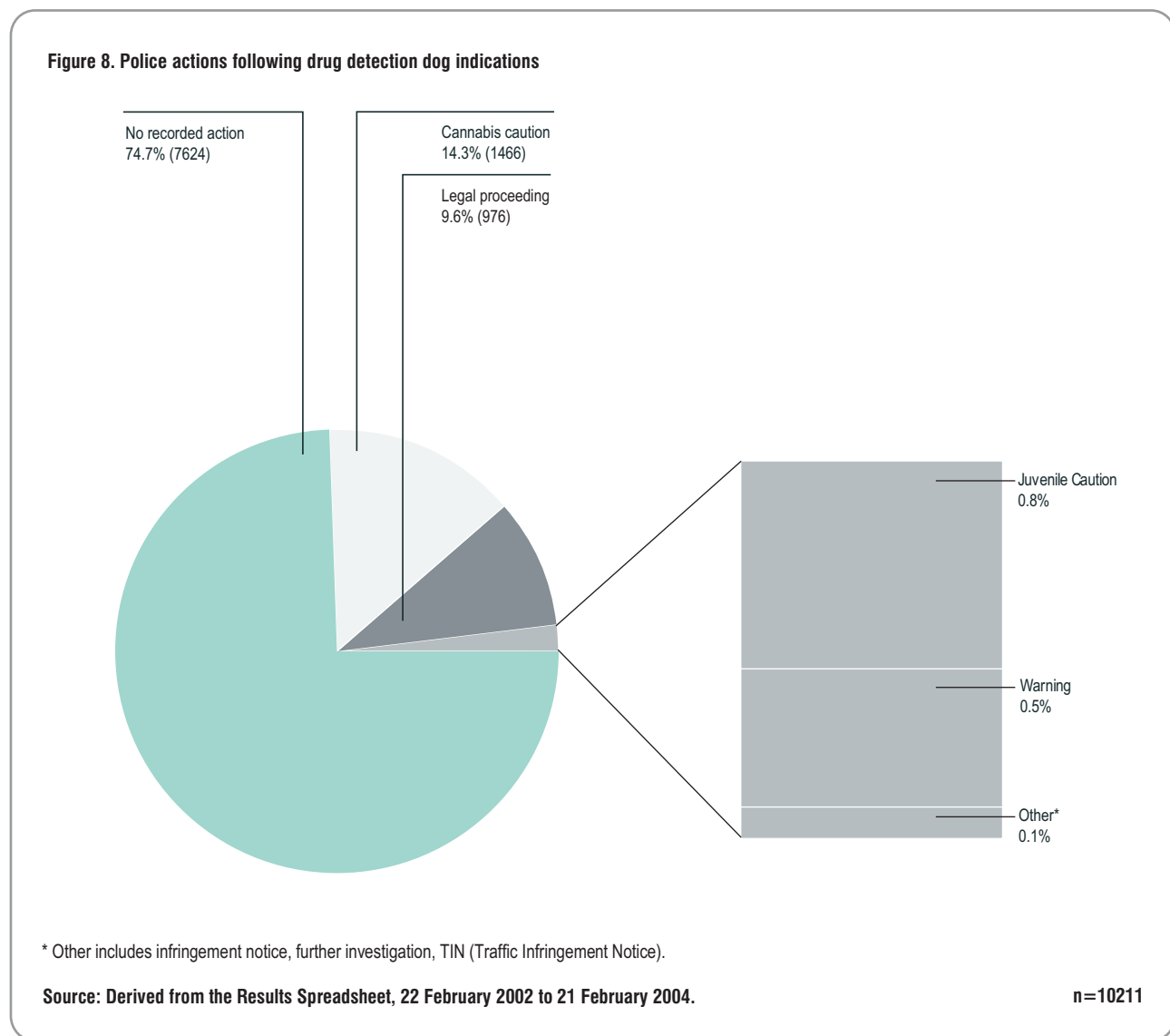
The offender was found not guilty of supply. He was convicted of three counts of possession.

The man had prior convictions for possession and supply at the time of the sentence and was serving 3 months imprisonment for a previous supply conviction. He was sentenced to five months imprisonment for the three counts of possess prohibited drug.¹⁴²

The next largest amount of heroin recorded on the spreadsheet weighed 1.5 grams. This case involved a young man under 18 years of age. Police located three balloons of heroin in the vehicle the young man was driving, as well as almost \$400 in cash. The young man denied any knowledge that the drugs were in the vehicle. Because police were of the view that possession could not be proved in this instance, the young man was allowed to leave without being charged. This also meant that the drugs were neither analysed nor weighed without packaging.¹⁴³

6.7. Actions taken by police following drug detection dog indications and searches

Figure 8 shows that in most cases police took no formal action following searches as commonly no offence was detected.



When police did take formal action (roughly a quarter of the time) this often resulted in the issue of a cannabis caution. Cannabis cautions accounted for 57% (1466 of 2587) of incidents in which police took formal action.

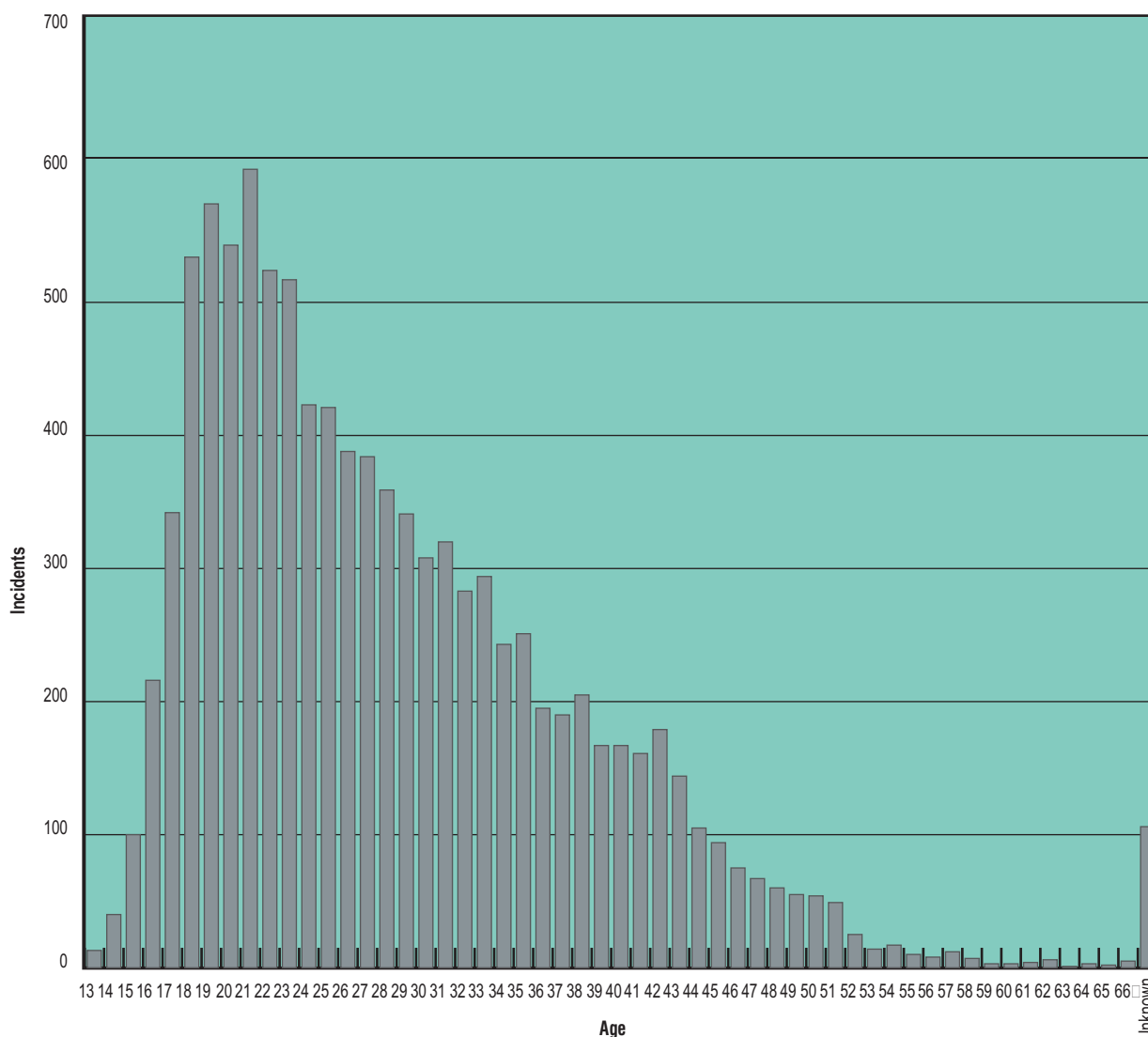
Police took action to initiate legal proceedings requiring the offender to appear in court in approximately 10% (976 of 10,211) of all indications.

6.8. Characteristics of persons searched

6.8.1. Age

We were able to determine the age of persons searched in 10,105 incidents, 99% of all drug detection dog indications.

Figure 9. Age of persons indicated by drug detection dogs



Source: Derived from the Results Spreadsheet, 22 February 2002 to 21 February 2004.

n=10,211

The median age of persons searched was 26 years. Slightly over 40% of persons searched were in the 18 to 25 age group. Almost 18% of persons searched were aged between 26 and 30 years. The predominance of young adults among those searched may reflect their greater propensity to frequent the public spaces patrolled by the dogs and/or their greater likelihood to consume or carry prohibited drugs. It is also important to note that a number of the locations patrolled restricted entry according to age, for example, licensed premises.

Far fewer of those searched were under 18 years of age (7%). Interestingly, the under 18-year-olds were also least likely to be detected carrying drugs, with slightly more than 80% of searches of this group finding no drugs. All other age groups showed a 26 or 27% rate of finding drugs.

As mentioned above, almost 18% of those searched were aged between 26 and 30 years, 14% between 31 and 35 years, 9% between 36 and 40 years and 10% between 41 and 50 years. Persons aged over 51 years accounted for almost 2% of those searched.

6.8.2. Other characteristics

The information collected by the Dog Unit does not include information about other details such as gender, ethnic origin or Aboriginality. We looked into this information by auditing a sample of 169 COPS records (a mix of both 'events' and 'information reports') relating to drug detection dog incidents.

Almost one in five spreadsheet entries (1,915 of the 10,211 records) had no event or information report number. At least some would have had a related COPS entry, but the failure to include a number in the spreadsheet made these difficult to audit.¹⁴⁴ For many searches noted in the spreadsheet it appears that no corresponding COPS entry was made. It has not always been mandatory to make records on COPS of all drug detection dog incidents. It would be expected that incidents for which *no* COPS entries were made would tend to be of a less serious nature than incidents for which COPS entries were made.

Although the 169 COPS records audited is too small to be representative of all records relating to drug detection dog indications, the sample selected roughly reflects search results, with the same ratio of 'drugs found' to 'no drugs found' results in both the COPS sample and the spreadsheet. Within the 'no drugs found' group, the audit sample has the same ratio of 'admission' types as the whole spreadsheet.¹⁴⁵

Another limitation was that the information sought in relation to these issues was often not recorded in the COPS records.

6.8.2.1. Aboriginal or Torres Strait Islander people

This information was available for 66 of the 169 records audited. Although information about Aboriginality is mandatory for COPS events, it is optional for information reports.

Three records noted that the person searched was Aboriginal, 63 records stated that the person was neither Aboriginal nor Torres Strait Islander, and the remaining 103 records provided no information on this characteristic.

6.8.2.2. Gender

Gender information was available in 126 of 169 audited records. Of these, five indicated that the person searched was female and 121 indicated that the person was male. This is supported by our observations of police operations, where observers reported that drug detection dogs indicated men much more frequently than women.

6.8.2.3. Ethnicity

This information was rarely recorded by police. Just 36 of the 169 audited records noted the 'racial appearance' of the person searched. All but three of these records indicated that the person appeared to be Caucasian. The most common of the Caucasian sub-groups was 'Caucasian fair' accounting for 21 records.

There is also a field in COPS to include information about the place of birth or nationality of the person. This optional field was completed in 32 of 169 audited records. The most common nationality or place of birth recorded was Australia(n), accounting for 24 of the 32 entries.

6.9. Complaints

Written complaints from people affected by the Drug Dogs Act or concerned about its provisions can also provide useful information about implementation issues. Table 6 shows the number of written complaints received by NSW Police and/or the Ombudsman during the 22 February 2002 to 21 February 2004 review period, and for periods immediately before and after the review.

Table 6. Complaints received January 2001 to May 2005

Pre-review	1 st year of review	2 nd year of review	Post review	Total
1 Jan 2001 to 21 Feb 2002	22 Feb 2002 to 21 Feb 2003	22 Feb 2003 to 21 Feb 2004	22 Feb 2004 to 4 May 2005	
18	18	8	7	51

Source: NSW Police and Ombudsman complaints records.

Most complaints in the pre-review period were received during or after July 2001. This coincided with wider use of the dogs and increased publicity about drug detection dog operations during the latter part of 2001. Challenges to the legality of drug detection dog searches were widely reported in August 2001 and at least one newspaper article¹⁴⁶ quoted civil liberties representatives urging members of the public to report any misuse of police powers to the Ombudsman.

The highest number received in any one month was nine complaints (18% of the 51 matters reviewed) received in September 2002. Data reported earlier in this chapter (see Figure 2 'Drug detection dog indications by month') show this apparent spike in complaints coincided with a surge in drug detection dog use. The complaints in this period included many by members of the public who had witnessed other people being searched, and many raising general concerns about the use of the dogs.

Of the 51 written complaints about drug detection dogs received between January 2001 and May 2005:

- 36 (71%) were from men
- 30 (59%) relate to police searches, and
- 7 reported being charged, although none involved drug-related offences.¹⁴⁷

The data provides a rare insight into the link between police searches and complaints. Of the 26 written complaints received by police and the Ombudsman during the 22 February 2002 to 21 February 2004 review period, 16 (62%) related to the search – including one matter initiated by police following a failed prosecution. Compared to the overall number of drug detection dog indications and searches during the review period, this suggests that about one in every 640 searches led to a complaint. Most of these were resolved by police investigators or senior officers meeting directly with the complainants to discuss their concerns.

Table 7 summarises information provided about the locations of incidents raised in complaints.

Table 7. Location of incident

Location type*	Number of complaints (n = 43)
Train station	18 (42%)
Street	11 (26%)
Commercial premises	6 (14%)
Licensed premises	5 (12%)
Correctional facilities	2 (5%)
Private residence	1 (2%)

*Excludes 8 matters where complainant has not stated where the incident occurred.

Source: NSW Police and Ombudsman complaints records.

Of the 43 complaints that identified the location of searches or incidents, about two-thirds occurred at train stations or on streets.

The information on outcomes shows many of the complaints were conciliated with the complainant or declined for investigation on the basis that no police misconduct was alleged.

The principal issues or concerns raised in the complaints were:

- **'False' indications or behaviour** by the drug detection dog in that no drug was located or there were other concerns about the dog's behaviour.
- **Civil liberties** infringements and damage to community confidence in police.
- **Humiliation or anger** felt at being detained and searched.
- **Escalation** of search leading to an arrest or alleged assault despite no drugs being found.
- **Recording issues** – concerns relating to the recording of details by police.
- **Victimisation** – felt victimised by police because of racial or other minority status.

The frequency of concerns raised by complainants are summarised in Table 8.

Table 8. Issues raised by complainants

False indications	Civil liberties	Humiliation or anger	Escalation	Recording issues	Victimisation
24* (47%)	24 (47%)	15 (29%)	12 (24%)	8 (16%)	6 (12%)

* Only includes those complainants searched by police.

Source: NSW Police and Ombudsman complaints records.

n = 51

Many complainants raised more than one issue or a combination of issues.

There are references to these complaints throughout this report. Complainants are quoted directly, without alteration to the words, spelling or emphasis used. Where the complaint includes allegations of serious misconduct, any available information on investigation outcomes is noted.

Endnotes

- ¹³⁰ This figure does not include any operations conducted where there were no indications by the drug detection dog. This is likely to account for very few operations.
- ¹³¹ In NSW Ombudsman, *Discussion Paper: Review of the Police Powers (Drug Detection Dogs) Act*, June 2004, we reported that there were 4,078 indications in the first year of the Drug Dogs Act. Updated data from the Dog Unit and a slight change in counting rules explains the variation in figures.
- ¹³² These figures have been calculated using all persons of interest involved in an incident. The total number of persons is greater than the total number of search incidents.
- ¹³³ For a more detailed discussion of the operation see: Chapter 7 'Operation Guardian – A case study in drug detection dog deployment'.
- ¹³⁴ See Chapter 2 'Background' for maps showing the geographical areas covered by these regions.
- ¹³⁵ Local area commands do not correspond exactly with suburbs of the same or similar name.
- ¹³⁶ NSW Ombudsman, *Review of the Police Powers (Drug Detection Dogs) Act*, June 2004.
- ¹³⁷ COPS Event 6.1; *Police v Jason Peters* (Morahan LCM, Unreported, Gosford Local Court, 5 May 2003).
- ¹³⁸ COPS Event 6.2; *R v Kelly James Stratton* (Belleair DCJ, Unreported, Sentence judgment, Sydney District Court, 19 March 2004).
- ¹³⁹ COPS Event 6.3; *DPP v [Offender 11]* (Cloran LCM, Unreported, Burwood Local Court, 21 July 2004).
- ¹⁴⁰ COPS Event 6.4; *DPP v Dean Robert Rees* (Cloran LCM, Unreported, Burwood Local Court, 3 June 2004).
- ¹⁴¹ COPS Event 6.5; *R v Victor Manuel Fernandez* (Blanch CJ, Unreported, Sentence judgment, Sydney District Court, 20 November 2003). For more details in relation to this offender see paragraph 13.6.1.
- ¹⁴² COPS Event 6.6; *Police v Shane Marcus King* (Ellis LCM, Unreported, Central Local Court, 21 April 2004).
- ¹⁴³ COPS Event 6.7.
- ¹⁴⁴ Some of these records relate to incidents for which a COPS entry would be expected. For example, where cannabis cautions were issued. In these cases we attempted to track down COPS records through other means but were not always able to locate the COPS record for the incident.
- ¹⁴⁵ Admission types include: Drug contact admitted, Drug contact denied and No information about drug contact.
- ¹⁴⁶ *Daily Telegraph*, 14 August 2001.
- ¹⁴⁷ Offences mentioned included goods in custody, assault police, hinder police, resist arrest, offensive language and fail to quit licensed premises.

Chapter 7. Operation Guardian 2004 – A case study in drug detection dog deployment

As explained throughout this report, drug detection dogs are routinely used in the context of operations, which vary in size and complexity.

NSW Police repeatedly cites Operation Guardian, which focused on the Sydney 'Big Day Out' festival, as a highly successful example of how the dogs can improve the effectiveness of large operations involving hundreds of police. For this reason, data on outcomes achieved by Operation Guardian in January 2004 is summarised in the following extended case study.

The operation also raises many of the issues that will be explored in the ensuing chapters of this report. These include the accuracy of drug detection dog indications, the effectiveness of drug detection dog operations in targeting drug supply, privacy and civil liberties issues, harm minimisation considerations, and cost effectiveness.

7.1. Introduction

The operation was conducted on 23 and 24 January 2004 to coincide with the 'Big Day Out', a large outdoor event featuring international and local musicians. The event is staged in centres across Australia each summer, including two days of concerts and other acts at Olympic Park in Sydney.

The aim of Operation Guardian was:

*To conduct a High Visibility Policing operation at major rail stations and upon trains, targeting anti-social behaviour, offences against the person and drug and alcohol related crime.*¹⁴⁸

The warrant application for the use of the drug detection dogs at Olympic Park stated:

The event is 'Big Day Out' a large two day concert of approximately 52 000 persons each day expected to attend ...

With the culture and lifestyle of live concerts being one of an acceptance and common use of recreational drugs the resulting demand for illegal substances in and around the event is expected to be high with this number of patrons attending.

It is the belief of police that most of the supply of illegal substances to these dance parties is conducted outside and on public transport to the event.

*Due to the expected demand of illegal substances at this event, and police records of drug detections in and around previous large similar events, Police feel that this concert will be similar to previous events and a great opportunity to curb the supply of illegal substances.*¹⁴⁹

The warrant was granted. A total of 323 police were involved in the operation over the two days.¹⁵⁰ Police worked in teams covering different railway stations and train lines, as well as Olympic Park where the event was held. Many of these teams were accompanied by drug detection dogs, with four dogs and handlers deployed on the first day of the operation and three on the second day.

A total of 244 officers were involved in the morning shift of the operation on both days and 79 officers worked the afternoon shift on both days.¹⁵¹ Drug detection dogs were only deployed in the morning shifts, which generally extended from 8.30 or 9.30am until 2 or 3pm. Not all police teams on the morning shifts were accompanied by a dog and handler.

Based on advice provided by NSW Police about the number of officers who worked directly with the dogs and handlers, and related expenses, it appears costs for the drug detection dog element of the two-day operation would have exceeded \$41,000. This figure includes wages (based on a level 3 senior constable hourly rate of \$27.22),¹⁵² food and overtime amounts noted in the Post Operation Assessment, but does not include any costs associated with planning, the prosecution of offences, or drug detection dog costs (other than handler wages).

7.2. Results

The Post Operation Assessment prepared by NSW Police makes repeated reference to the 'success' of Operation Guardian 2004 and the 'excellent results' achieved, notably the significant number of detections, the large quantities of illicit drugs seized, the number of supply charges and the positive media coverage.

Figure 10 shows the proportion of indications where drugs were found as a result of drug detection dog indications.

The data on searches following drug detection dog indications shows that 59% (245 of 414) of those searched were found to be in possession of drugs. This is much higher than the rate over the whole review period, where just 26% of searches led to drugs being found.

As Figure 11 shows, most of the people caught carrying drugs were found carrying cannabis.

A significant number of people (54 incidents) were found in possession of more than one drug. This was most commonly a combination of cannabis and another substance, usually ecstasy or meth/amphetamine.

Figure 12 shows what police were told by people who were searched without drugs being found.

Of the 169 people on whom no drugs were found, 67% admitted to having had some drug contact. One person was found carrying a knife and received an infringement notice.¹⁵³

Figure 13 shows the actions taken by police following the drug detection dog indications and searches:

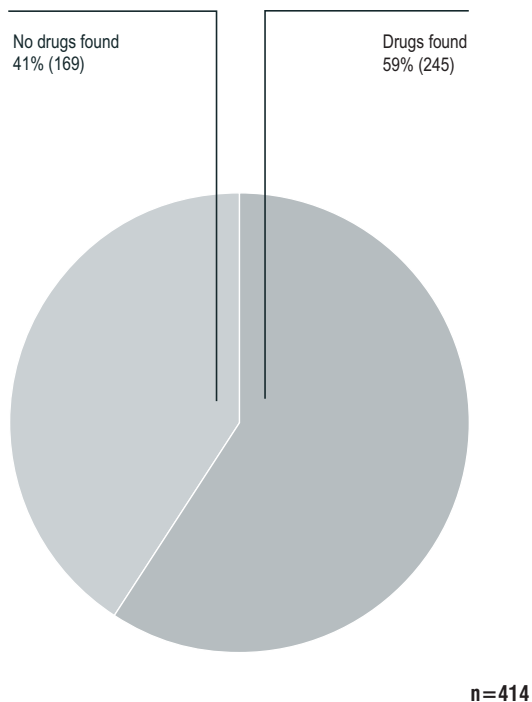
Of the 414 persons indicated by the drug detection dogs and searched during the operation:

- 86 people were criminally charged with drug-related offences – this represents 21% of persons indicated, significantly higher than the 9.6% of indications that resulted in a legal action over the whole review period.
- 139 people were issued with cannabis cautions¹⁵⁴ – this represents 34% of persons indicated, compared with 14.2% over the whole review period.

An important indicator of the seriousness of the drug offences detected is the number of supply charges preferred as a result of the drugs found. Among the 86 people criminally charged as a result of the operation, NSW Police advised that 18 were charged with supplying a prohibited drug.¹⁵⁵ A review of these 18 drug supply charges showed that:

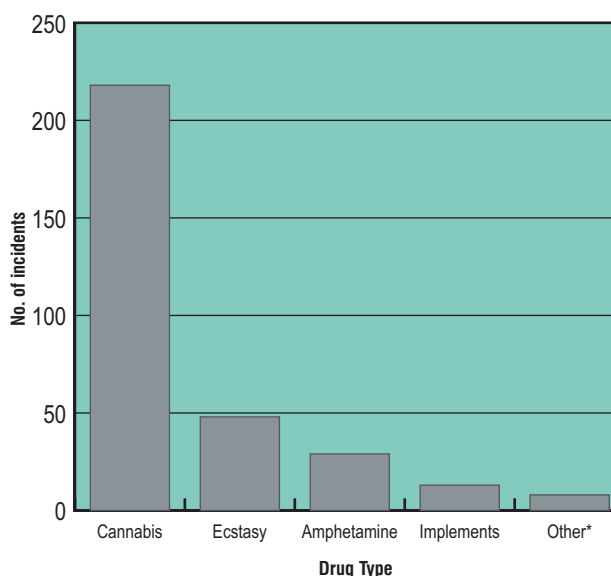
- 12 were withdrawn
- 1 person failed to appear in court (an arrest warrant has been issued), and
- 5 accused pleaded guilty.

Figure 10. Drug detection dog indications by drugs found, not found



Source: Data on all recorded Operation Guardian drug detection dog indications 23 and 24 January – derived from Results Spreadsheet, 22 February 2002 to 21 February 2004.

Figure 11. Indications where drugs found, by type of drug



n=245 Figures exceed 245 as some people were found with more than one drug or implement.

*Other includes cocaine, methadone, Valium, powder, prescription drugs.

Source: Operation Guardian drug detection dog indications 23 and 24 January 2004 – derived from Results Spreadsheet, 22 February 2002 to 21 February 2004.

Of the five who pleaded guilty to supply offences, none had any prior criminal convictions (drug-related or otherwise). Examination of the relevant court transcripts to check the sentences imposed showed that three of the five had no conviction recorded and were subject to a good behaviour bond,¹⁵⁶ one received a bond (with conviction recorded)¹⁵⁷ and one received a 16-month suspended sentence.¹⁵⁸

Michael Walton wrote in Kingsford Legal Centre's newsletter of his experience in attending the hearings of some of those prosecuted as a result of Operation Guardian:

I watched several people plead guilty to charges of possessing prohibited drugs such as cannabis and speed. Most of them were in their twenties and thirties, unrepresented and this was the first time they had ever been to court, let alone been charged with a criminal offence. For some, the prospect of a criminal charge meant that they faced the cancellation of their residency visa and deportation from Australia.

*The Magistrate, after a half-hearted lecture about the law and drugs, dismissed the charges against the first-time offenders and recorded no criminal conviction.*¹⁵⁹

NSW Police also provided details of 11 persons charged with supply as a result of a similar operation during the Big Day Out on 26 January 2005. In 10 of the 11 matters, the supply charges were withdrawn. In the other matter, the supply charge was proven and the offender received a \$1000 fine for providing ecstasy to his girlfriend.

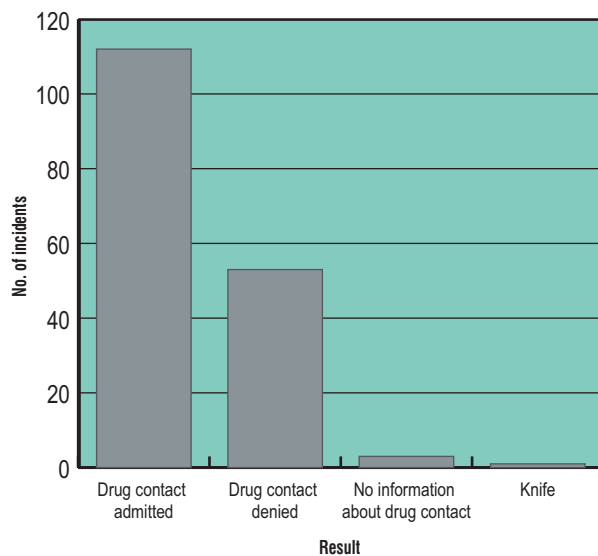
NSW Police considers Operation Guardian 2004 to have been a particularly successful operation. The drug detection dogs' rate of locating drugs was certainly higher than the overall rate during the review period. Although the issue of cannabis cautions was the primary form of action taken by police where drugs were found, more than one-fifth of all indications led to formal legal action.

However, consistent with the findings elsewhere in this report, most offences were of a minor nature and only six people were prosecuted for drug supply offences. None of those charged with supply and whose cases proceeded to court had any prior criminal record.

7.3. Some comments from 'partygoers'

Much discussion has been generated about police use of drug detection dogs on a number of Internet forums used by people involved or interested in raves and other music events. Some of this discussion was specifically about the Big Day Out event and some was about police operations using dogs at other raves and parties.

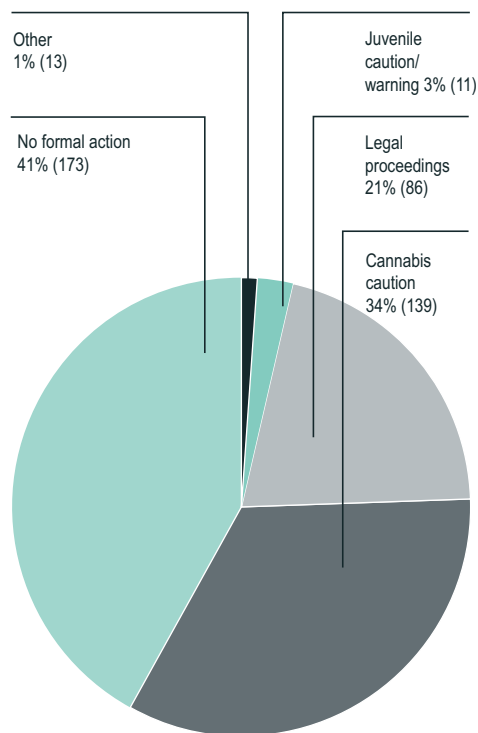
Figure 12. Indications where no drugs found, by information provided



n=169

Source: Operation Guardian drug detection dog indications 23 and 24 January 2004 – derived from Results Spreadsheet, 22 February 2002 to 21 February 2004.

Figure 13. Legal actions taken following searches



n=414

Source: Data on all recorded Operation Guardian drug detection dog indications 23 and 24 January – derived from Results Spreadsheet 22 February 2002 to 21 February 2004.

We regularly monitored one of the more active websites during the review period and have reproduced some of the discussion 'threads' below. These show the responses of some partygoers to the use of the drug detection dogs.

An event in February 2004 led to some discussion on this site. A number of comments expressed the view that use of the dogs was a waste of resources or an invasion of privacy:

Posted by res: *Is it just me, or does this use of sniffer dogs represent a breach of some pretty basic human civil liberties?*

Groovstar: *Well, two music events at olympic park in a row have been targeted by police and their drug dogs. On the surface, it looks like this might be common occurrence for all of these future parties.*

It's a damn shame.

Apollo: *Heh, I cruised past the event at the State Sports Centre last night at about 10. There was a minibus full of police, 4 dogs, 2 patrol cars and 2 paddy wagons. I wasn't going to try to count the police ... Seems like an astounding waste of resources to me.*

Ozbreaker: *It's just so disgusting ... the waste of resources is hideous ... and for what gain? Is it just because I've been paying more attention, or has the amount of raids and busts gone up heaps recently?*

phase_dancer: *Perhaps that's the undisclosed objective; scare them all into not going (supporting) these events. It will drive the parties back underground. It will provide the temporary public view that drugs have been cleaned up through the tough police presences...¹⁶⁰*

In another thread following a posting about a 'dance party raid' there was much discussion about the abilities of the dogs and how to avoid being detected and also discussion about attitudes to the police. Two main views were expressed in these postings about police. On the one hand there were those who saw the police as just doing their job. These postings often saw the 'legislators' as the source of the problem rather than the police. For example:¹⁶¹

Baker: *I will never agree with the laws they enforce and at times I get upset and mouth off about them, but cops do jobs that are going to make them hated by society ...*

Velocidex: *... Whether you like it or not, the fact remains that taking drugs is illegal, and I agree that you should not beg with the police (although you can try) to be lenient, because the fact of the matter is you know the penalty for the crime. Talking to the police will not have some wide-ranging impact on the drug laws; you need to go to the source, to the legislators who enact the laws.*

Raspberrywatergirl: *My friends, its not the police you should hate but rather the makers of the rules. As said before they are only doing their jobs, following orders from the higher seats of power.*

Other postings clearly focused their anger at police:¹⁶²

Satricion: *F..k cops. They might think they're doing what's right, but f..k them anyway. COPS are the strong arm of the state. They are there to enforce the law. If they don't agree with the laws then they shouldn't become cops, because cops are there to make sure that people follow the laws that the state makes.*

Seriously. F..k cops.

goatyoghurt: *I haven't mentioned anything about it previously due to paranoia, but my level of loathing towards ANY government employed law enforcement official has risen to extraordinary levels.*

I was arrested in a similar operation in February and was the victim of these pathetic individuals on the ultimate power trip. I don't care that what I was allegedly doing was illegal, I oppose the law in the first place and I spit in the face of any cretin that enforces them.

My sympathies go out to anyone else caught up in this draconian bullshit...

The NSW Council for Civil Liberties submitted that Operation Guardian demonstrated that police were targeting partygoers who presented no real harm to the community:

Those concert and partygoers who have drugs on them are not 'drug addicts' in the stereotypical sense of people who commit crimes to purchase their drugs. Many of the people caught by Operation Guardian were employed and had families. They were causing no one any harm.¹⁶³

The Youth Justice Coalition was also concerned about the use of drug detection dogs at the Big Day Out concert. Its submission to the review included a description of the experience of one young girl who attended the concert:

*It was the most terrifying thing I have ever experienced. We went to The Big Day Out and passed through the ticket gate. It was only then, after we had gone through, that we could see that there were sniffer dogs being used to search everyone going in. It was too late for anyone to do anything but be caught up in this. People all around me were panicking. I had one ecstasy tablet in my wallet and I was totally freaked about what I should do. My friend encouraged me to relax and walk through, which I did. But there were others who decided to take their drugs there on the spot – and I'm sure some people took whatever they had on them. It was very scary – wondering what would happen to me and worried about others who might seriously have gotten really sick ...*¹⁶⁴

The producer of the 2005 Big Day Out has also reportedly expressed concern that 'the drug dogs' presence ... could potentially lead to fans overdosing to avoid being caught'.¹⁶⁵

Endnotes

¹⁴⁸ NSW Police, Operational Orders – Operation Guardian.

¹⁴⁹ Form 1, Application for Warrant, 22 January 2004.

¹⁵⁰ Post Operation Assessment, Operation Guardian, Flemington Local Area Command, 29 January 2004.

¹⁵¹ Post Operation Assessment, Operation Guardian, Flemington Local Area Command, 29 January 2004.

¹⁵² Correspondence from NSW Police, 1 April 2005.

¹⁵³ COPS Event 7.1.

¹⁵⁴ This is in accordance with the figures on COPS. The police report to the authorised officer about the execution of the warrant states that 417 drug dog searches occurred and that there were 338 possession and or/supply charges as a result of the operation. It is unclear how these figures were derived.

¹⁵⁵ This was also reported in the Form 3 execution report to the authorised officer.

¹⁵⁶ Pursuant to s.10(1)(b) of the *Crimes (Sentencing Procedures) Act 1999*. *Police v [Offender 1]* (Syme LCM, Unreported, Downing Centre Local Court, 16 February 2004); *Police v [Offender 2]* (Keogh LCM, Unreported, Burwood Local Court, 23 February 2004); *In the matter of the appeal of [Offender 3]* (Blanch CJ, Unreported, Sydney District Court, 15 March 2004). The offender's name has not been used where the court ordered that no conviction be recorded.

¹⁵⁷ Pursuant to s.9 of the *Crimes (Sentencing Procedures) Act 1999*. *Police v Timothy Paul Driver* (Still LCM, Unreported, Burwood Local Court, 11 June 2004).

¹⁵⁸ Pursuant to s.12 of the *Crimes (Sentencing Procedures) Act 1999*. *R v Nathan John Harrison* (Williams DCJ, Unreported, Sentence judgment, Sydney District Court, 22 October 2004).

¹⁵⁹ Walton M, *Unsolicited*, Issue 1, (2004), p.20.

¹⁶⁰ www.bluelight.nu (Accessed 5 August 2004). Postings made on 14 & 15 February 2004 and 6 June 2004.

¹⁶¹ www.bluelight.nu (Accessed 9 August 2004). Postings made on 1 & 6 June 2004.

¹⁶² www.bluelight.nu (Accessed 9 August 2004). Postings made on 31 May 2004 and 1 June 2004.

¹⁶³ NSW Council for Civil Liberties submission, 19 August 2004.

¹⁶⁴ The Youth Justice Coalition submission, 20 August 2004.

¹⁶⁵ McCabe K, 'Big Day Out for the sniffer dogs', *Daily Telegraph*, 25 January 2005.

Chapter 8. Accuracy of drug detection dogs

Accuracy is a key factor in the efficacy of using drug detection dogs to sniff out drugs. Public perceptions of accuracy are likely to affect community attitudes to police use of the drug detection dogs. Police perceptions of accuracy may impact on the formation of a reasonable suspicion to search a person on the basis of an indication by a drug detection dog. Judicial or other independent assessments of the dogs' level of accuracy may also impact on whether, from an objective perspective, it was reasonable for police to suspect a person of possessing drugs based solely on an indication by a drug detection dog.

8.1. Training drug detection dogs

*A drug dog is a dog conditioned to have a change of behaviour when it detects the scent of a drug in the air.*¹⁶⁶

NSW Police conducts the training of drug detection dogs at the Dog Unit at Menai. The Dog Unit has put together an 88-page training manual,¹⁶⁷ which includes information about handler and dog selection, dog health, hygiene and basic anatomy, and training the dogs in drug detection. About two-thirds of the training manual is devoted to health and related issues.

The opening pages of the training manual contain a brief description of 'drug dog imprintation':

*The process where a training aid containing the scent of the drug is presented to the dog. When the dog inhales the scent he is encouraged to display a change of behaviour and is rewarded with food. This is developed through ongoing repetition of this process.*¹⁶⁸

NSW Police has informed us that drug detection dogs 'are trained to scan the airspace around persons using their olfactory senses'.¹⁶⁹ The drug detection dogs are trained to detect 'cannabis and its derivatives, heroin, cocaine' and 'amphetamines including ecstasy, ice etc.'¹⁷⁰

During the review period we observed one training session for the drug detection dogs. However, because (as will be explained below) training of the drug detection dogs is based on reinforcement of the desired behaviour, that is detecting illegal drugs, training occurs both during specific training sessions and whenever the dogs are deployed in the field. For this reason, the way handlers manage their dogs in day-to-day operational work is a key part of drug detection dog training. During the review period we also observed close to 100 hours of policing operations where the drug detection dogs were deployed.¹⁷¹

At allocated training sessions, a variety of training devices and methods are used with the dogs. However, all training has the same central theme: praise and food for the desired behaviour and reprimand for undesirable behaviour.

At the training session we observed,¹⁷² dogs were trained using a device which could be described as a rotating cross. The cross was slightly raised from the floor and a container was located at each of the four ends of the cross. The cross could be spun on a central axis. A drug would be put in one of the containers and the device would be spun around. Neither the handler nor the dog could visually locate the container with the drug. When the device stopped spinning, the handler would lead the dog around the device, encouraging it to sniff each container. If the dog located the correct container and indicated to its handler that it had detected the scent of a drug, the dog would be praised and fed. If the dog indicated an empty container, or a container which contained a 'distracter' (see below) the dog would be reprimanded with a jerk of its lead and a comment from the handler in a harsh tone, for example 'No!' This routine would be repeated until the dog was consistently indicating the containers with drugs, and only those containers. On some occasions every container was empty.

New dogs are trained in this way for six weeks. After this they are trained in more realistic situations at a range of sites including factories and old police stations, and with people as the object of the dog's attention.

We were advised by police that dogs which have successfully completed their initial training continue to be trained every week and 'accredited' (or tested for their accuracy) by the Dog Unit every three months.

Often an indication by a drug detection dog will amount to the dog sitting down next to the source of the scent. However, indications are not always this clear. According to the training manual, 'some dogs may indicate in a way only apparent to the handler but predominantly all dogs should sit on location.'¹⁷³ Handlers sometimes have to explain to other police that they should not try to guess when the dog has made an indication. Only the handler can reliably know when an indication should be trusted and other police should wait for the handler to either stop the person indicated or tell police that a particular person should be stopped.¹⁷⁴ Observer notes of a dog handler's

comments to a police briefing prior to an operation in the inner city provide some insight into the complexity of identifying an indication:

*[Handler says that] dog will show a particular change of behaviour when a person has something. It will get very excited but won't necessarily stop and sit. It may follow the person.*¹⁷⁵

The drug detection dogs are only ever fed when they make a drug indication. In a sense, every feed is a training session because it reinforces the dog's connection of the scent of drugs with a food reward. If the dogs are not working on a particular day the handler will use a supply of 'drug scents' to allow the dog to indicate and be fed. These feeds are known as 'maintenance feeds'. The dogs are also praised and patted by their handlers when they indicate correctly. This also forms part of their reward or incentive to find drugs.

The drug detection dogs are also trained with 'distracters'. These are items such as food, that the dogs might commonly come across on the street. The dogs learn that if they indicate these items they will not be fed. If handlers notice that a dog seems to be indicating 'falsely' during an operation they will try to work out what substance is causing the 'false positive' and train the dogs not to indicate when it detects the odour of that thing.

Although the dogs often try to eat food from the ground, we have observed that handlers will always attempt to pull the dogs away and sometimes remove the food from the dog's mouth.

As shown earlier in this report (at paragraph 6.5), more often than not when a drug detection dog indicates a person, police will not find drugs on the person. We asked NSW Police whether drug detection dogs were rewarded (fed) when they indicated a person who was not found to be carrying drugs. The NSW Police response was as follows:

*In the operational field or training area the Handler will only feed his/her dog once the P.O.I. confirms that illicit drugs are present on their persons or property.*¹⁷⁶

However, our observations of police operations revealed that handlers usually fed their dog with every indication. It seemed that this might reinforce the dogs in indicating persons not carrying drugs, either because the dogs were picking up a slight trace of a scent or for some other reason.

In addition, our observers noted that it was rare for a drug detection dog and handler to remain near by when police searched a person following an indication. The handler would usually move forwards to screen the next person or would move away from the search so that the dog did not continue to advance towards the person indicated. Further, the operational guidelines for the drug detection dogs advise that after an indication and cautioning by the handler, the handler 'is then to remove the dog from the scene as soon as is practicable'.¹⁷⁷

From a practical perspective, it can be difficult for handlers to know whether or not to feed their dogs. In some cases persons might immediately admit they are carrying drugs and the dog can be rewarded soon after the indication, ensuring the association between the correct indication and the reward. However, if a handler must return sometime later to check the outcome of the search, this would necessitate a delay in rewarding the dog for a correct indication. It is unclear what impact this might have on the dog's training.

At some stage during the review period it appeared that handlers attempted to change their feeding/reward practices to reduce the number of 'residual' indications. On one occasion we spoke to a handler after an operation. She informed us that she had been advised to stop feeding the dog for 'residual' indications. Our observer's notes read:

*[The handler] thinks her dog is not working well because she's been asked not to feed it when it indicates residuals. She thinks that this is confusing the dog because previously it was fed whenever it indicated.*¹⁷⁸

On another occasion a different handler made similar comments to an observer, which were noted as:

*The handler advises me that he is not feeding the dog unless drugs are found on the person. He is trying to discourage residual indications. He reintroduces the dog to the person later if it is not possible to identify the drugs and feed the dog on the spot straight after the detection.*¹⁷⁹

Our observer noted another conversation with a handler as follows:

*Handler says that the dogs are given mixed messages. When working, he does not feed the dog if it seems to only be picking up residual amounts because this would reinforce the behaviour. However, when the dogs are trained and fed at home this is done with residual amounts.*¹⁸⁰

8.2. Results in the field

8.2.1. What is an acceptable rate of detecting drugs?

As noted (at paragraph 6.5), drug detection dog indications led to police finding illicit drugs 26% of the time. Roughly three-quarters of the time no drugs were found. In the majority of incidents in which no drugs were found, police records indicate that an admission of drug use (most often use of cannabis) was made. In Chapter 11 'Obtaining information and how it is recorded and used' we examine the nature of these recorded admissions and find that police recording of admissions is of variable reliability.

It is not possible to point to a rate of finding drugs which is universally thought of as acceptable in terms of accuracy and effectiveness. While some might say that a rate of 1 in 4 is commendable, others will be concerned that three-quarters of those searched are not found to be committing any offence. Others point to the number of admissions of drug use that accompany the searches where no drugs have been found to indicate that the dogs are highly accurate, detecting miniscule residual traces. Still others might comment that it is unduly narrow to focus on statistical rates when other benefits of the use of drug detection dogs and high visibility police patrols are no less important but are less quantifiable. For example, it has been argued that the drug detection dogs contribute to reducing fear of crime in the community, deterring and disrupting drug networks and reducing other forms of crime such as assaults and thefts.

What is clear is that in practice, drug detection dogs provide the sole basis for the police reasonable suspicion to search a person. The dog can be viewed as a tool used to engage this suspicion. One might expect a higher standard of accuracy and reliability when using a tool, such as metal detectors or breathalysers, than of a police officer acting in the course of his or her duties without the assistance of any tools.

Some United States case law touches on the question of accuracy of drug detection dogs. Courts have variously found that:

- 'an overall reliability rate of 92%' for a narcotics dog is sufficient to justify reasonable cause to obtain a search warrant to search a package¹⁸¹
- if a drug detection dog is trained and accredited it is not necessary to establish how reliable the dog has been in the past to establish probable cause in support of a search warrant,¹⁸² and
- a dog sniff can support probable cause for a search warrant, only if sufficient reliability is established. In this case evidence was provided of correct identification by one dog in 60 of 66 occasions and by the other dog in 2 of 2 occasions and was held to be sufficient to establish probable cause.¹⁸³

One submission to our review from an Associate Professor in the sciences, questioned whether a 27%¹⁸⁴ rate of finding drugs could be considered as any better than chance. He noted that the *2001 National Drug Household Survey*¹⁸⁵ found that 35.5% of 20 to 29 year-olds and 27.7% of 14 to 19 year-olds had used illicit drugs in the 12 months prior to the survey. Citing data from the first 12 months of our review, he went on to write:

*Although police located drugs in 27% of searches, it [is] also true that police failed to locate drugs in 73% of searches. Given this poor hit rate and the fact that around 70% of 14-29 year olds apparently do not use illicit drugs, it appears to me that the use of police Detection Dogs only confirm what is already known from survey data and that the results are not much better than chance for a given demographic.*¹⁸⁶

Other submissions compared 'success rates' of police equipment to the drug detection dogs' rate of finding drugs. Direct comparisons of success rates can be misleading for the reasons noted below, however, the examples give an indication of the breadth of views about acceptable success rates.

One response, from a Local Area Command in Western Sydney, noted the 'impressive' success rate of the drug detection dogs. The submission went on to comment:

*When compared to Random Breath Testing, which has an overall success rate of approximately 3%, the figure of 27% tends to justify the use of drug detection dogs. I do not sense any great public anxiety over the small number of positive tests in relation to random breath testing. A survey of the community would no doubt reveal a similar belief in relation to the use of drug detection dogs. The benefit of RBT and Drug Dogs to the community far outweighs any inconvenience to the individual.*¹⁸⁷

It is worth mentioning here that the stopping of vehicles for the purposes of random breath testing is largely a random exercise. By law, however, the detaining of persons for searching cannot legally be a random exercise and must be based on a reasonable suspicion.

Alternatively, another submission to our discussion paper commented:

*If speed cameras were getting it wrong in 3 out of five cases there would be public outrage and we would stop using them. Given these poor results, police should immediately stop using sniffer dogs.*¹⁸⁸

However, speed camera footage is used as direct evidence of an offence rather than information on which to base further investigation, as is the case with drug detection dogs.

Another submission, from Redfern Legal Centre, argued that the rate of finding drugs was not sufficient to provide the legal basis for the search. The legal centre submitted:

*if one dog indicates that a person is carrying something prohibited, then there should be a second dog on hand to separately verify that indication. Only if this second dog makes a positive indication, should the police have grounds for reasonable suspicion entitling further DISCREET investigation by way of questioning and, only if necessary, a pat down search at the scene.*¹⁸⁹ [Original emphasis]

8.2.2. 'Residual' indications

During our observational research we have noted some instances in which the ability of the drug detection dog to detect a prohibited substance has seemed quite remarkable. The notes of one of our observers from an operation in inner Sydney state:

*From the top of the stairs (20-30 metres away) the dog detects an odour from a man who is leaving the bar. The man runs away and police and the dog chase him. The man ends up in a dead-end area and is questioned and searched by police.*¹⁹⁰

The man was searched by police and was found to have small quantities of both cannabis and cocaine in his possession.¹⁹¹

At another operation our observer's notes state:

*While walking past the outside of the station the dog strains towards the fence around the rail lines. (The dog previously did this but the handler pulled him away because she surmised that the dog was interested in some cats on the other side of the fence.) The dog sniffed around the ground and the handler found an old-looking small plastic bag with some [cannabis in it].*¹⁹²

However, on most occasions the drug detection dogs' indications do not lead to the detection of any drugs. It may be that although actual drugs are not found most of the time the dogs are, on some of these occasions, detecting what is known as a 'residual scent'.

When a drug detection dog indicates a person because it can smell the scent of a drug the person recently came into contact with, but is no longer in possession of, police call this a 'residual' indication. One handler told police at a briefing we attended:

*The dog doesn't know the difference between a cannabis scent that is hours old and one that's there.*¹⁹³

Our observer's notes record another handler's comments at a police briefing as follows:

*Comment that dog will indicate residue scent as well. This scent is strong because it's all over the person. "That's a hell of a lot stronger than if they've just gone and bought a \$50 bag."*¹⁹⁴

The Results Spreadsheet shows that in almost 60% of indications where no drugs were found, the person made some kind of admission in relation to contact with drugs. Our observational research confirms that people regularly make this kind of admission to police.

Admissions were not necessarily admissions of any clearly illegal activity. The following are some examples of police records of admissions of drug contact:

*The POI admitted he had been drinking at the [name of hotel] the previous evening, 28/08/02 and would have been in contact with people smoking cannabis. POI informed a record would be made of search and detection by dog.*¹⁹⁵

*The POI stated that he had smoked cannabis in the morning at home.*¹⁹⁶

*The POI was questioned with regard to drug residue and were told that the jacket she was wearing belonged to her brother, [name, DOB] who may have been wearing whilst smoking marijuana.*¹⁹⁷

*The defendant stated, "I smoke pot but you wont find anything on me."*¹⁹⁸

*The poi informed police that his girlfriend does occasionally use illegal drugs.*¹⁹⁹

The poi stated she is a regular user of cannabis and she uses it in joints. She stated that she has a few joints daily.²⁰⁰

The POI was questioned by police as to his dealings with drugs and he stated "I don't smoke but my friends do." The POI was submitted to a search which produced a nil find. The POI was then allowed to leave. The whole time police were speaking to the POI he stated on several occasions that he had no respect for police and that what we were doing was a waste of time. The POI was extremely annoyed at being stopped by police.²⁰¹

The defendant stated that he kept the cannabis for his own personal use, indicating that he regularly smokes cannabis for medicinal purposes.²⁰²

POI initially denied any use or possession of drug. When told he would be searched he stated that he had had a smoke of cannabis that day. POI was searched with nothing found.²⁰³

8.2.3. Should residual indications be included in estimates of the dogs' accuracy?

NSW Police believe that a better statistic showing the reliability of the dogs is a figure of about 70% accuracy.²⁰⁴ This figure is obtained by adding the proportion of occasions when a drug is found to the proportion of occasions when no drug is found, yet some explanation is provided as to why the dog might have indicated the person searched.

The Police Association of NSW also believes that all indications other than those where no drugs were found and the person denies any contact with drugs, should be included in the accuracy statistic. According to the Association this provides an accuracy rate of about 80%.²⁰⁵ In addition, the Association noted:

*Of the remaining 20%, statistics rely on the comments made of persons searched. For any number of reasons, these people may prefer to lie about their usage or carriage of drugs. Drug [dog] handlers argue that the dogs are accurate in regard to their indications, well over 90% of the time.*²⁰⁶

At one level the 70-80% statistic put forward by NSW Police and the Police Association could be seen as a reflection of the dogs' accuracy. However, there are a number of difficulties with using this a measure of accuracy for present purposes.

First, as is discussed further below, it seems that NSW Police does not currently accept that being in the presence of other people smoking cannabis, without personal drug contact, can explain an indication by a drug detection dog. Explanations in which a person claimed that they were or may have been present when others smoked accounted for 21% of all admissions in our audit of police information reports.²⁰⁷

According to NSW Police:

*NSW Police is not aware of any scientific evidence to suggest that dogs would indicate a person who has been in the presence of other people smoking cannabis. 'Admissions' from such persons so indicated, do not necessarily constitute such evidence.*²⁰⁸

It is interesting to note that this advice appears to contradict advice received by this office in February 2003 in relation to a complaint about a drug detection dog indication and the subsequent search. We were advised by the relevant Local Area Commander that the complaint investigator recommended NSW Police consider:

Advising Police that they are to inform members of the public who are searched with negative results following an indication by a Drug Detection Dog that the dogs are attracted to persons who may have clothing impregnated with the scent of a drug as a result of being exposed, perhaps unknowingly, to a drug user.

...

*Advice has been received indicating that the recommendation number has been accepted and will be included in Standard Operating Procedures and in briefings prior to operations involving Drug Detection Dogs.*²⁰⁹

This recommendation was approved by the Commander²¹⁰ of the Dog Unit and by the (then) A/Commander of the State Protection Group.²¹¹ However, we are not aware of any changes having been made to Standard Operating Procedures to reflect the recommendations.

Second, although the dogs may be extremely sensitive to drug scents, some admissions of drug use are so remote in time, that they do not provide probable explanations of the indications by the drug detection dogs. A number of admissions in our audit related to drug use that was weeks, months and sometimes more than a year prior to the indication by the drug detection dog.

Finally, although admissions may provide some evidence of the accuracy of the dogs in detecting a scent this should not be confused with the accuracy of dogs in detecting actual drugs. It is not an offence to emit the scent of a drug. Actual drug possession is required before it can be said a drug detection dog has played a role in detecting evidence of an offence.

8.2.4. Denials of cannabis smoke

Admissions do not accompany all 'negative' searches. Police records show that in 41% of search incidents where nothing is found, no admission is made.²¹² This accounts for almost 30% of all indications. There are a number of possible explanations for this finding. For example, according to one handler:

*If the dog reacts to someone and they say they have nothing to do with drugs they are lying – that's my personal opinion.*²¹³

It may also be possible that the person came into contact with cannabis smoke without being aware of it, for example at a pub or party. As noted above, NSW Police has stated that there is no 'scientific evidence' to suggest that the dogs would indicate a person who has been in the presence of other people smoking cannabis, but who has not personally been in possession of the substance. However, our observations and police records of searches note that this is a common explanation provided by persons searched by police, and who are not found to be carrying any drugs. It is also a common explanation provided by police to persons who are searched and do not understand why the dog indicated them.

For example, at one operation our observer noted that police had advised indicated persons that 'if they had been around anyone smoking that the smell would stay on them.'²¹⁴ At another operation, our observer's notes at the scene of a search included the following:

*POI advised [police] that flatmates smoked pot and told by police that this was probably the reason the dog detected her.*²¹⁵

Another handler commented to one of our observers during an operation, that although the drug detection dog was interested in a particular person, the handler judged that the dog had not made a solid indication. The handler felt that because the dog did not go to a particular spot on the person, but rather moved around to both sides of the person, that the indication was likely to be a residual indication. This was because it was more likely that smoke would be detected all over the person rather than in one spot.²¹⁶ As a consequence the handler did not indicate to police that they should search the person.

Many patrol police are also of the view that the dogs often pick up smoke from cannabis on a person's body. For example, our observer noted one, quite typical, exchange between a searching police officer and a person of interest as follows:²¹⁷

Officer ... explained that the dog can also smell residue.

[POI] asked "Are you telling me that it's always accurate?"

The officer said, "No, that's not what I'm saying at all. Has anyone smoked around you?"

[POI] "Yes"

Officer: "Well, that's probably it."

At least one handler maintained that more than just being in the presence of someone smoking cannabis was required to make a dog indicate.²¹⁸ The Police Association of NSW also commented that:

*Training methodology precludes any other reason for an indication other than carriage or recent use of drugs, therefore substantiating reasonable cause to search.*²¹⁹

According to NSW Police, the 'strength of any residual odour will be dependent on numerous factors including duration and/or frequency of secretion [of the drug] in the indicated location.'²²⁰

One submission to our review suggested the idea that dogs do not pick up the odour of cannabis smoke 'would seem to go against common sense'. The submission went on to state:

*If you have been in the presence of smokers ... then ordinary humans can smell the scent on you, so I am sure that a drug detection dog will also smell that since they are supposed to have superior smelling ability compared with humans.*²²¹

Although the drug detection dogs are not trained to detect the odour of cannabis smoke, we are not aware of any training which would deter the dogs from indicating the scent of cannabis smoke, for example by using items which have absorbed cannabis smoke as 'distracters' and not rewarding the dogs when/if they indicate them in training. It would seem at least possible that some persons with cannabis in their possession would also emit the scent of cannabis smoke. If the dogs were fed when they indicated such people this may act to reinforce the behaviour of indicating for smoke as well as for actual drugs.

8.2.5. Denials, inadequate searches and evasions

As the comments below suggest, handlers also believe that in some instances people may be getting away with drugs in their possession because police are not thoroughly searching the person.

I could guarantee that a lot of people are walking away with gear on them because they're not searching them right. You can't ask police to strip search everybody. I wouldn't want to go that far but I've had that many people stuffin' it down their underpants. How many other people are walking away with stuff?²²²

It's true. Like I've had my dog chase someone 100 metres up the street and once again it's experience too. 'Cause they were searching the guy and he was carrying a bread roll and I said 'Make sure you check his bread roll' and nup. And they came back and said, 'No, he hasn't got anything' and I went back to him, pulled the roll out and he had, like, 10 grams sitting inside the roll. And look, we don't do that with everyone.²²³

The fact that police should take into account privacy concerns when conducting searches in public places may also mean that searches are less thorough than they might otherwise be. Some drugs may be secreted in areas unlikely to be found by police conducting 'pat down' searches. It has also been suggested that some people carrying drugs may be alerted to the presence of the drug detection dog (because most operations involve 'high visibility' policing) before police approach them. They may dispose of the drugs moments before the drug detection dog makes its indication.

Observers at one operation noted the dog located considerable amounts of drugs on the ground:

On three occasions the dog has found drugs on the ground. A plastic bag with half a pill is located in a raised garden bed. A bag with several pills is found on the ground. A bag of brown-ish powder is found on the ground.²²⁴

However, it is also possible that the drug detection dog has simply 'got it wrong'.

There is also some anecdotal evidence that the drug detection dogs miss people who are in fact carrying drugs. Police data, of course, cannot report on this kind of result. However, the fact that the dogs may miss some people carrying drugs could be a result of many things, such as the number of dogs deployed compared to the number of people present with drugs. A dog can only indicate so many people, so at events where numerous people may be carrying drugs it is perhaps not surprising that some people slip through the net. On other occasions people may have worked out methods to avoid detection:

What the drug using population seems to have worked out is, particularly for heroin, if you carry a cap in your mouth the dogs don't pick it up. So, they now seem unperturbed by the sniffer dog operations.²²⁵

We note that in Internet discussion groups there is much discussion of ways to avoid being detected carrying small amounts of drugs, predominantly ecstasy, into dance parties. It may be that some of these strategies are successful.²²⁶

In their response to the draft final report, NSW Police suggested that:

consideration should be given to the creation of offences where a person intentionally uses a distracter i.e. pepper, coffee, curry powder, meat to avoid being detected or create a diversion to hinder the police dog.²²⁷

We note three things in relation to this suggestion. First, it is unclear how the use of these distracters impacts on the capacity of a drug detection dog to identify drug odours on which they are trained. Second, it is difficult to foresee how such an offence could be practically applied by police or the courts given the substances identified may be lawfully possessed for a multitude of legitimate purposes. Third, if NSW Police apprehend a person with prohibited drugs and form the view that the person has attempted to use a distracter to avoid detection, this may form part of the criminality of the drug offence, which could be brought to the attention of the court during legal proceedings. If this is the case, an additional offence would be unnecessary.

8.2.6. Denials and other odours

A submission we received from an organisation that advocates on behalf of cannabis users questioned the ability of the drug detection dogs to distinguish actual cannabis scents from other odours which include some of the component scents of cannabis. This view was based on an analysis of different cannabis scents conducted for the organisation. According to this organisation scents found in cannabis can also be found in some perfumes, moisturisers, foods and deodorants.²²⁸ The submission went on to state:

Scents present in cannabis are typical and common with many other commercial scents and aromas, and it certainly isn't an offence to smell like cannabis, nor should smelling like something that smells like cannabis be reasonable grounds to be stopped by police and be searched.²²⁹ [Original emphasis]

Drug detection dog handlers stridently defend the accuracy of their dogs. When asked whether the dogs might indicate a person because the person was carrying food, or because the person owned cats or dogs, the handlers' responses included:

*My dog never lies. It never lies!*²³⁰

*I think each dog is different, because I know my dog. It might sniff someone that smells different, about a dog or a cat or something, but they don't indicate to me that's drugs.*²³¹

*We're not going to turn around and say, 'oh, the dogs sniffed them, OK, well we'll stop them'. The dog's just sniffing, and as the trained handlers, we know that. Perhaps the other police we work with don't know, but we'll just go, 'nup that's wrong'. So it's a load of crap. The dogs don't indicate on food or cats or dogs. They might sniff them. They might pay them a little more attention, but that person's not being stopped or searched or anything else just because they've been sniffed.*²³²

*If they're going to pick up on food, every food store we walked past the dog would be going off its head. And most of the time where we're working there's a takeaway 10 metres away.*²³³

8.2.7. Indications and prescription medications

During parliamentary debate on the Police Powers (Drug Detection Dogs) Bill 2001, the Hon. Peter Breen MLC commented on the possibility of 'false positives', or indications by the drug detection dogs that were not triggered by the presence of the scent of a prohibited drug.²³⁴ Mr Breen was concerned that a man had been found to be carrying prescription drugs during a police 'raid' at cafes in Nimbin. He commented:

*These drugs apparently caused what is known as a 'false positive' identification by the dogs. I understand that this is a common problem.*²³⁵

One submission to our discussion paper also noted:

*The identification of prescribed drugs following sniffer dogs "indication", although very low, also raise concerns about the validity of this approach.*²³⁶

The Results Spreadsheet identifies 18 occasions where police found prescription drugs. COPS records were made for 14 of these incidents. In one incident, prescription drugs were found but the person searched also admitted to smoking cannabis the night before.²³⁷

In ten incidents recorded on COPS no offence was committed and there was no other possible reason for the indication noted. In one event police explicitly recorded:

*Police did find 8 prescribed tablets which were labelled as Risperdal 8mg. Police feel that this is what the dog detected on the poi.*²³⁸

On one occasion the person searched was found carrying 'an empty prescription drug blister pack' and received infringement notices for travelling on the train without a ticket and giving the police a false name.²³⁹ In three events police made no mention in the event narrative of finding prescription drugs. In two of these events the person admitted to smoking cannabis.

Infrequently, we have observed the drug detection dogs to make clear 'false positives'.

On one occasion we observed in a northern-Sydney suburb, a drug detection dog indicated a woman who appeared to be aged in her forties. The handler cautioned the woman and explained that the dog had made an indication. At first the woman denied having any drugs on her. She then appeared to recall that she was carrying her son's ADD (Attention Deficit Disorder) medication. Amphetamine-based medications are commonly used to treat ADD.²⁴⁰ The handler explained to the woman that the dog had probably picked up on this amphetamine. The woman had a female companion with her who commented during the interaction, 'Quite unreliable isn't it?' The police officer answered, 'Not really, as some people sell it illegally.'²⁴¹

On another occasion in western Sydney our observer noted that the person searched suggested to police that the dog may have 'reacted to the medication he was on for the flu'.²⁴² On another occasion during an operation in inner Sydney our observer noted that prescription Valium was found on the person searched and no other reason offered for the indication by the dog.²⁴³ In another incident in inner-western Sydney where no illegal drugs were found but prescription medication was located our observer noted these comments from the searching police officer:

After the [person searched] left one of the officers said to me and the other officer, "That's curious, maybe the dog indicated the prescription drugs? I'll have to ask the handler because I don't think she [the person searched] was lying."

The officer later said to me, "I checked with the handler. He said that it was possible but not likely that the dog picked up the scent from the prescription drugs."²⁴⁴

At an operation in a south-western Sydney command, our observer noted:

[The person searched] denied having any drugs on himself, but said that he did have some Chinese medicine in his bag. He was an elderly Asian man, and couldn't speak English very well. He was taken off the train and searched on the platform. He also had pharmaceuticals in his bag, asthma tablets.²⁴⁵

Another senior police officer told us of one experience he had with a drug detection dog. The officer explained that on one occasion the dog indicated a man as he alighted from a train. The man denied that he had any involvement with drugs and this police officer was inclined to believe him. When the man was searched he had some prescription drugs on him that he needed to treat a medical condition.²⁴⁶ On another occasion in western Sydney, we observed that several Valium tablets were located after a search following an indication by the drug detection dog. On this occasion the person searched was not carrying his prescription with him. Police attempted to call his doctor for confirmation of the prescription. However we are unaware of the results of this phone call.²⁴⁷

There is also some evidence that the dogs may be indicating the presence of methadone. The Results Spreadsheet shows that drug detection dogs indicated persons found in possession of methadone on 19 occasions. COPS records were made for 12 of these incidents. On one of these occasions the person made an admission to police about contact with illicit drugs and no mention of finding methadone was made in the COPS event narrative. On another occasion the person admitted to having been recently in possession of drugs. In 10 of the 12 incidents recorded on COPS there was no mention of any other admission or reason why the dog may have indicated the person, other than the presence of the methadone. The following is an excerpt from one event:

About 12.50pm the drug dog [name of drug detection dog] sat down as the POI approached it indicating that the POI was in possession of illegal drugs. The POI was searched and two cylinders of methadome (sic) were found in the POI's handbag. She stated that she was an ex drugdependant (sic) user and now was on methadome and she receives two at a time to save coming to [suburb] daily. Police were informed by the dog [handler] that [name of dog] was able to detect methadome. No offence.²⁴⁸

One person found carrying methadone was charged because he admitted to having purchased the methadone from a friend.²⁴⁹

One submission to our review noted:

We specifically draw the Ombudsman's attention to the fact that drug dogs are often giving a positive indication for people carrying legal and prescribed take-away doses of methadone.²⁵⁰

The submission cited an interview with a woman from western Sydney as an example of this phenomena. The woman is quoted as saying in an interview:

The [police] dog come straight up and sniffed my medicine. I told them [the police] that it was medicine [methadone] and legal. I had to show them I.D. and match it with the bottle's label. They searched me and lifted up my top, which was embarrassing in front of all them people at the train station...²⁵¹

Although drug detection dogs are not trained to detect methadone or prescription drugs, we are not aware of any training performed to eliminate possible false positives with these drugs.

8.2.8. Discussion

Drug detection dogs are trained to assist police to detect drug offences. On 74% of occasions no drug offence is detected. Whether this is because the drug detection dogs are so adept at detecting drugs that they identify miniscule amounts, residual odours and prescription medications, or whether they simply make mistakes, does not alter the offence detection rate, nor the fact that many people are subjected to an intrusive public search with no result.

A comprehensive inquiry into the scientific basis of the dogs' training was beyond the scope of this review. However, it is possible that a more refined training regime may be able to minimise the number of indications which do not result in drug finds. Developing a training program which excludes the likelihood of the dogs detecting prescription drugs, cannabis smoke and other residual scents would be a start.

Better offence detection rates will reduce any public disquiet about fruitless searches, and result in a better return for the police resources expended in drug detection dog operations.

Recommendation

1. NSW Police refine the training of drug detection dogs to better exclude the indication by the dogs of:
 - cannabis smoke
 - other residual scents, and
 - prescription drugs.

NSW Police does not support this recommendation and responded with the following information:

Drug detection dogs are trained to indicate an odour and are rewarded on odour location only. The animals are unable to tell the handlers what amount of odour they have located.

Cannabis smoke – the dogs are not trained to locate smoke but are trained to locate the scent of cannabis in its unburnt form, whether residue or substantial amounts.

Prescription drugs – dogs may indicate any prescription drug that contains a chemical component found in any of the drugs they are trained to find.

As part of their ongoing training, dogs are given ‘distracting odours’ to teach them not to indicate odours other than those drugs for which they are trained.²⁵²

There are a number of difficulties with the NSW Police response. First, drug detection dogs are rewarded on indication irrespective of whether drugs or odours are located on the person during the ensuing search. Second, while drug detection dogs are not trained on cannabis smoke, handlers often advise other police officers during operational briefings that the dogs can detect cannabis smoke. Third, ‘distracting odours’ are primarily foodstuffs and the like, to which dogs are naturally drawn. They are largely irrelevant to the issue of drug detection dogs indicating cannabis smoke, other residual scents, or prescription drugs.

The Queensland Parliament recently enacted legislation for the use of drug detection dogs.²⁵³ Interestingly, some Queensland dogs are not trained to detect cannabis. The Hon. Judy Spence, Minister for Police, made the following observations during the second reading speech of the Police Powers and Responsibilities (Drug Detection Dogs) Amendment Bill 2005 (Qld):

Members will note that cannabis sativa has not been included in the list of drugs to be detected by a drug detection dog. There is a very good reason for this. A discussion paper titled Review of the Police Powers (Drug Detection Dogs) Act released by the New South Wales Ombudsman in June 2004 indicated a high proportion of false positive indications from the New South Wales police drug dogs with respect to cannabis sativa. A reason offered for these false positive readings was that cannabis sativa leaves a lingering and strong odour on the clothes of persons who have smoked it or been in the presence of a person who has smoked it. While it is the intention of this government to crack down on dangerous drug possession and use, it is not reasonable to conduct unnecessary searches of large numbers of persons who may have only been standing near a person who was smoking cannabis, for instance in a nightclub. Therefore, drug detection dogs trained for the purpose of this bill will not be trained to detect cannabis sativa.²⁵⁴

The Minister was also quoted as saying that Queensland ‘dogs were only trained to detect hard drugs and would not follow the NSW experience, which often only found recreational soft drug users’.²⁵⁵

NSW Police does not appear to have any real solutions for the high proportion of searches that have resulted in no drugs being located. It is a reasonable view that this issue should be addressed.

One possible solution is for NSW Police to have some drug detection dogs not trained to detect cannabis. This would address the issue to the extent that the dogs would no longer be indicating on cannabis smoke. These dogs could be used in general drug detection dog operations in public places. Other dogs trained to detect cannabis could be used in operations where the detection of cannabis is an operational requirement such as searching premises for cannabis production and supply-related offences.

Alternatively, Parliament could consider amending the Drug Dogs Act in a manner similar to the Queensland legislation to exclude cannabis from the definition of prohibited drugs for the purpose of general drug detection.

8.3. Complaints alleging ‘false’ indications

Of the 30 people searched by police during drug detection dog operations who subsequently made complaints, 24 (80% of those searched) stated that no drugs had been found. It is not clear whether drugs were found on the other six complainants, only that there was no reference to this in most of their complaints. Only one complainant reported making admissions to contact with drugs, stating that he told police he had just visited a methadone clinic.²⁵⁶ Another said words which police claimed to be an admission of drug use, but which the complainant refuted.²⁵⁷

‘False’ indications were also alleged by people who witnessed searches. One man raised concerns after watching a drug detection dog operation at a suburban train station.²⁵⁸ He observed ‘many people to be publicly searched and humiliated, yet none of the ones I saw were arrested or even taken off for a formal caution so [the results] must have been ‘false positives’.’ His perception was that the drug detection dogs were not effective enough to warrant the impact on civil liberties.

Many complainants who were searched with no drugs found, thought that dogs may indicate on the basis of things other than illicit drugs, such as prescription medicines, food, other animals or hormones. One stated he had seen, ‘a man about 75-years-old [who] was sniffed out because of his prescription medicine. The man was a shaking mess.’²⁵⁹

A chef stated that she was wearing her work clothes at the time of the indication and attributed the dog’s response to the smell of food.²⁶⁰ Another complainant was sitting in a hotel with a bag of groceries under her table when the drug detection dog approached her and sniffed the bags. Police asked her to empty the contents onto the table. No drugs were found. She stated:

*I think the dog smelled the crumbed chicken schnitzel that I had in my bag and which was to be for myself and my husband for dinner. I mentioned this to the police and one of them replied that the dogs were not trained for that.*²⁶¹

A cat owner attributed the dog’s positive indication to his ownership of three cats:

*[Police] said the dog has been training to get drug, I believed in that. But dog also interesting a lot of things we never knows ... I do study an animal behaviour. I understand that dog does has a lot of interest of smell.*²⁶²

A diner sitting at an outdoor café was positively indicated by a drug detection dog and searched without result.²⁶³ She vigorously denied ever having drugs in her possession. The officer suggested the dog may have picked up a drug scent from the previous occupant of the table she was sitting at.

A man was searched twice within a one and a half hour period in the same suburb. Nothing was found on the first occasion. On the second occasion, the complainant voluntarily accompanied police to the local police station where, in the words of the complainant, he was ‘subjected to the humiliation of a strip search’ where again nothing was found. When the complainant asked why the drug detection dog had indicated him the following conversation ensued between the searching police officer and the complainant. The police officer asked, ‘Have you been in a pub or club where they smoke cannabis?’ The complainant responded, ‘No’. The police officer then asked, ‘Have you been in contact with someone who smokes cannabis?’ The complainant replied, ‘No’. The police officer then stated, ‘You might have sat next to someone on a train or bus that had been smoking cannabis.’ The complainant said, ‘How do I know if a member of the public unknown to me is a cannabis user?’ The complainant stated that, ‘Upon reflection does this mean I can’t travel on public transport because the person I sit next to may be a cannabis user, and the smell can be transferred to my clothing without my consent or knowledge.’ The complainant also made the comment that he ‘felt ashamed and humiliated as I have never had an injustice like this happen to me before.’²⁶⁴

The reliability of a dog indication was the subject of a police review of a prosecution for ‘resist arrest’.²⁶⁵ Legal advice from a police prosecutor suggested police might not have had a reasonable suspicion to search the complainant based on an indication in crowded licensed premises. The prosecutor’s advice stated that the indication could have given police a reasonable suspicion to suspect there was a drug in the general area, but it could be argued this suspicion did not directly attach to the complainant because of the crowded environment. Furthermore, because no drug was found on the complainant this could be seen to vindicate the lack of real suspicion police say they had about the complainant. Police withdrew the charge.

A number of female and male complainants referred to embarrassment at the dogs' proximity to their crotch area. One man took issue with the dog's proximity stating, 'I was immediately aware that the dog was following me because it had its head up my backside'.²⁶⁶ Police conciliated this matter with the complainant.

A female complainant held a strong belief the drug detection dog falsely indicated her because she was menstruating.²⁶⁷ Another female complainant, whose premises were subject to a search warrant using a drug detection dog, described her embarrassment this way:

*I told the gentleman [police officer] and a number of others that I could not let the dog sniff me as I had my period. I was ask to stand [with my] back to the dog with my hand behind my back. Although this was disgustingly embarrassing for me I done what they asked me to. I was then told I would have to STRIP AGAIN as the 'SNIFF' dog had sniffed my hands.*²⁶⁸

A transgender complainant alleged police attributed the dog's indication of her to female hormones.²⁶⁹

One complainant raised the issue of health concerns arising from exposure to drug detection dogs.²⁷⁰ The complainant stated he suffered the effects of long-term HIV infection, in particular immuno-suppression, and exposure to animals may heighten risks associated with infection. He stated:

My doctor's advice ... is to avoid contact with domestic animals. While his advice was directed at pets, the implication is contact with a sniffer dog could be as potentially dangerous to my health. Toxoplasmosis is a very serious illness that can severely impair or even kill the immuno-suppressed (not just HIV but also those who because of organ transplantation require immuno-suppressive medication). While toxoplasmosis is generally regarded as an animal disease, it readily crosses the species barrier. There are also other conditions that many domestic animals carry which could put me in hospital or a cemetery.

Case study

False indication and behaviour of drug detection dog

The complaint

In mid 2002 a female complainant was entering a suburban railway station when she alleges she felt something nudging her backside. She stated, 'When I turned around there was a white Labrador dog nudging me. This dog then tried to hump my leg'. The complainant alleged the dog handler was approximately four metres away and appeared not to have complete control of the dog. The complainant was told an indication had been made and she was escorted to a passageway where a number of other persons were waiting to be searched by police. After the complainant was searched and no drugs were found, the searching officer told the complainant that the positive indication by the dog may have been attributable to the clothing she was wearing. The complainant stated, the searching officer 'suggested that I may have been with someone who had taken drugs and the smell could be on my clothes. He then asked when was the last time I had worn my jacket, when I replied last Saturday night to a concert he said that would be the source of the problem. As I know that I was not with any people who took drugs in my presence I find it hard to prescribe to that theory. [The searching officer] did not agree when I suggested that the dog might have been smelling me because I was menstruating at the time'. She added, 'If the dogs are trained to sit beside you, why did this dog touch me and try to mate with my leg'.

Outcomes

Police met with complainant to try resolve the matter informally. When she re-asserted her view that the dog had smelt her because she was menstruating, police explained the dogs were only trained to smell for drugs and if the dog had smelled her crotch it would have been inadvertent. An apology was offered. The complainant accepted the apology but indicated she was still unhappy with the use of drug detection dogs. The outcome included directions being issued by the local commander that all police explain to persons positively indicated with nil result that dogs may indicate as a result of clothing which has been impregnated with a drug, as a result of exposure, perhaps unknowingly, to drug use.²⁷¹

8.4. How do the dogs compare?

Individual dogs varied significantly in their individual rates of correctly indicating drugs. Table 9 shows that although some dogs find drugs at a rate much higher than the average rate of 26%, others indicate actual drugs much less frequently.

Table 9. Comparison of the rates at which drug detection dogs successfully indicate drugs

Dog	Rate of finding drugs	Number of indications
Dog A	56%	180
Dog B	45%	449
Dog C	45%	589
Dog D	30%	1164
Dog E	28%	138
Dog F	27%	2205
Dog G	25%	115
Dog H	25%	808
Dog I	24%	842
Dog J	24%	743
Dog K	24%	638
Dog L	23%	192
Dog M	19%	466
Dog N	14%	111
Dog O	14%	243
Dog P	12%	1259
Dog Q	7%	57

Source: Derived from the Results Spreadsheet, 22 February 2002 to 21 February 2004.

It is likely that not all these dogs are currently utilised by the Dog Unit.

Variation by location may also affect the rates of finding drugs of individual dogs. For example, if it is more difficult for the dogs in licensed premises and one dog works mostly in licensed premises you might expect that dog's rate of finding drugs to be lower than another dog working primarily in street based operations. Other factors may also impact on accuracy, for example longer operations may reduce accuracy if dogs become fatigued.

The variable accuracy of drug detection dogs may impact on whether it is reasonable for police working with a particular dog to suspect that a person is carrying drugs solely on the basis of an indication by the dog. We discuss this further in the context of legal interpretation issues at paragraph 14.3 'Forming a reasonable suspicion'.

8.5. Independent accreditation of drug detection dogs

As noted above (at paragraph 8.1), the training and accreditation of drug detection dogs is performed by the NSW Police Dog Unit. While NSW Police and the Police Association of NSW believe the dogs to be highly reliable and accurate, others question the accuracy of the dogs based on the number of indications which result in no drugs being located.

The variability of the 'drug find' results for individual dogs also raises the need for some system of accreditation that takes account of in-the-field results and not just controlled training conditions. Arguably one factor in a dog's accreditation should be an agreed 'drug-find rate'. If the dog fails to meet that rate of finding drugs it should be re-trained until it meets the required standard.

Federally and in other Australian states and territories, police either currently use or are investigating the potential of drug detection dogs. To maximise public confidence in the abilities of drug detection dogs it is worth considering the development of an independent and recognised accreditation process for drug detection dog training programs.

Independent accreditation would go some way to avoiding potential difficulties for police in court if the accuracy of an individual dog was raised. It would provide transparency and a strong impetus for continual improvement. It would also better facilitate the sharing of 'best practice' advice between jurisdictions and agencies.

Recommendation

2. NSW Police hold discussions with those responsible for the training of drug detection dogs in other Australian jurisdictions with a view to establishing an independent accreditation process for the training of drug detection dogs.

NSW Police supports this recommendation and advised that:

In November 2005, the Dog Unit engaged an independent representative (non NSW Police) to oversight course accreditations. The Dog Unit has also commenced consultation with education organisations and other law enforcement agencies, primarily Victoria Police, Queensland Police, Australian Federal Police, New Zealand Police and the Australian Customs Service, to prepare a registered national standard competency based training program for detection dogs that will include revised and bench marked accreditation and training practices.²⁷²

8.6. Use of drug detection dogs in crowded environments

A further issue in relation to the accuracy of drug detection dogs is their ability to locate the exact source of a scent in crowded, enclosed environments. In our discussion paper we asked whether and in what way a crowded environment was relevant to forming a reasonable suspicion to search a person. We also asked whether police should be able to give directions to people for the purpose of screening groups with a drug detection dog.

We were advised of one instance in which a charge of 'resist officer in execution of duty' was withdrawn from prosecution because of a police prosecutor's view that the drug detection dog indication, in this instance, was not sufficient to create a reasonable suspicion to search the person.²⁷³ The prosecutor took this view primarily on the basis that at the time of the indication a number of other people were in close proximity to the person who police said had been indicated by the dog. He considered that a magistrate would not accept that the dog could tell which person was the source of the scent.

This incident occurred during a police operation our observers attended. The indication occurred in a pub that was described by one observer as 'crowded and loud'. The indication in question appeared to be one of five which occurred in rapid succession over a short period (less than five minutes).²⁷⁴

In a police memorandum in relation to this issue the prosecutor wrote:

The emphasis and focus can only be the suspicion of the DEFENDANT. There would be little doubt that the Police were well founded to have a reasonable suspicion that there was a prohibited drug somewhere in those PREMISES, but that is not the test.

The end result of no drugs being found upon the defendant may merely vindicate, objectively speaking, the lack of real suspicion the Police say they had about the defendant.²⁷⁵ [Original emphasis]

In a later memorandum the prosecutor went further stating:

it will now come down to the accuracy of the behaviour of the dog and in this case, the drug detection dog was CLEARLY WRONG.

Based upon unreliable detection methods (as it appears), it is my view that proceeding with this matter [the resist officer in the execution of his duty offence] may cause the New South Wales Police Force some embarrassment. In the light of that unreliability and other factors including the defendant's prior good character, it would not be in the public, nor in the Police Force's interest to proceed.²⁷⁶ [Original emphasis]

We spoke to the handler about the incident some months after it had occurred. Although the handler could not recall all the details of the particular indication, we were advised of the handler's general approach to working with the dog:

I won't stop anyone if I'm not 100% sure. No matter how crowded it is, I won't stop them unless I'm sure it's that person.²⁷⁷

The officer who laid the 'resist officer' charge was also firm in his belief that he had 'reasonable cause' to conduct the search.²⁷⁸

We raised this incident in our discussion paper and received a number of responses. The NSW Police submission noted that the drug detection dog will not indicate until it has located the source of the scent, and since without an indication there will not necessarily be a cause to search, 'a crowded environment does not effect (sic) the question of reasonable suspicion'.²⁷⁹ Nonetheless, our observers have witnessed clear indications on groups of people where

the handler has not been sure of which individual was the source of the scent. It may be that the dog identified the source of the scent but was not able to clearly communicate this to the handler. Whether it is the dog, the handler or both which are unclear about the source of the scent is somewhat irrelevant since the result is that without some change in the positioning of the individual people in the group to allow the dog better access, a precise source of the scent could not be found.

The following are two examples of this phenomenon from our observers' notes:

*Dog approaches a group of young people. The dog is very attracted to the group and moves in and out between [the people in the group]. The dog finally settles on a girl who says she is 16 years old. ... Prior to this indication the handler asks one young man to move slightly away from the group to let the dog have a proper sniff of him. This appears to be to clarify if the dog is interested in the man. The dog is not interested and the man goes back into the group.*²⁸⁰

*The dog appeared to indicate a man in a group who was being a bit rowdy when we went past. The handler asked if [the man] could somehow be separated from the group. [A police officer in plain clothes] asked him to come over and [the man] said, "Who are you?" and [the officer] explained he was a police officer and explained about the dog. The dog went past but did not indicate the man.*²⁸¹

NSW Police supported the view that police should be empowered to 'give reasonable directions to persons for the purpose of screening groups'. NSW Police elaborated:

*In most cases the direction would be as simple as asking a person to take a step or two away from the person next to them; allowing the drug detection dog to move between people while it screens the airspace.*²⁸²

One local area command responded:

*I tend to agree with the police prosecutor ... in relation to the close proximity of persons in crowded bars etc. To raise a reasonable suspicion there should be no doubt as to the identity of the person who is subject of the drug dog indication. When people are crowded into a small space and are virtually touching each other, this can cause distinct identification problems. Perhaps this is not a good environment for the dogs to operate.*²⁸³

Notwithstanding his concerns about using the dogs in crowded environments, the commander supported police having the ability to move people a short distance for the purpose of screening in order to 'protect the innocent'.²⁸⁴

A submission we received from Redfern Legal Centre stated that the environment of the indication was 'crucial in ascertaining reasonable suspicion' and continued:

*We submit that [to use a drug detection dog] in crowded venues, public places and public transport, owing to problems of 'residual' scents and the strong potential for intrusion on the liberty and privacy of a number of proximate people who may be held under suspicion but who are not in possession of any prohibited substance, is draconian and unnecessarily heavy-handed.*²⁸⁵

The legal centre proposed that if police continue to use the dogs in crowded environments, there should be clear guidelines to advise police how they may make further inquiries for the purpose of drug detection.

The Police Association of NSW also commented on the issue of crowded environments:

*Police should have all necessary power to give directions in order to identify a person committing a crime. If this involves asking a group of people to move apart, or any other action deemed necessary, then police should be entitled to do so. It would appear ridiculous that a police dog handler could be aware of the presence of a drug through the actions of their dog and not be able to investigate where the scent is coming from, by not being able to move people or objects. Drug dogs are trained to correctly identify a person carrying a drug when in crowded situations. The handlers are able to identify the correct person from the actions of the dog, as the dog will place their nose in extremely close proximity to the drug, thus identifying the offender.*²⁸⁶

We have also noted that some places, particularly licensed premises, can be too crowded for the dog to effectively and safely perform its functions. In packed nightclub dance floors, for example, it is apparent that the dog may easily be accidentally injured or may present a hazard to people, especially those who have consumed alcohol. It is also more difficult for handlers to ensure that the dog does not touch people in these environments. On some occasions we have observed handlers to remove dogs from particular venues for this reason.²⁸⁷

One handler told police at a briefing:

*I won't go pushing my way through people on the dance floor or anything like that.*²⁸⁸

The evidence indicates that using drug detection dogs in crowded clubs and pubs late at night where patrons are likely to be affected by alcohol can be problematic. There are risks to the dogs and handlers, to the patrons and sometimes to the officers conducting searches. Yet the main problems appear to be:

- the risk of dogs wrongly indicating innocent patrons, and
- the risk of interactions escalating and leading to arrests if they are poorly managed and/or if alcohol-affected patrons are uncooperative.

As the evidence presented earlier in this chapter shows that fewer than one in four drug detection dog indications in licensed premises led to drugs being found (compared with 37% of indications in an open air road or street environment), the value of using drug detection dogs in pubs and clubs is questionable. Notwithstanding these difficulties, there may be occasions when police continue to use the drug detection dogs in crowded environments where alcohol is being consumed. The circumstances warranting use of the dogs in such situations should be clarified in police procedures or guidelines, and explained to everyone involved in the operation to minimise any unnecessary use of the drug detection dogs in such potentially difficult situations.

If a drug detection dog has indicated in the vicinity of a group of people but has not made clear the exact source of the scent, we agree that police should ask people in the group to move slightly to allow the dog to indicate the correct person. Police already may – and often do – make such requests. Our observations found that people generally cooperate once officers identify themselves as police and explain the reasons for the request, even though there is no obligation to comply. While individuals might or might not understand that they do not have to obey the police request, and good practice suggests that officers should inform them that their cooperation is voluntary, current police practice in this area generally presents few problems.

The greater challenge for police is how best to manage situations when people refuse to cooperate, especially alcohol-affected patrons in noisy, crowded venues. Our analysis of charges associated with drug detection dog searches shows that a key risk in these situations is the danger of incidents escalating, leading to prosecutions for hindering police and other such charges. People who deliberately hinder or obstruct police can already be charged. It is not clear how additional police powers could reduce the likelihood of conflict or unnecessary charges.

After carefully considering the various submissions, we do not believe it is necessary to give police a new power to *require* people to obey directions in circumstances where they are not yet suspected of having committed an offence. Some of the practical problems include:

- While it might be reasonable to ask people to step to one side for a moment or two as the dog passes by, should individuals be isolated from their companions and detained until the dog can screen them?
- If so, how long could they be lawfully detained?
- Could they be made to line up with others or taken outside to give the dogs easier access?
- What safeguards would protect people from being singled out for unfair or arbitrary treatment?

As so few drugs are found following drug detection dog indications at licensed premises, it is difficult to see how such a provision could be warranted unless an individual is reasonably suspected of having committed an offence. Where there is a reasonable suspicion, police already have adequate powers.

Recommendation

3. NSW Police develop procedures to guide the use of drug detection dogs in licensed premises and other crowded situations, emphasising strategies on how to seek cooperation from individuals affected by these operations and setting out advice on when the dogs should not be taken into crowds. Pre-operation briefings should be used to highlight relevant parts of the procedures or guidelines to officers involved in the operation.

NSW Police supports this recommendation and advised that:

*The Dog Unit will develop procedures as part of its current review of the Police Dog Deployment Guidelines. These guidelines will be the Dog Unit's overall guidelines for all operational aspects. It is currently anticipated that the guidelines will be complete by the end of June 2006. In addition, a set of operational guidelines have been developed to be delivered at briefings.*²⁸⁹

Endnotes

- ¹⁶⁶ NSW Police Dog Unit, *Drug Detection Dog Program Training Manual*, December 2002, p.2.
- ¹⁶⁷ NSW Police Dog Unit, *Drug Detection Dog Program Training Manual*, December 2002.
- ¹⁶⁸ NSW Police Dog Unit, *Drug Detection Dog Program Training Manual*, December 2002, p.2.
- ¹⁶⁹ Correspondence from NSW Police, 1 April 2005.
- ¹⁷⁰ Correspondence from NSW Police, 1 April 2005.
- ¹⁷¹ A total of 97½ hours were observed, usually by two or more researchers focusing on different aspects of each operation.
- ¹⁷² At Menai Dog Unit, 16 July 2002.
- ¹⁷³ NSW Police Dog Unit, *Drug Detection Dog Program Training Manual*, December 2002, p.86.
- ¹⁷⁴ Ombudsman observer notes, January 2003.
- ¹⁷⁵ Ombudsman observer notes, July 2002.
- ¹⁷⁶ Correspondence from NSW Police, 1 April 2005.
- ¹⁷⁷ NSW Police, *Drug Detection Dogs Management Operational Guidelines*, March 2002, p.9.
- ¹⁷⁸ Ombudsman observer notes, November 2003.
- ¹⁷⁹ Ombudsman observer notes, November 2002.
- ¹⁸⁰ Ombudsman observer notes, March 2003. The Dog Unit would prefer that all training be conducted using illicit drugs however currently industrial issues related to kennelling have not allowed this to consistently occur.
- ¹⁸¹ *United States v Scarborough* 128 F. 3d 1373 (1997) Tenth Circuit.
- ¹⁸² *United States v Berry*, 90 F. 3d 148 (1996) Sixth Circuit.
- ¹⁸³ *United States v Spetz* 721 F. 2d 1457 (1983) Ninth Circuit.
- ¹⁸⁴ This figure is based on one year's data, which was published in our discussion paper: NSW Ombudsman, *Review of the Police Powers (Drug Detection Dogs) Act*, June 2004. It has been revised to 26% using data for the entire two-year review period.
- ¹⁸⁵ Australian Institute of Health and Welfare, *2001 National Drug Strategy Household Survey: First Results*, Canberra, 2002.
- ¹⁸⁶ Associate Professor Michael Dawson (Head, Department of Chemistry, Materials and Forensic Science, University of Technology, Sydney) submission, 2 August 2004.
- ¹⁸⁷ Crime Manager (endorsed by Commander), Western Sydney Command submission, 31 July 2004.
- ¹⁸⁸ NSW Council for Civil Liberties submission, 19 August 2004.
- ¹⁸⁹ Redfern Legal Centre submission, 20 August 2004.
- ¹⁹⁰ Ombudsman observer notes, June 2002.
- ¹⁹¹ Ombudsman observer notes, June 2002.
- ¹⁹² Ombudsman observer notes, April 2003.
- ¹⁹³ Ombudsman observer notes, August 2003.
- ¹⁹⁴ Ombudsman observer notes, September 2003.
- ¹⁹⁵ Event audit (additional) record 3.
- ¹⁹⁶ Event audit record 4.
- ¹⁹⁷ Event audit (additional) record 23.
- ¹⁹⁸ Event audit (additional) record 31.
- ¹⁹⁹ Event audit record 11.
- ²⁰⁰ Event audit record 54.
- ²⁰¹ Event audit record 57.
- ²⁰² Event audit record 81.
- ²⁰³ Event audit record 131.
- ²⁰⁴ Ministry for Police submission, 30 August 2004. NSW Police quoted a figure of 71% in their response. We have revised this figure to 70% by using the same method of calculation with the full two years of data.
- ²⁰⁵ Police Association of New South Wales submission, 19 August 2004. This figure was based on information provided in our discussion paper.
- ²⁰⁶ Police Association of New South Wales submission, 19 August 2004.
- ²⁰⁷ See discussion in Chapter 11 'Obtaining information and how it is recorded and used' at paragraph 11.8.
- ²⁰⁸ Ministry for Police submission, 30 August 2004.
- ²⁰⁹ Correspondence from Local Area Commander, 17 February 2003; Complaint 11.
- ²¹⁰ Police memorandum, 1 December 2002.
- ²¹¹ Correspondence NSW Police, State Protection Group, undated.
- ²¹² Derived from the Results Spreadsheet, 22 February 2002 to 21 February 2004.
- ²¹³ Ombudsman observer notes, August 2003.
- ²¹⁴ Ombudsman observer notes, December 2002.
- ²¹⁵ Ombudsman observer notes, July 2002.
- ²¹⁶ Ombudsman observer notes, September 2003.
- ²¹⁷ Ombudsman observer notes, December 2002.
- ²¹⁸ Ombudsman observer notes, April 2003.
- ²¹⁹ Police Association of New South Wales submission, 19 August 2004.
- ²²⁰ NSW Police Comment on NSW Ombudsman Draft Discussion Paper, 8 June 2004, p. 3.
- ²²¹ J. Ready submission, 22 July 2004.
- ²²² Drug detection dog handlers' focus group, May 2003.
- ²²³ Drug detection dog handlers' focus group, May 2003.
- ²²⁴ Ombudsman observer notes, March 2003.

- 225 Dr Ingrid van Beek interview, April 2004.
- 226 See www.bluelight.nu (Accessed 5 August 2004).
- 227 NSW Police response to draft final report, 10 March 2006.
- 228 Nimbin Hemp Embassy submission, 9 August 2004. Although documentation of the analysis was provided to the Ombudsman we are not in a position to assess the validity of the study.
- 229 Nimbin Hemp Embassy submission, 9 August 2004
- 230 Drug detection dog handlers' focus group, May 2003.
- 231 Drug detection dog handlers' focus group, May 2003.
- 232 Drug detection dog handlers' focus group, May 2003.
- 233 Drug detection dog handlers' focus group, May 2003.
- 234 NSWPD, Legislative Council, 13 December 2001, p.20231.
- 235 NSWPD, Legislative Council, 13 December 2001, p.20231.
- 236 Ms Clover Moore MP submission, 9 August 2004.
- 237 Information Report 8.1
- 238 COPS Event 8.1.
- 239 COPS Event 8.2.
- 240 See www.betterhealth.vic.gov.au.
- 241 Ombudsman observer notes, December 2002.
- 242 Ombudsman observer notes, September 2002.
- 243 Ombudsman observer notes, July 2002.
- 244 Ombudsman observer notes, August 2003.
- 245 Ombudsman observer notes, April 2003.
- 246 Ombudsman observer notes, December 2003.
- 247 Ombudsman observer notes, December 2002.
- 248 Information Report 8.2.
- 249 COPS Event 8.3.
- 250 NSW Users AIDS Association submission, 17 August 2004.
- 251 NSW Users AIDS Association submission, 17 August 2004.
- 252 NSW Police response to draft final report, 10 March 2006.
- 253 *Police Powers and Responsibilities (Drug Detection Dogs) Amendment Act 2005*, which was assented to on 28 November 2005. See Chapter 4 'The use of drug detection dogs in other jurisdictions' for a more detailed outline of the Queensland legislation.
- 254 Queensland Parliamentary Debates, Legislative Assembly, 30 September 2005, p.3082.
- 255 Watson P, 'Police to let the drug dogs out', *The Courier Mail*, 16 December 2005, p.13.
- 256 Complaint 1.
- 257 Complaint 2.
- 258 Complaint 3.
- 259 Complaint 4.
- 260 Complaint 5.
- 261 Complaint 6.
- 262 Complaint 8.
- 263 Complaint 2.
- 264 Complaint 43.
- 265 Complaint 9.
- 266 Complaint 10.
- 267 Complaint 11.
- 268 Complaint 12. It should be noted that some terms used by complainants such as 'strip' search may correspond to the complainant's understanding of the term and not reflect the actual police procedures involved.
- 269 Complaint 13.
- 270 Complaint 14.
- 271 Complaint 11.
- 272 NSW Police response to draft final report, 10 March 2006.
- 273 If a search is judged to be illegally conducted then any action for resisting a police officer trying to perform the search may be unsuccessful at court.
- 274 Consequently, as our observer was moving rapidly through the pub with the handler, her notes on this particular incident are not sufficiently detailed to be useful in this context.
- 275 Police memorandum, July 2003.
- 276 Police memorandum, September 2003.
- 277 Telephone conversation with drug dog handler, 20 November 2003.
- 278 Police memorandum, July 2003.
- 279 Ministry for Police submission, 30 August 2004.
- 280 Ombudsman observer notes, March 2003.
- 281 Ombudsman observer notes, May 2002.
- 282 Ministry for Police submission, 30 August 2004.
- 283 Crime Manager (endorsed by Commander), Western Sydney Command submission, 31 July 2004.
- 284 Crime Manager (endorsed by Commander), Western Sydney Command submission, 31 July 2004.
- 285 Redfern Legal Centre submission, 20 August 2004.
- 286 Police Association of New South Wales submission, 19 August 2004.
- 287 For example, Ombudsman observer notes, July 2002; August 2002; July 2003.
- 288 Ombudsman observer notes, August 2003.
- 289 NSW Police response to draft final report, 10 March 2006.

Chapter 9. Policing issues

This chapter looks into issues affecting the deployment and safety of drug detection dogs and their handlers.

9.1. Stationing drug detection dogs and handlers in different regions

During the review period approximately 80% of drug detection dog operations were conducted in the Greater or Inner Metropolitan Regions.²⁹⁰ In its submission to our discussion paper, Western Region noted this lack of exposure of the commands in the region to the use of drug detection dogs:

The main issue identified was the limited exposure to the resource and the subsequent cost of accessing it in a remote/country location.

The time spent training the dog and handler are viewed as appropriate, however a suggestion of sending the resource to the field to increase the awareness of its potential is also seen to be of importance.²⁹¹

In our focus group with drug detection dog handlers, some handlers raised the possibility that they could be stationed out in the regions on days when there was no pre-planned operation or warrant to attend. This way they could respond quickly to search warrants or vehicle search requests which required their assistance on an urgent or more spontaneous basis. Under this scheme, handlers would let relevant officers in local commands know that they were in the area so that officers were encouraged to make use of their services.

The Police Association of NSW expressed some support for the idea of regional deployment:

There is the argument that there would be increased capability of detections if the handlers were geographically deployed. Handlers would be better able to assist police in the field if they were deployed geographically which would allow for greater detections.²⁹²

However, NSW Police was firmly of the view that 'it is not feasible for dogs to be stationed in Regions'. Concerns in relation to cost and quality control featured prominently in the NSW Police submission. In particular the following disadvantages of de-centralisation were noted:

- *Decentralised teams could only service the centre of attachment and nearby locality without the requirement for travelling and overtime allowances. These issues would still exist if dog teams were required in other Regions.*
- *Limited services available unless considerable resources allocated to cover all dog unit services desired.*
- *Difficulties maintaining standards through ongoing training and accreditation, thus compromising public accountability.*
- *On-going operational training and accreditation costs for rural based teams would be consistent with that of deploying teams from Sydney to service rural needs.²⁹³*

Although it noted some advantages of locating dog handlers and drug detection dogs in regions, such as more ready access for urgent response, increased local knowledge for handlers and increased exposure of local police to dog teams, overall NSW Police did not favour the proposal. This reluctance to pursue regional deployment is also the result of a 1998 review of the Dog Unit by NSW Police which recommended the 'reformation of a centralised Dog Unit' rather than the continuation of what was then a regionalised structure.

Our review of the implementation of the legislation has not attempted to comprehensively inquire into the question of de-centralisation of the dog unit or more limited regular deployment of drug detection dogs and handlers to regional areas of NSW. Instead we have presented for information the views expressed to us on this issue during the review.

9.2. Proportion of time spent by drug detection dogs and handlers 'in the field'

One issue raised by drug detection dog handlers at a focus group discussion in 2003 related to handlers' frustrations that they were not spending enough time using the dogs for drug detection work. The following comments from three different handlers were generally supported by the members of the focus group and illustrate their concerns in this area:²⁹⁴

On a day like today it's not uncommon to have us, you know, more or less sitting here, doing nothing. How we can we can justify sitting around doing nothing here when there's people doing that kind of thing [engaging in drug related activity] – we could have a drug dog in this region every day ...

That's the hard thing too that management won't let us go ...

They've got a bunch of people, like we've got 14 people here now or 20 people and they were specially selected for our 'get up and go', and what their station said about their work performance. They've got them here and now they expect us to sit around and do nothing and it's like we just want to up there and go ...

Does the community know, does the government know how much, how much time is wasted by us sitting here and not going out and doing what we are paid to do?

Management of the Dog Unit reported to us that some handlers believed that prior to the introduction of the legislation, operations were more frequent, successful and less prohibitive in terms of where, when and how the operations were conducted. These handlers were reportedly frustrated by aspects of the Drug Dogs Act.²⁹⁵

We asked handlers for documentation of how much time they spent on different aspects of their work. They agreed to provide us with a list of their daily rostered activities for the two months preceding the focus group discussion (April and May 2003). Table 10 shows our analysis of this information.

Table 10. Activities of 14 drug detection dog handlers (April – May 2003)

Activity	Days	% of all work
Time in Office or training (Kennel duties, supervision, office duties, training)	176	62%
Time spent on drug detection (Vehicle searches, operations, search warrants, travel)	99	35%
Other (Court, public relations)	9	3%
Total work activities	284	100%

Note: For the purposes of this exercise we have not included non-work activities which included the activities listed by handlers as 'rest', 'sick' and other leave.

Source: Drug detection dog handler roster information, April & May 2003.

It should be noted that these results are likely to underestimate the time spent in the office performing administrative or kennel duties, or training because we have allocated a whole day to the activity listed for that day. For example, if a handler went to a search warrant on a particular day, that whole day has been allocated to the warrant, even if only a few hours were spent on this task and the remaining time was spent at the office.

It should also be noted that we have not checked to see whether the months of April and May 2003 are typical months in terms of the amount of work available to handlers. The Dog Unit also told us that although it concurred with the data presented, the information should be considered with some caution. According to the Dog Unit, a number of handlers were being trained during this period and the figures do not reflect the usual ratio of drug detection work in the field compared to office and training duties. In addition the Dog Unit reported that there was a higher than average job cancellation rate and a comparatively low number of searches and drug finds over the two months.

In addition, only 8 of 14 handlers were able to complete the roster information sheets for us. Notwithstanding these limitations, the data provided does lend support to the impressions of handlers that they were not spending enough time 'in the field'.

Clearly it is necessary for handlers to spend a certain amount of time doing administrative tasks, COPS entries, training the drug detection dogs and ensuring that kennels are maintained. The question is whether handlers spend an inappropriate amount of time on these duties.

We presented this information in our discussion paper. In response the Police Association of NSW argued that drug detection dog handlers were not spending enough time in the field because of restrictions in the legislation such as the need for warrants to patrol some public places. The Association also felt that better deployment models could be investigated.²⁹⁶ A western Sydney command agreed with this view and stated that the restrictions on locations where the drug detection dogs could be used 'adversely influenced the time spent by dog handlers in the field' and 'considerably reduced the number of requests by local area commands for drug detection dogs'.²⁹⁷

Another submission, from a member of the public, commented that to know whether handlers are spending an appropriate amount of time in the field 'it must first be determined whether their job, as it stands, is necessary'.²⁹⁸

We also received a detailed response from NSW Police explaining its view that dog handlers spent an appropriate amount of time in the field. The submission stated that drug detection dog teams were operating at capacity and jobs were occasionally declined because of lack of staff. NSW Police presented its own figures about the issue. These are set out in Table 11 below which has been extracted from the NSW Police submission.

Table 11. Operational Activities of Drug Detection Dogs (1 July to 31 December 2003)

No. of Jobs	Total requests	394
	Jobs attended	352
	Jobs cancelled	42
	Outstanding	0
No. of Searches	Building screen	20
	Person screen	2994
	Search warrant	209
	Street screen	28
	Luggage/mail screen	1
	Vehicle screen	41
	TOTAL	3293
Totals	Jobs during review period*	3293
	Total available shift during review period*	1464
	Ratio of jobs completed to maximum shifts available during review period	2.49:1**

* The 'review period' referred to here is the six-month period from July to December NOT the full two-year review period.

** We believe this ratio is unreliable.

Source: Ministry for Police submission, 30 August 2004.

Unfortunately these figures are not comparable with those set out in Table 10 above, which we received from the Dog Unit in 2003.

The analysis by NSW Police in Table 11 indicates that handlers are attending on average 2.49 'jobs' per available shift. However, there are a number of problems with this analysis.

One problem with the information presented above is that in the final calculation of the completed jobs to available shifts ratio (in the last cell of the table), instead of using actual 'jobs', a figure of 3293 is used instead. This figure represents the addition of the number of search warrant, building, vehicle, luggage etc *jobs* added to all the *indications* of drug detection dogs during general drug detection operations over the six-month period. That is, the ratio does not distinguish between a job which may last for extensive periods and include many indications, and an indication which takes a matter of seconds. The figure of 2.49:1 is therefore not a valid expression of the ratio of jobs to shifts, which would be substantially less than 2.49 jobs per shift.

Nor can the ratio fairly be calculated on the basis of the actual number of jobs attended (which the above table shows as 352) divided by the number of available shifts, because a single job may extend over several shifts and would occasionally use multiple dogs and handlers. This method would underestimate the 'in the field' workload of handlers.

The spreadsheet information kept by the Dog Unit does not lend itself to the easy determination of the activity levels of handlers. This was why we requested handlers to provide us with their day-by-day duties, the results of which are provided in Table 10 above. However, we recognise that there are limitations in our own method.

Given:

- the strong belief of NSW Police that handlers are being adequately utilised
- the clear concerns expressed by handlers in our focus group that they are under utilised, and
- the legitimate public interest in the efficient utilisation of police resources

it would be advisable for NSW Police to properly investigate this issue.

In its submission to our discussion paper, the Attorney General's Department suggested that inquiry into the decisions of local area commanders about the factors influencing decisions to request drug detection dogs would be a useful component of such an investigation.²⁹⁹

Recommendations

4. NSW Police conduct a review, by a person or group independent of the Dog Unit, and in consultation with drug detection dog handlers, to investigate the proportion of time handlers are spending on various aspects of their work. This investigation should assess whether there is currently an appropriate balance between time spent 'in-the-field' and time spent on administration and training.
5. Part of any such investigation should involve consideration of:
 - whether an element of regional stationing of handlers would increase utilisation of drug detection dogs and handlers, and
 - whether the current number of drug detection dogs is appropriate given demand for the drug detection dogs.

NSW Police supports recommendation 4 and advised that:

*The Dog Unit is currently undergoing a process of review, which commenced in May 2005 and has involved extensive consultation with Dog Unit staff. NSW Police agrees to conduct a review of the Dog Unit to investigate the issue of work performance and will consider how this recommendation can be adopted into the current review.*³⁰⁰

In response to recommendation 5, NSW Police indicated that they do not support the investigation of regionalisation for the following reasons:

The NSW Police Dog Unit has already explored regional deployment of dog teams to both metropolitan and country locations. Each time this has been considered the prohibitive factors were, and are still, the cost of relocation of staff and dogs, supervision of those officers, and the ability to ensure the quality of training, accreditation and performance. Regional areas are currently provided with the service of dog teams upon request regardless of location, providing the request meets the stated criteria.

*In 1998 a critical review of the Dog Unit saw an amalgamation of the four region based dog squads into one unit. The review highlighted the pitfalls of region based structure with a number of deficiencies. Some of these were: inadequate supervision, training, funding, resource management, and overall conflicting management concepts and practices that occurred within the four separate region based units. In addition to this, is the fact that the drug dogs are required to train with prohibited drugs. All training is oversighted by operational trainers and the organisation does not currently have the capacity to manage training needs of region based dog units.*³⁰¹

While these historical matters must be considered, it is our view that some examination of increasing the availability of drug detection dogs in regional areas is warranted. This could be part of the current review of the Dog Unit.

In relation to investigating appropriate numbers of dogs given demand, NSW Police agreed to consider whether additional dogs are required as part of any independent review of the Dog Unit.³⁰²

9.3. Officer and drug detection dog safety

9.3.1. Officer safety

Drug detection dog handlers, like many other operational police, often work in crowded environments where a proportion of people are intoxicated and/or drug affected. Unlike other police, handlers need to focus on their drug detection dog. This reduces their capacity to look out for potential threats. Handlers also use one hand to control their drug detection dog, and are therefore less able to defend themselves if threatened. Drug detection dogs are not trained to attack and will not defend themselves or their handlers.

Handlers regularly advise police at briefings that they require at least two police with them at all times. Operation commanders often reinforce this message. However, in practice we have noted on a number of occasions that handlers are left on their own on trains and at licensed premises.

At one operation we observed, the handler made clear at the police briefing that he required police back-up. Our observer's notes indicate that the handler:

Told police they had 'two roles: watch me and watch the crowd'.

Safety: 'My role is to keep my eye on the dog and keep the dog safe. Your role is to watch my back'.³⁰³

During that operation, the handler was twice left on his own for short periods. On one occasion on licensed premises the drug detection dog indicated a man and the handler cautioned the man and had to lead him out of the crowd to wait for police to conduct the search. Later at the same venue, the handler followed a man into the men's toilets, with no police back up. Our observer stood outside and watched a number of men go in and out of the toilets. Eventually the handler came out of the toilets.

On another occasion at a dance party, the handler followed a strong indication by the drug detection dog and ran into a car park following four young men.³⁰⁴ It was 11pm and the car park was otherwise unoccupied. The handler saw one young man drop a container and after retrieving the container the handler asked the young man what it contained. Eventually the young man stated there was ecstasy in the container. The handler attempted to use his radio to contact other police but his radio was not functioning at the particular site. He was unable to obtain police backup and was clearly uncomfortable with the situation. He could not effectively deal with his dog and the young man and his companions. Finally, for safety reasons the observer decided to contact another observer at the dance party, and the police she was accompanying were informed of the situation. Other police then arrived to search the young man.

On another operation in Sydney's inner west, the handler advised the police briefing that he needed two officers with him at all times. During the operation, however, he was left alone and followed the drug detection dog as it pursued a scent in the men's toilets. It was some time before another male officer also entered the toilets to assist.

Handlers noted this safety issue during our focus group discussion with them. The following comments from two handlers illustrate their concerns:³⁰⁵

And the other thing with like operations too is people protecting us. We go into like dance parties and nightclubs ... and you're just watching your dog so you don't know anything that's like going on and you look up and there's nobody there. Like, I've been to good operations and there they've said stick by the dog. You're job is to do that and to do that only and that keeps me safe. I can protect my dog. You look after me and we can all do a safe and happy job ... I always tell the people who are looking after me 'Tell me if there's no more coppers and we'll get out of here.'

And some sergeants, there's one that I'm sure most of you have worked with. And he just, he'll tell them not to walk next to us because he doesn't like a big bunch of police walking together ...

At another focus group of operational police, one officer explained the approach to safety in crowded environments:

We put a security team on the dog. Just two people walking with their handler making sure that the dog doesn't get hurt and stuff like that. And just maintaining their O.S. [officer safety] watching each other's backs.³⁰⁶

We raised these issues of handler and dog safety in our discussion paper and received the responses set out below.

NSW Police submitted that measures were already in place to ensure handlers could carry out their duties safely and that as long as an adequate ratio of support police was maintained that the safety of the dog and handler would be 'maximised':

The nature of policing is unpredictable and dog teams will always be confronted with risks – similar to those other Police face. As long as an appropriate ratio of properly resourced, trained, and briefed support Police is maintained during detection dog operations, then safety of dog and handler is maximised.³⁰⁷

One Crime Manager experienced in the use of the drug detection dogs wrote:

My experience is that drug dogs and their handlers are always well protected by at least four officers in the immediate vicinity of where the dog is operating. The handlers appear to be well trained. There will always be a certain element of risk with the use of drug dogs, as there is in most aspects of policing.³⁰⁸

The Nimbin Hemp Embassy commented:

unforeseen drunken crowds, energy charged youth events or groups who may try to object by intervention on behalf of a friend would be the main problems if police came upon such.³⁰⁹

The Police Association of NSW was in favour of increasing penalties to deter violence towards police:

Police operational orders and briefings adequately address this issue. However, to fully reinforce the need to protect police, fines and gaol terms for assaulting police or cruelty to animals must be increased. There should be much stronger mandatory minimum sentences for assaults upon police in the execution of their duty.³¹⁰

Dog handlers often work in environments where there is a risk of alcohol-related violence. It is also often dark and crowded. While this is not an uncommon scenario for many police, dog handlers are encumbered by the necessity of keeping their dogs under control and protected in these environments. We did not observe any major acts of aggression against handlers during our observational research. We did, however, witness circumstances where handlers were left in potentially dangerous situations. Handlers themselves have also reported these concerns to us. If drug detection dogs are to continue to be deployed in these environments, our view is that NSW Police must take greater steps to ensure commanders enforce the guidelines that handlers should not be left without any police backup during operations.

Recommendation

6. Police commanders ensure the safety of drug detection dog handlers by reinforcing guidelines that state that handlers are not to be left unaccompanied during operations. If necessary, the operation commander should be made responsible for allocating a police officer to remain with the handler at all times.

NSW Police supports this recommendation and noted that:

This aspect is already incorporated into Drug Dog Handlers verbal briefings before operations commence. Handlers are provided with a briefing checklist they deliver to operation police outlining procedural and safety issues. Handlers are also equipped with a number of appointments and are trained in their use. Issues of dog safety are always of paramount concern to the handlers and this is conveyed to support police on all occasions.³¹¹

9.3.2. Drug detection dog safety

Handlers also told us of a number of incidents in which their drug detection dogs were injured or threatened by members of the public. These comments from handlers illustrate the kinds of behaviour that handlers and their dogs confront:³¹²

Again I think it's later in the night when they've got a bit of drink on board, mainly in the licensed premises. And sometimes I think it's not intentionally that they've hurt the dog. I just think that they're got a bit of alcohol or whatever else on board and they like pat the dog or just be a bit smart and they'll come down and they'll actually whack the dog but they are not aware ... I think some people do it on purpose and I think others aren't aware of just how hard ... You know the dog will walk past – the dog's paid no attention to them, we haven't stopped to speak to them – and they'll just go smack in on their head or their bum. And one other time he copped a kick in the guts from a chick that was ripped off her head.

Earlier on in the piece going into nightclubs a guy attempted to burn the dog with a cigarette – it was lucky police were really quick and kicked it out of his hand at the time. I've had somebody try to slap him across the head. I've had people, umm, try to intimidate me while I'm doing my job, and they're [saying] 'Where's your dog? Where's your dog?' And he ended up getting arrested ...

Can I just say one more thing? People threaten to hit them [the dogs] as well ... 'bring that f...ing dog near me and I'll kick its head in' and you're in two minds whether to say, 'Shut up mate I do the job how I like' or like, 'God, will he really kick the dog in the head?'

Family Drug Support noted in its submission:

*The safety of both police and dogs are obviously in question in situations where there are large crowds, especially in enclosed spaces. I believe it would be difficult to guarantee officer or dog safety. This is a major issue in pursuing an effective strategy.*³¹³

We note that after the stabbing death of the NSW Police General Purposes Dog Titan, the (then) NSW Police for Minister reportedly foreshadowed 'more severe punishment for people who maim or kill emergency service dogs'.³¹⁴

In November 2005 the NSW Parliament passed the *Crimes Amendment (Animal Cruelty) Act 2005* 'in response to the killing of police dog Titan last year during a police operation'.³¹⁵ The Act creates a new serious animal cruelty offence designed to protect animals used in law enforcement.³¹⁶ It is now an indictable offence with a maximum penalty of five years imprisonment to intentionally kill or seriously injure an animal knowing that the animal is being used by a law enforcement officer in the execution of the officer's duty,³¹⁷ or as a consequence of, or in retaliation for, the use of the animal by a law enforcement officer while in the execution of the officer's duty.³¹⁸

9.3.2.1. Cruelty incidents resulting in charges or warnings

We also examined a number of cases of cruelty to animals that proceeded to court during the review period. Unfortunately there was no systematic method in place to locate all such matters so we relied on the memory of drug detection dog handlers and our own search of the COPS database to locate relevant cases. It is likely that our list of cases is not comprehensive.

In all we located four matters which proceeded to court and one matter in which the alleged offender was issued with a warning in relation to cruelty to animals. We have summarised these five matters below.

Case studies

An incident at an inner-city hotel

In May 2001, plain clothes police, accompanied by a drug detection dog and handler, entered a local hotel during a drug operation in an inner-city suburb of Sydney. As the dog passed the bar area, a 49-year-old man seated at the bar was observed by police to turn around, reach over with his leg and kick the dog in the stomach, causing it to yelp. Police identified themselves and removed the man from the premises. The man was informed that he was under arrest for committing an act of cruelty on an animal. When questioned, the man claimed he had not known that the dog was a drug detection dog. It appeared to police that he was under the influence of alcohol. As a result of the action taken by the man, police alleged the dog became frightened and withdrawn and was unable to be used in drug detection operations for a period of three weeks. The man originally pleaded not guilty to the offence but subsequently altered his plea to guilty. He was convicted at Waverley Local Court in February 2002 and fined \$300.³¹⁹

An incident at a suburban train station

During a Thursday afternoon in October 2002, police conducted a drug operation at a train station on Sydney's upper North Shore. In the course of this operation, police observed a 34-year-old man looking at the drug detection dog 'in a menacing manner'. The person was then observed to deliberately walk towards the dog, whereupon he lunged forward with one leg, placing his full weight on the dog's hind leg, causing it to yelp. Police immediately approached the man and asked him to explain his actions. The man claimed that he was 'just trying to catch [a] train' and that the dog had attacked him. The man was well known to police as a result of a lengthy criminal record for drug and public mischief offences. He was subsequently placed under arrest and conveyed to the local police station where he refused to be interviewed or to supply a statement. The man was charged with committing an act of cruelty on an animal. He was convicted without appearing at Hornsby Local Court in December 2002 and fined \$2000.³²⁰

An incident at a Newcastle hotel

During the early hours of a Sunday morning in January 2004, police conducting a drug operation at a local hotel in Newcastle observed a 34-year-old man approach the hotel entrance. Security personnel refused him entry. As the man began to walk away from the hotel he was observed by police to kick a drug detection dog. The dog handler pushed the man away and told him to leave the dog alone. The man then challenged police to fight and behaved in an aggressive manner. Police directed the man to leave the area on two occasions. These directions were ignored and police responded by taking hold of him. The man appeared to police to be affected by alcohol. He resisted efforts to subdue him before being brought to the ground and handcuffed. He was then conveyed to the local police station and charged with several offences, including committing an act of cruelty on an animal. After pleading guilty, the man was convicted and directed to undertake 50 hours of community service for the animal cruelty offence.³²¹

An incident at a Wollongong hotel

During a Saturday night in August 2002 police conducted a drug operation in central Wollongong. In the course of this operation police entered a local hotel. The hotel was dimly lit and a band was playing loud music. Shortly after entering the hotel, the drug detection dog led its handler in the direction of a 20-year-old man who was seated at a table with three companions. Police alleged that the dog walked up to the man and sat beside him, indicating that it had detected the presence of an illegal substance. The dog's handler then approached the man and informed him that the dog had made an indication. The man stood up and waved his arms in the air before reaching down and striking the dog to the head with his hand. He was then informed that he was under arrest and subsequently charged with committing an act of cruelty against an animal. In his statement to police, the man agreed that the dog handler had approached him and explained that the dog had detected the presence of an illegal substance. He reported that the dog had then placed its front legs on his right leg. The man claimed that this caused him to feel 'uncomfortable' and as a result, he 'pushed' the dog away. He stated that the dog handler responded by grabbing and hurting his wrist, calling him a 'smartarse' and telling him to 'shut [his] mouth'. The man further stated that the handler would not tell him why he was under arrest.

The man pleaded not guilty. In his evidence to the court, the man claimed that he had first become aware of the drug detection dog when he felt 'something brush up on my thigh, and I looked and [the dog's] head was like straddled on my leg like practically on my groin, and that just freaked me out'. He continued, 'I sort of got scared because I don't really like dogs, and I sort of pushed it away and I got up at the same time and that's when I seen a police officer come up behind me, because I never seen no one, I seen the dog first, seen no one before that'. The man further stated, 'it was all a shock to me, like I didn't expect the dog to be there.' He also claimed that the drug detection dog had barked, and that a police officer grabbed him by the neck after he had pushed the dog away. During cross-examination, the man attributed the apparently contradictory version of events contained in his original statement to error on the part of the police officer who recorded it.

The man was convicted and fined \$250.³²²

Incident at a Southern NSW pub

Just before 10pm on a Thursday evening in October 2003, police accompanied by a drug detection dog entered a pub in southern NSW. According to the police report, while walking in the rear pool parlour area a man kicked out his left leg lightly, touching the drug detection dog. The man was warned not to touch the dog and he stated, 'What the fuck's a dog doing in the pub anyway?'

After completing their patrol of the pub, police returned to the man and asked him to move into the hallway. Police spoke to the man who explained that he had not realised the dog was a police dog when he had kicked out at it. He was 'very apologetic' and further stated that he was a 'bit pissed' and often kicked dogs. The police record states that the man 'was issued a Warning in relation to 'Cruelty to Animals' and informed a record would be made of the incident and that if he again re-offended in the same manner, he would probably be prosecuted.'³²³

9.3.2.2. Visibility of Dogs

During the parliamentary debate of the Police Powers (Drug Detection Dogs) Bill 2001, the question of whether drug detection dogs should be required to wear uniforms was raised.³²⁴ While the discussion centred on the possible need for the dogs to be identified as police drug detection dogs, there may be other reasons to consider some kind of uniform.

We commented in our review of the implementation of the *Police Powers (Drug Detection in Border Areas Trial) Act 2003* that the visibility of drug detection dogs was an issue in roadside operations. We recommended that reflective vests or other appropriate methods be used to ensure the drug detection dogs were visible during operations.³²⁵ We also note the comments of one dance party organiser that patrons have been known to 'trip over the dog's lead'.³²⁶

It may be appropriate for drug detection dogs working at night or in dimly lit environments to wear some kind of highly visible vest to reduce the risk of accidental harm to the dogs (and to members of the public) from persons failing to see them during 'overt'³²⁷ operations.

Recommendation

7. NSW Police provide reflective vests or use other appropriate methods to ensure drug detection dogs are visible during overt operations.

NSW Police indicated in principle support for this recommendation and advised that the issue of reflective vests is under consideration.³²⁸

Endnotes

²⁹⁰ Derived from the Results Spreadsheet, 22 February 2002 to 21 February 2004.

²⁹¹ Western Region of NSW Police submission, 4 August 2004.

²⁹² Police Association of New South Wales submission, 19 August 2004.

²⁹³ Ministry for Police submission, 30 August 2004.

²⁹⁴ Drug detection dog handlers' focus group, May 2003

²⁹⁵ NSW Police Comment on NSW Ombudsman Draft Discussion Paper, 8 June 2004, pp.15-16.

²⁹⁶ Police Association of New South Wales submission, 19 August 2004.

²⁹⁷ Crime Manager (endorsed by Commander), Western Sydney Command submission, 31 July 2004.

²⁹⁸ J. Ready submission, 22 July 2004.

²⁹⁹ NSW Attorney General's Department submission, 17 May 2005.

³⁰⁰ NSW Police response to draft final report, 10 March 2006.

³⁰¹ NSW Police response to draft final report, 10 March 2006.

³⁰² NSW Police response to draft final report, 10 March 2006.

³⁰³ Ombudsman observer notes, August 2003.

³⁰⁴ Ombudsman observer notes, December 2003.

³⁰⁵ Drug detection dog handlers' focus group, May 2003.

³⁰⁶ Police Focus Group 1, July 2004.

³⁰⁷ Ministry for Police submission, 30 August 2004.

³⁰⁸ Crime Manager (endorsed by Commander), Western Sydney Command submission, 31 July 2004.

³⁰⁹ Nimbin Hemp Embassy submission, 9 August 2004.

³¹⁰ Police Association of New South Wales submission, 19 August 2004.

³¹¹ NSW Police response to draft final report, 10 March 2006.

³¹² Drug detection dog handlers' focus group, May 2003.

³¹³ Tony Trimmingham, Family Drug Support submission, 6 August 2004.

³¹⁴ Reported in 'Armour for police dogs', *Daily Telegraph*, 27 December 2004, p.17.

³¹⁵ The Hon. Sandra Nori MP, NSWPD, Legislative Assembly, 9 November 2005, p.19387; The Hon. John Della Bosca MLC, NSWPD Legislative Council, 16 November 2005, p.19713.

³¹⁶ The Act commenced on 16 December 2005.

³¹⁷ *Crimes Act 1900*, s.531(1)(a).

³¹⁸ *Crimes Act 1900*, s.531(1)(b).

³¹⁹ *Police v William Reginald Stapleton* (Madgwick LCM, Unreported, Waverley Local Court, 8 February 2002).

³²⁰ *Police v Darryl Wayne Harding* (McIntosh LCM, Unreported, Hornsby Local Court, 4 December 2002).

³²¹ *Police v Dallas James Westbrook* (Wakely LCM, Unreported, Newcastle Local Court, 17 August 2004).

³²² *Police v Tony Popovski* (McRobert LCM, Unreported, Wollongong Local Court, 12 February 2003).

³²³ COPS Event 9.1

³²⁴ An amendment was moved by Ms Lee Rhiannon MLC to require drug detection dogs to wear a jacket displaying the words "NSW Police Service". This amendment was not passed. See NSWPD, Legislative Council, 13 December 2001, pp. 20231-20232.

³²⁵ NSW Ombudsman, *Review of the Police Powers (Drug Detection in Border Areas Trial) Act 2003*, January 2005, p.152.

³²⁶ Transmission Promotions Pty Ltd. submission, 4 August 2004.

³²⁷ That is, operations which are not 'covert' and hence utilising police in plain clothes.

³²⁸ NSW Police response to draft final report, 10 March 2006.

Chapter 10. Drug detection warrants and police intelligence

This chapter examines elements of the warrant system established by the Drug Dogs Act and outlines our analysis of the intelligence information that police have used to support the deployment of drug detection dogs.

10.1. When is a drug detection warrant required?

Section 7 of the Drug Dogs Act provides for the use of drug detection dogs at or in specified public places *without* a warrant:

- (1) *A police officer may, without a warrant, use a dog to carry out general drug detection in relation to the following persons:*
 - (a) *persons at, or seeking to enter or leave, any part of premises being used for the consumption of liquor that is sold at the premises (other than any part of premises being used primarily as a restaurant or other dining place),*
 - (b) *persons at, or seeking to enter or leave, a public place at which a sporting event, concert or other artistic performance, dance party, parade or other entertainment is being held,*
 - (c) *persons on, or seeking to enter or leave, a public passenger vehicle that is travelling on a route prescribed by the regulations, or a station, platform or stopping place on any such route.*
- (2) *In this section, **public passenger vehicle** means a train, light rail vehicle or bus that is used to provide a public passenger service.*

Section 8 of the Drug Dogs Act provides for the use of drug detection dogs at or in any public place *with* a warrant. The drug detection warrant regime is discussed in more detail below (at paragraph 10.3).

10.1.1. Use of police intelligence to justify the deployment of drug detection dogs

Under section 7 of the Drug Dogs Act there is no legislative imperative for police to provide justification for the deployment of drug detection dogs at specified locations. However, NSW Police has formally advised us that *all* drug detection dog operations are based on police intelligence information.³²⁹

In our view the deployment of drug detection dogs on the basis of relevant intelligence information is good policy, and goes some way to ensuring that the dogs are being used in a cost effective and appropriate manner. Ensuring that drug detection dogs are deployed on the basis of sound intelligence may also reduce perceptions of arbitrary or unfair targeting of particular locations and/or communities. Furthermore, drug detection dog operations based on sound intelligence are likely to be more effective in detecting drug offences which will arguably reduce criticism that the dogs are deployed in areas where drugs do not appear to be a problem. These views are consistent with those of police and the community obtained during the review.

For example, one senior police officer we interviewed expressed the view that using intelligence information to justify all deployments of drug detection dogs ensures that dogs are used in an efficient manner as they are utilised at locations where prohibited drugs are more likely to be detected. This officer also said that the Dog Unit looks to the quality of the intelligence information to ensure it is recent and related to the supply of drugs.³³⁰

The following comments by hotel licensees and managers we interviewed illustrate the need for the public to be assured that the deployment of drug detection dogs in certain locations is justified:

*If police have sufficient evidence that there are drugs on the premises, I'm all for the dogs going on to the premises. If there is no evidence of drugs being sold on the premises, I don't think they should go in at all.*³³¹

*So I think that there's got to be some kind of rule, I don't know whether there's some proof for them to allow, I don't know, along the same lines as having a court order, where you go and allow them into someone's premises, whether, maybe there should be some proof before they just drag dogs all through your venue.*³³²

*I think the legislation needs to be amended so the only time they can board your licensed premises is if there is reasonable cause. ... If they come in and their intelligence indicates that there is no reasonable cause, they shouldn't be allowed to come in. It's real simple. Why should it be any different to a search warrant?*³³³

10.2. Decision making process for deploying drug detection dogs

Police in a local area command or unit who wish to carry out a drug detection dog operation are required to gather intelligence information to justify the deployment of the dog before making a request to the Dog Unit.

To ensure compliance with the NSW Police policy that all operations be based on intelligence, requesting police are required to complete a *Drug Detection Dog – Preplanned job request form*³³⁴ detailing the intelligence material that police are relying on to support the deployment of the dog.

If the proposed operation is to cover public places not specified in section 7 of the Drug Dogs Act, then requesting police must also prepare a drug detection warrant application which details the reasonable grounds police have for believing that drug offences are being committed in a particular public place. An authorised officer must grant the drug detection warrant before the proposed operation can be conducted.

The request form requires police to provide details of suspects and/or locations for which there is some intelligence information. The form also requires police to summarise the intelligence basis for the operations and supply COPS Information Reports (IRs) and COPS event narrative numbers. Importantly, the request form stipulates that if a drug detection warrant is being sought for the operation, then a copy of the information provided to the authorised justice be attached to the request form.

Upon receipt of the request form, the Dog Unit assesses the request to determine whether there is sufficient intelligence information to merit the deployment of a drug detection dog at a particular location/s. The request is also checked for compliance with the Drug Dogs Act and internal police policies and guidelines.

The Commander of the Dog Unit is responsible for approving requests for drug detection dogs in metropolitan areas.³³⁵ The Commander of the State Protection Group is responsible for authorising the deployment of drug detection dogs to areas outside the Sydney metropolitan area and for reviewing any requests that have been declined by the Commander of the Dog Unit.³³⁶

10.3. Drug detection warrants

As mentioned above, drug detection dog operations require the authorisation of a drug detection warrant if it is to occur in a public place other than one specified in section 7 of the Drug Dogs Act. Section 8 of the Drug Dogs Act provides:

- (1) *A police officer may use a dog to carry out general drug detection if authorised to do so by a warrant under this section.*
- (2) *A police officer who has reasonable grounds for believing that the persons at any public place may include persons committing drug offences may apply to an authorised justice for a warrant under this section.*
- (3) *An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a warrant authorising any police officer to use a dog to carry out general drug detection in the public place during the period or periods specified in the warrant.*
- (4) *An application for a warrant under this section must disclose whether any drug detection to be carried out under the warrant will be part of a covert police operation.*
- (5) *Part 3 of the Search Warrants Act 1985 applies (with any necessary or prescribed modification) to a warrant issued under this section.*

Despite the emphasis on targeting drug *supply* during the parliamentary debate of the Police Powers (Drug Detection Dogs) Bill 2001, the Drug Dogs Act only requires that the police officer applying for the warrant has reasonable grounds to believe that a 'public place may include persons committing drug offences' and does not require that those offences relate to drug supply.

In addition, any operation which is 'covert' in nature requires a drug detection warrant, even if it is at a location specified by section 7, which ordinarily would not require a warrant. Section 9(3) of the Drug Dogs Act provides:

General drug detection under this Part may be carried out as part of a covert police operation, but only if it is authorised by a warrant under section 8.

Warrants may be issued by an 'authorised justice' which is defined in the *Search Warrants Act 1985* as:

- (a) a Magistrate, or
- (b) a justice of the peace who is a Clerk of a Local Court or the registrar of the Drug Court, or
- (c) a justice of the peace who is employed in the Department of Courts Administration and who is declared (whether by name or by reference to the holder of a particular office), by the Minister ... to be an authorised justice ...³³⁷

The requirement that police obtain a drug detection warrant means that an additional level of scrutiny is applied before police can conduct operations in certain public places or conduct covert operations.

10.3.1. Use of drug detection warrants

The Dog Unit Results Spreadsheet does not specify whether or not a particular indication by a drug detection dog occurred under a drug detection warrant or under section 7 of the Drug Dogs Act. Information about drug detection warrants is only available from the Requests Spreadsheet. The requests spreadsheet documents all requests for use of the drug detection dogs, whether they were approved, cancelled or denied by the Dog Unit, and whether they require a drug detection warrant. It also records basic details about the purpose of the operation and the places and dates the dogs are to be used.

The request spreadsheet has a number of shortcomings from a research perspective. For example, a single request may account for a number of operations on a range of dates. The request spreadsheet does not specify whether the warrant was required for each day of a multi-day operation. For example, a three-day operation might indicate that a warrant was required even though it was only required on one day of the operation. Nor does the request spreadsheet specify the location for which the warrant was required. Locations are generally stated, but often more than one location per request is noted and it is unclear which locations apply to the warrant. Whether a warrant was for a covert operation is also not recorded.

Over the review period, police from local area commands made 182 requests for use of drug detection dogs involving authorisation by a drug detection warrant.³³⁸ This represents almost a quarter (23.4%) of all requests for the drug detection dogs for general drug detection work during the review period.

Table 12. Requests for the use of drug detection dogs involving a drug detection warrant

Request information	Number of requests
Request granted by Dog Unit	157
Requests cancelled or denied	25
• Request cancelled by initiating LAC	20
• Request denied by Dog Unit	4
Total requests involving warrants	182
Total requests for use of drug detection dogs	779

Source: Derived from Requests Spreadsheet, 22 February 2002 – 21 February 2004.

Of the four requests which were cancelled by the Dog Unit, three were due to staffing issues and one was not approved by the Dog Unit on the basis of legal advice suggesting that using drug detection dogs at random breath testing sites is not authorised by the Drug Dogs Act.

Approximately one-fifth (38 of 182) of requests for warrant operations were for operations to be held on more than one date. Of those requests that were granted, 15 did not specify a place at which the dogs were to be used. Approximately one-fifth of requests (37 of 182) nominated more than one place of deployment of the dogs.

Table 13. Location of approved requests for drug detection dogs with drug detection warrant

Location specified	Number of approved requests (%)*
Street/CBD	95 (60.5%)
Railway station, trains, railway concourse, rail/bus interchange	68 (43%)
Licensed premises	32 (20%)
Dance parties/festivals/markets	8 (5%)
No location specified	15 (9.6%)

* Figures do not add to 100% as some requests contained more than one location type.

Source: Derived from the Dog Unit Requests spreadsheet 22 February 2002 to 21 February 2004

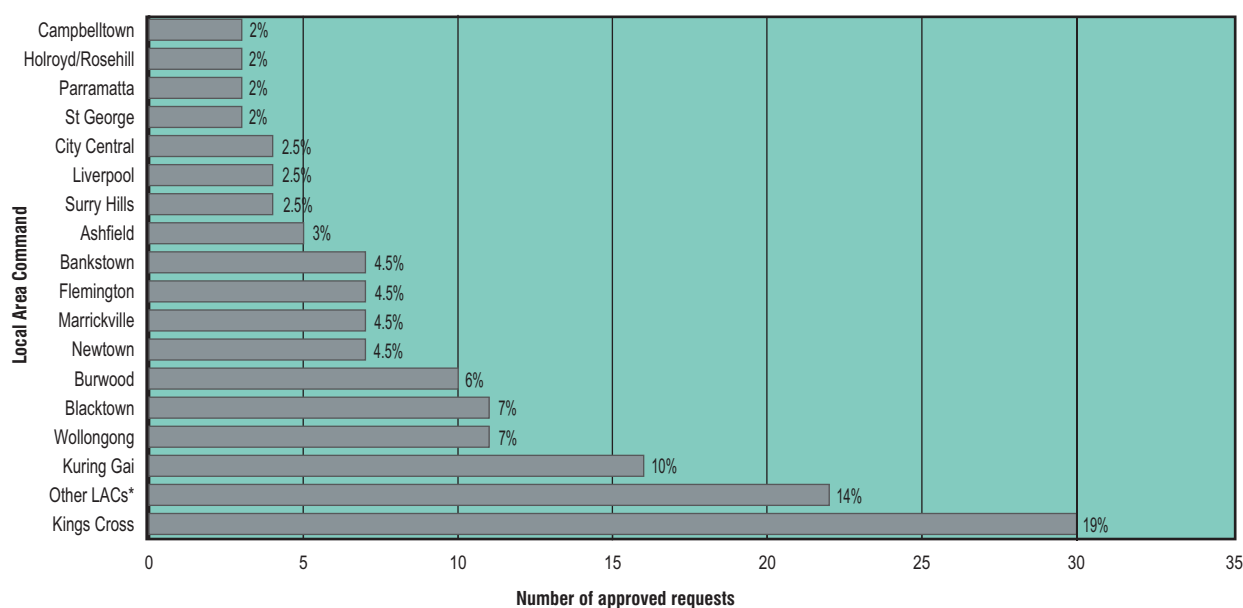
Unlike the Street/CBD category, many of the locations nominated do not clearly require authorisation by warrant. Many of these locations may not have been the target of the warrant and may have occurred along-side a warrant operation. For example, when both licensed premises and streets are patrolled during one operation. Others may be explained by the following:

- some of the rail category may have been outside routes prescribed in the Drug Dogs Regulation
- some of the rail category included railway concourse areas which police believe require authorisation by warrant
- other places may have required warrants because they were conducted as covert operations, or
- because of legislative interpretation difficulties police have sought warrants to screen queues to dance parties and nightclubs.

As Figure 14 shows, most drug detection warrants were associated with requests to use drug detection dogs in Kings Cross, Kuring Gai, Blacktown and Wollongong. Kings Cross and Wollongong mostly conducted street and CBD patrols using drug detection warrants, while Blacktown and Kuring Gai focussed on railway stations and concourses.

10.3.2. Approved requests for drug detection dogs with warrant by requesting LAC

Figure 14. Approved requests for drug detection dogs with warrant by requesting LAC



Source: Derived from the Requests Spreadsheet, 22 February 2002 to 21 February 2004

n=157

Other LACs	No. of requests	Other LACs	No. requests
Brisbane Water	2	Auburn	1
Coffs/Clarence	2	Lower Hunter	1
Griffith	2	Newcastle	1
Manly	2	Shoalhaven	1
Monaro	2	The Hills	1
North Shore	2	Wagga Wagga	1
Rosehill	2	Waratah	1
Albury	1		

Source: Derived from the Requests Spreadsheet, 22 February 2002 to 21 February 2004.

10.3.3. Information provided to magistrates in warrant applications and execution reports

As part of our observational research, we examined 21 drug detection warrants, 14 warrant applications and 7 reports on the execution of drug detection warrants. While this is far from a representative or random sample of these documents, we provide a brief description of the nature of these documents below.

10.3.3.1. Warrant execution area

Warrants and applications for warrants must describe the area in which the warrant may be executed. Many of the drug detection warrants and applications described an area bounded by a number of streets in a particular CBD or suburb. Maps were also sometimes attached setting out the area where it was proposed to deploy the drug detection dog. Some warrants specifically excluded or included various places or premises in the description of the warrant execution area. For example:

*Including *** oval where the *** markets are conducted. Excluding all other shops, offices, court house and government buildings.*³³⁹

**** Railway, concourse, i.e. the whole area of the level which includes where tickets are sold and entry to trains obtained and shops operated from. It includes the whole area on that level but does not include the pedestrian ramp leading to *** street mall, or the internal floor space of the shops.*³⁴⁰

*This excludes places of worship, private premises, retail shops and entertainment venues.*³⁴¹

*The areas to be searched include two bitumen footpaths and exclude the inside of any premises. The premises excluded in this application do not include licensed premises.*³⁴²

*including streets, laneways, carparks, shopping precincts and all public places bound by [details of streets outlining area].*³⁴³

Other warrants and applications were more broadly described, for example:

*The *** area, within 500 metre radius of the *** street entrance of the *** railway station as defined within the circle of the attached map.*³⁴⁴

Another warrant described an area within 1km of a particular railway station.³⁴⁵ The NSW Council for Civil Liberties noted a number of warrants that were to be executed within a 1000 metre radius of Kings Cross Railway Station.³⁴⁶ Another warrant applied to:

*all train services operating between *** and *** on the *** rail line including station platforms on that line.*³⁴⁷

The Council found that some of the warrants it inspected covered wide areas and submitted:

*police are using the warrants to cover vast areas. In Newtown, police request and are granted warrants for the entirety of King Street and 100m either side of King Street. [Newtown Local Court, Warrant 71/2004 (15/5/2004)]. In Marrickville, police request and are granted warrants covering five whole suburbs. [Newtown Local Court, warrant 67/2004 (13/5/2004)] ... Police are clearly misusing these warrants to cast their net over huge expanses of Sydney.*³⁴⁸

10.3.3.2. Covert operations

None of the warrants or warrant applications we obtained stated that the general drug detection was to be carried

out as part of a covert operation. Two warrants were incomplete³⁴⁹ in this section of the warrant form, leaving both covert and not covert options open (normally the authorised justice crosses out one option). However, both of these operations were conducted by police in full uniform.

As we discuss below (at paragraph 10.6), two operations we observed were substantially conducted by police in plain clothes, however neither of these operations were authorised by warrant.

10.3.3.3. Intelligence provided in warrant application

The application for a drug detection warrant requires that the police officer applying for the warrant complete a section which begins:

*I have reasonable grounds for believing the following matters which justify this application for the issue of a warrant.*³⁵⁰

It is common for police to provide intelligence information in this section and/or to attach intelligence information as an annexure to the application. Most applications documented evidence of a reasonable intelligence basis justifying the use of the drug detection dogs in the area specified. In some applications the intelligence basis for the use of the drug detection dogs was more scant. However, it is possible that additional information was obtained by the authorised justice at the time of the application, for example by questioning the applicant. It may also be that some police were reluctant to provide detailed information in a document that would be available for public inspection. Although, as we discuss below (at paragraph 10.3.4), public inspection can be restricted if police take appropriate actions.

The detail and extent of the information provided varied among the applications we inspected. For example, one warrant application³⁵¹ provided two and a half pages of intelligence in support of the application including basic details of 40 drug detections over the previous 14 months (15 cannabis, 2 ecstasy, 1 'speed', 1 buprenorphine, 3 heroin, and 19 unstated)³⁵² and 21 drug-related intelligence reports with information about suspected drug use and drug dealing over the previous 10 months. This application also stated that 'in excess of 700 intelligence reports had been submitted [in the previous 11 months] for the subject area relating to drug activity'.

Another application relied on results from other drug detection dog operations in the region and in the specific area of the warrant, which had occurred over the previous 12 months.³⁵³ The information detailed drug finds totalling 116.6 grams of cannabis and 51 grams of powder/tablet drugs – although it was not clear that all of these drugs were located within the area proposed for the drug detection warrant. The application also detailed the modis operandi of nightclub patrons believed to be using and/or selling prohibited drugs in the area.

Another application provided a summary of drug-related activity in the area and attached a list of names and event numbers from drug detection dog operations.³⁵⁴ The people on the list ranged from those with drug supply convictions through to persons with minor non-drug related convictions and people with no criminal history. The list immediately followed this statement in the application:

*The following drug dealers frequent the CBD of *** for the purpose of dealing illicit drugs: (See also attached forms)*

The statement implies that the persons in the list are 'drug dealers', although this seemed unlikely in relation to at least some of the persons named.

One application³⁵⁵ named 12 individuals identified by police and the general public 'as possibly being involved in illicit drug supply/use' in the area described in the warrant application. This application also stated:

*There is information that the CityRail service from *** to *** is being used by these persons and others to travel to obtain drugs. Information on hand indicates that the drugs which may be present include cannabis, amphetamines and methadone.*³⁵⁶

The application also listed six offences in the *Drug Misuse and Trafficking Act 1985* 'believed to be committed within the area of the warrant.'

One warrant application for use of the drug detection dogs at a community event, provided limited detail about the intelligence basis for the application:

*This event is part of the *** Festival which attracts persons from outside the *** area. A summary of drug detections during the Festival 2002 has been prepared.*³⁵⁷

Although we were not provided with the summary of drug detections, the Results Spreadsheet shows that over three evenings at the 2002 festival, a total of 10.9 grams of cannabis and 0.9 grams of meth/amphetamine was found. It is possible that additional prohibited drugs were located by police without the assistance of the drug detection dogs.

This can be contrasted with another warrant application for a dance party which also relied on the results from a

previous operation three years earlier at a similar, though smaller, event at the same location.³⁵⁸ The application noted that at the previous event police had charged 47 people for drug possession and one person for supply. The application also noted the commonly understood association between dance parties and drug use.

The least intelligence was detailed in a warrant application for a street operation. It stated only:

*Information and reported incidents indicate that [the warrant area] is being used for the supply of prohibited drugs. Information from members of the public indicate that such activity occurs on a daily basis and occurs from the morning to late at night on each day.*³⁵⁹

Where detailed information was provided it was usually relatively recent and dated no further back than the previous 12 months.

All but one of the applications we inspected provided some information about drug supply. The information provided varied, sometimes providing details of suspected suppliers, community information provided about supply from particular locations and/or supply charges, and at other times simply noting that drug supply occurred in the area. However, there is no requirement in the Drug Dogs Act that drug supply (as opposed to drug use or possession) activity be occurring in the area designated for execution of the drug detection warrant. The targeting of drug supply has been emphasised by police and in NSW Parliament but is not a requirement of the Drug Dogs Act.

10.3.3.4. Execution of warrant report

We examined six execution reports that were returned to the authorised justice following the execution of a drug detection warrant. The reports were brief and described the time during which the warrant was executed and the results. The results were described as follows:

- Nil drugs located on persons in the area with use of warrant³⁶⁰
- 7.11.03 Cannabis 1.4gms 10.3gms, 0.3gms amphetamine
8.10.03 Cannabis 1.4gms + implement³⁶¹
- 57 persons searched resulting in 25 drug arrests, 37 drug charges/cannabis cautions
2 instances drugs abandoned on the street.
Total weight of all drugs seized by police:
 - Cannabis 53.13 grams
 - MDMA (Ecstasy) 4.3 grams (10 tablets)
 - Amphetamine 5.5 grams
 - Heroin 1.1 grams³⁶²
- 8 Drug Detections
7 cannabis detections weights 0.4g → 7.3g
1 Heroin charge 8 foils 2.4 grams³⁶³
- Intelligence Reports: 33
Events: 25
Move Alongs: 1
Knife Searches: 5
Drug Dog Searches: 39
Firearm Dog Searches: 6
Drug Detections: 3
Charges (CHA/FCAN/CAN/ETC): 7
RINS/TINS/PINS: 10³⁶⁴
- As requested the results of the warrant are as follows:
 - A total of 37 drug scent detections.
 - 25 actual detections of drugs including Ecstasy, Speed and Cannabis
 - 12 persons searched without locating drugs, however admitted either carrying or consuming up to and including 24hrs.
 - 11 charges completed at this stage. More to be completed when officers return to duty as FCANS utilised when circumstances allow. Juvenile cautions also to be arranged.
 - Offences involved both possession and supply of prohibited drug.
 - All drugs recovered in possession of [name of LAC] exhibit officer. Destructions orders completed were (sic) possible.³⁶⁵

The last report in the above list also noted that there were still events and charges to be completed when officers returned to work and that with additional resources police believed that more detections would have been made.

We note also that section 21 of the *Search Warrants Act* states:

- (2) *A report with respect to a search warrant shall be made within 10 days after the execution of the warrant or the expiry of the warrant, whichever first occurs.*

Because charges are sometimes withdrawn (particularly in relation to drug supply) and drug amounts often vary when weighed and analysed by the Division of Analytical Laboratories, the information that the authorised justice receives about the execution of warrants may not always be completely accurate or up-to-date.

We note that the NSW Council for Civil Liberties inspected 43 warrants issued in 2004 and found that often execution reports were not available for inspection. The Council found that of those warrants which were executed more than ten days prior to the inspection, 28% (11 of 39) were missing. The Council was of the view that the most likely reason for this is that police have not forwarded the execution report even though they are required to do so within 10 days of the execution of the warrant.³⁶⁶ Our informal discussions with two registrars from Local Courts have confirmed that it is not uncommon for police to fail to provide execution reports as required.

10.3.4. Public inspection of warrant applications and execution reports

Members of the public are able to inspect applications for drug detection warrants, as well as the reports about the execution of these warrants. This is provided for in clause 11 of the Drug Dogs Regulation:

Keeping and inspection of warrants

- (1) *The following documents must be kept in relation to each warrant that is issued:*
 - (a) *the application for the warrant,*
 - (b) *the report on the execution of the warrant.*
- (2) *The documents must be kept at a Local Court for at least 6 years from the date on which the warrant was issued, but may be destroyed after that period has expired.*
- (3) *During the hours that the Local Court is open to the public, the documents may be inspected by any person.*

This public inspection process provides a safeguard on the use of the drug detection dogs by allowing members of the public to assure themselves that police had authority to conduct particular police operations using a drug detection dog. The occupier of premises subject to a search warrant issued under the *Search Warrants Act* has a right to inspect the search warrant. Although no such right applies with respect to drug detection warrants, the ability to inspect documents as provided in clause 11 provides a similar safeguard.

10.3.4.1. Appropriateness of information for public inspection

The Drug Dogs Regulation provides that warrant applications and execution reports may be inspected by any member of the public. While we support the public availability of such information, it is important that this does not occur at the expense of individual privacy, the viability of police investigations and the safety of police officers.

In order to suppress information contained in a warrant application or execution report, police can make an application to an authorised justice at any time pursuant to clause 10 of the *Search Warrants Regulation 1999*, which provides:

- (1) *An authorised justice may at any time issue a certificate to the effect that the justice is satisfied that:*
 - a. *a document or part of a document referred to in clause 9³⁶⁷ contains matter:*
 - i. *that could disclose a person's identity, and*
 - ii. *that, if disclosed, is likely to jeopardise that or any other person's safety, or*
 - b. *a document or part of a document referred to in clause 9 contains matter that, if disclosed, may seriously compromise the investigation of any matter.*
- (2) *The document or part of the document to which the certificate relates is not to be made available for inspection under clause 9(3).*
- (3) *The certificate is to be kept with the document to which it relates.*

- (4) *An authorised justice ...may revoke the certificate if satisfied ...that disclosure of the matter to which it relates is no longer likely to jeopardise any person's safety or seriously compromise the investigation of any matter.*³⁶⁸

The granting of a certificate pursuant to clause 10 effectively suppresses the sensitive information. The certificate is attached to the information thereafter ensuring that it is not accessed by any person who would ordinarily have the right to see the warrant application. An authorised justice could also initiate a clause 10 certificate if satisfied that the conditions were met. It is unclear whether the mere publication of a person's name and other details in connection with an indication by a drug detection dog could be considered to 'jeopardise any person's safety' and thus whether clause 10 provides an adequate solution to the privacy issues involved in the publication of these names.

The majority of warrant applications we inspected provided information with varying degrees of detail but did not refer to any information capable of identifying individuals or their property. However, some warrant applications presented information that was of concern.

For example, four warrant applications for different locations patrolled during one operation, provided information detailing names, locations, event numbers and drug results for persons indicated during previous drug detection dog operations. This information was headed 'Information not for public viewing'.³⁶⁹ We spoke to the relevant Deputy Registrar who confirmed that the information was part of the warrant application and that without an appropriate clause 10 certificate he would not be able to withhold the information from any member of the public, notwithstanding the heading on the page.

The Deputy Registrar in this matter also informed us that an execution report had been submitted for the operation and that it listed COPS event numbers and names of 17 people indicated by the dogs, including 4 people on whom drugs were located.³⁷⁰ This information was available for public inspection.

Another application listed the names of 12 suspected drug suppliers 'with lengthy criminal histories' who were 'well known to' local police.³⁷¹ A further application listed event and information report numbers, in some cases together with registration numbers and descriptions for vehicles connected with drug offences and, in one case, together with the name of a suspected heroin dealer.³⁷²

In addition to our observational research, the NSW Council for Civil Liberties provided details for a number of applications in its submission to our discussion paper. One of these applications contained the following information:

Since February 2003 Manly detectives have conducted a covert drug investigation targeting the supply of ecstasy within one licensed premises, [name of bar], located in North Steyne. During the operation, undercover police were supplied ecstasy on 6 separate occasions from different patrons of that club.

*During subsequent investigations that involved the use of telephone intercepts, police ascertained that a number of these offenders were frequently attending various licensed premises within the Manly area on any one night. On a number of occasions arrangement[s] were made by these persons to meet prospective 'customers' in a number of public areas away from the licensed premises, these included Manly Wharf and public toilets on Manly beachfront.*³⁷³

It is unclear whether the police investigation referred to in the above application was ongoing and what, if any, difficulties the public availability of information about telephone intercepts may have posed.

Our review also uncovered another warrant application, available for public scrutiny, which contained a detailed account of a controlled operation conducted by police including names of suspected drug suppliers and their modis operandi, the mobile phone number of a suspected heroin supplier, names of people who gave police information about drug dealing, and the assumed names of 17 law enforcement officers engaged in controlled activities.

We were concerned that such highly sensitive material was available on the public record and quickly brought the matter to the attention of the relevant local area commander.³⁷⁴ We asked the commander to advise us of any actions taken in relation to the public availability of this information.

We have since been advised by the commander that a clause 10 suppression order was successfully sought and that the information is no longer available for public scrutiny.³⁷⁵ The Commander advised us that he had reviewed both the drug detection dogs and search warrants legislation and had written to the relevant Regional Commander making recommendations that:

1. *All police officers be made aware that sensitive and or confidential information contained in drug detection dog and search warrant applications may be accessed by any member of the general public (drug detection warrants) or the occupier or his or her representative (search warrants), and*
2. *All police officers ensure that any warrant applications containing sensitive or confidential information be accompanied by an application for a certificate to suppress the information.*

As a result of our inquiries into this matter an article was published in the *Police Weekly*.³⁷⁶ The article explains the process for applying a clause 10 suppression certificate and warns police of the risks of failing to obtain a certificate when sensitive information is included in applications.

We note that a balance needs to be struck between providing recent, relevant and specific intelligence to enable an authorised justice to thoroughly assess the intelligence on the one hand, and ensuring that the privacy of an individual on the other hand. One relatively easy method in which police can avoid using a person's name in a warrant application is to refer to the unique CNI (Central Names Index) number of any person mentioned in the warrant.

Recommendation

- Information about the public inspection provisions in the Drug Dogs Regulation, together with information about 'Clause 10 certificates', be forwarded to any officer requesting use of a drug detection dog for general drug detection as soon as possible after the request is made known to the Dog Unit.

NSW Police supports this recommendation and advised that they are:

*currently considering the most appropriate manner to provide information on clause 10 certificates to police. One option that is being considered is an information sheet that will be included with the template form used to apply for a drug detection dog warrant form, available from the NSW Police Intranet. Some form of statewide communication would also be sent out notifying police of the location of information on clause 10 certificates.*³⁷⁷

10.3.5. Warrant documents research project

As part of our review we inquired into how clause 11 'Keeping and inspection of warrant' operated in practice: that is, whether a member of the public could simply turn up to a Local Court and ask to see the warrant documents for a particular police operation, and have this request satisfied. To do this we established a small research project. The method and results of this research are set out below.

10.3.5.1. Method

The research was designed to provide a snapshot of whether and how easily members of the public were able to inspect the 'warrant documents' (that is the execution report and application for warrant) set out in clause 11 of the Drug Dogs Regulation.

A team of six people from the Ombudsman's office participated in the research project.

Each participant was asked to go to a specified Local Court and request to see a copy of the warrant documents for a particular drug detection dog operation. The six local courts selected for the study were chosen according to the location of the most recent drug detection dog operations at the time of the research. The warrants were issued at courts in the inner city of Sydney, inner-western Sydney, northern Sydney and western Sydney.

Each participant was given a copy of the relevant section of the Drug Dogs Act, the Drug Dogs Regulation, an instruction sheet, and an assessment form to be completed upon returning to the office. Participants were instructed to present at the Local Court as ordinary members of the public and not to identify themselves as employees of the NSW Ombudsman.

On arrival at the court, if the court officer at the front desk was unaware that a member of the public was entitled to inspect the warrant documents, or if the officer was reluctant to show a copy of the documents to the participant, participants were advised to show the court officer a copy of the Drug Dogs Regulation. Participants were advised to follow any advice given by Local Court staff and to persist in their attempts to inspect the documents for a reasonable period.

10.3.5.2. Findings

We found that when first approached none of the six Local Court counter staff encountered by our participants were aware that any person could inspect warrant documents as provided by clause 11 of the Drug Dogs Regulation. Initial advice from staff at five of six courts was that inspection of the documents was either not permitted or not possible. In these five cases, our participants then showed Local Court staff a copy of the regulation. This resulted in one of the five participants being allowed to inspect the documents.

The other four participants were variously directed to police or other court staff and/or advised that they were not permitted to see the documents. After reasonable efforts to follow the advice provided by Local Court staff and police these four participants ceased their attempts at inspecting the warrants.

Below are some descriptions of the experiences of three of our participants.

Inner-Sydney Local Court

The participant ('P') approached the inquiries clerk and requested to see a copy of the warrant documents for a drug detection dog operation which occurred in September 2003. The clerk explained that they would not keep copies of the warrant documents at the court, but offered the phone number of the 'Police Ombudsman' to call. Upon showing a copy of the regulations, the clerk explained that P should speak with the registrar, but that he was currently busy with appointments. P agreed to return in the next couple of days.

P returned to the court a couple of days later and spoke with a different inquiries clerk, who was also unaware that a member of the public was entitled to inspect the warrant documents. Upon showing the regulations, the clerk discussed the matter with the Search Warrant Officer. The clerk returned after approximately 10 minutes and asked if the address where the operation took place was known. It was explained that the address was unknown. P was advised that this information was needed in order to locate the warrant. P was also asked if they were involved in the operation. When told they were merely interested in seeing the documents, the clerk said that they were not able to see the documents as they had no specific interest in the matter. This was based upon advice given to the clerk from the Search Warrant Officer.

Inner-western Sydney Local Court

The Participant ('P') approached the front desk and requested to see a copy of the warrant documents for a drug detection dog operation which occurred in November 2003. P spoke with the registrar who explained that the regulations did not allow a member of the public to inspect the warrant documents if they weren't involved (he quoted from the search warrant regulations). P then showed the registrar a copy of the Drug Dogs Regulation and was subsequently allowed to inspect the warrant. After a short wait, the registrar brought out the documents for P to inspect at the counter.

Western-Sydney Local Court

The Participant ('P') approached the front desk and requested to see a copy of the warrant documents for a drug detection dog operation which occurred in November 2003. P spoke with the counter officer who was not aware that a member of the public could see the warrant documents. She asked another, more experienced, counter officer for assistance. This officer explained that warrants can be shown to members of the public but only if the person could prove that s/he was the subject of the warrant and/or lived at the address in question.

However, upon seeing the Drug Dogs Regulation, both agreed that P had a right to inspect the warrant documents but felt they required more information before they were able to show them.

The staff suggested that P visit the police station to find out:

- if there was a warrant
- where it was issued from – just because the police came from a particular suburb, didn't necessarily mean that the warrant had been issued at the corresponding local court
- the date the warrant was issued
- whether the warrant was issued against a particular name/person, and
- if there was a reference number.

P went to the police station as advised and was told, somewhat brusquely, that he was not entitled to the information he sought. Upon showing the police officer a copy of the regulations, the police officer suggested that P call the 'Information Unit' and proceeded to give P the phone number.

P then, using a public telephone box, called the number provided only to find that he had in fact called Police Insurance Services. P explained the information that he required and was told that despite the fact he had come through to the wrong place they may be able to help if P could provide them with the event number. P explained that he did not have the event number but could give them details as to where and when the operation took place. P was then advised to contact the Infringement Processing Bureau (IPB) in Maitland since 'they handle warrants'. P checked that he had understood correctly and the advice was confirmed.

P then called the IPB and was informed that this inquiry had nothing to do with them and that he should take the inquiry back to the Local Court. The exercise ended at this stage.

10.3.5.3. Inspection of sensitive information

At another Local Court, inspection of a range of documents was eventually permitted. Along with the application for the warrant and report on the execution of the warrant, our researcher was provided with two pages of what appeared to be material supporting the warrant application. It listed operations at a particular location over a seven-month period and detailed dates, offences and surnames in relation to arrests made.

Although our researcher was not permitted to take copies or notes in relation to the documents, we have some concerns about the nature of the material that was available for inspection in this case.

10.3.6. Discussion

As a result of this research and our examination of documents for our observational research, we were concerned that the safeguard provided by clause 11 of the Drug Dogs Regulation was not operating effectively. We wrote to the Local Courts section of the Attorney General's Department briefly explaining the research we had conducted and asking for comment on our findings.

We received advice from the Assistant Director General and Acting Director, Local Courts that as a result of the issues we had raised an internal bulletin had been issued to Local Court staff on 18 April 2005. The bulletin is set out below.

Drug Detection Dog Warrant Applications

The Police Powers (Drug Detection Dog) Act 2001 includes provisions for police who have obtained a warrant to use drug detection dogs in any public place which 'may include persons committing drug offences'.

The Regulations of the Act provide safeguards on police use by allowing for members of the public to inspect search warrant documents.

The provisions of the Regulation (Part 3, clause 11) states: [quotes clause 11 of the Drug Dogs Regulation].

*In light of these regulations, Registry staff should remind police applicants for drug detection dog warrants of the opportunity for members of the public to inspect the applications. Accordingly, applicants should be encouraged not to include **unnecessary** personal information in these warrant applications.³⁷⁸ [Original emphasis.]*

This bulletin may improve public access to warrant documents and may also alert police to the possibility of public scrutiny of information they provide in support of warrant applications and in any execution reports.

The provisions allowing public inspection of warrant documents at Local Courts have been used by at least one advocacy organisation to scrutinise police conduct.³⁷⁹ We are also aware that university students have inspected the warrant documents as part of research projects. Given that such inspections appear to be rare (as evidenced by Local Court staff's lack of familiarity with the provisions) they do not seem to place a great burden on Local Courts. For this reason, we believe that the provisions of clause 11 should remain.

It is likely that many persons subject to powers enforced according to the authority of drug detection warrants would be unaware of their ability to inspect the warrant documents. Inspection of warrant documents at Local Courts may also be a time consuming process for members of the public and, on occasion, court staff. In some situations, it may be possible to circumvent the need for inspection of these documents at court if members of the public could see some documentation authorising the exercise of police powers 'on-the-spot'.

In this context, it may be beneficial for drug detection dog handlers, the supervisor of an operation, or other appropriate and accessible police, to carry a copy of the drug detection warrant to show any member of the public who requests inspection of the warrant, during an operation. We note that section 16 of the *Search Warrants Act* applied to warrants issued under the *Police Powers (Drug Detection in Border Areas Trial) Act 2003*, an Act which provided for the stopping and screening by drug detection dogs, of vehicles in specified areas of southern and south-western NSW. Police conducting these operations were required to allow persons to inspect the warrant during operations. During our review of the implementation of this trial legislation police reported no difficulties with these on-the-spot inspection provisions.³⁸⁰

In a similar vein, the NSW Council for Civil Liberties commented in their submission:

Police do not carry a copy of the warrant with them during an operation. This makes it impossible for citizens to know if they are being lawfully stopped by police during a drug detection dog operation outside the areas prescribed by the Act and Regulations.³⁸¹

The Council recommended that police carry a copy of the warrant during operations and show it to every person searched.

We agree that it is important to provide assurance of the legality of police actions to those members of the public who seek it. Further, allowing inspection of the drug detection dog warrant application and warrant execution report provides the public with an opportunity to assess the value of the operations aimed at detecting drug offences and this may in turn instil public confidence in the conduct of drug detection dog operations.

In our view any person asking to view a copy of the drug detection warrant during an operation should be provided with an opportunity to inspect the warrant and advised of the public inspection provisions contained in Clause 11 of the Drug Dogs Regulation.

Recommendations

9. Parliament consider amending the Drug Dogs Act to provide for the inspection of the drug detection warrant at any time during an operation.
10. NSW Police provide information regarding the public inspection provision in the Drug Dogs Regulation to any person who requests to inspect the drug detection warrant during an operation.

NSW Police indicated that they support both of these recommendations.³⁸²

10.4. Audit of police intelligence

In order to assess the intelligence information that was provided to support operations involving drug detection dogs, we audited the written requests held at the Dog Unit.

10.4.1. Methodology

The Requests Spreadsheet records all requests for the use of drug detection dogs. The spreadsheet includes information about requests for the use of dogs for general drug detection under the Drug Dogs Act as well as other purposes, such as the execution of search warrants on private premises, and the screening of motor vehicles.

Because we were only examining the intelligence information in relation to operations that were conducted under the Drug Dogs Act, we excluded requests that: were declined; related to search warrants on private premises; or related to the screening of motor vehicles.

This left approximately 610 requests for us to examine. We randomly selected 61, or 10% of relevant requests, to analyse more closely. Of the 61 requests we audited, 28 involved operations where an authorised officer granted a drug detection warrant or closure order (see paragraph 10.4.2.2 below). The remaining 33 involved operations where a drug detection warrant was not required.

Before conducting the audit we decided upon three criteria to assess the intelligence information: recency, relevance and specificity.

10.4.2. Types of intelligence information contained in written requests held at the Dog Unit

Intelligence information may take many forms. It may include strong evidence of actual drug supply offences that have recently been detected in a particular location, or it may be limited to generalised reports of suspected drug activity.

We encountered the following types of intelligence information in the 61 requests audited.

10.4.2.1. Warrant applications containing intelligence information presented to the authorised officer

The information contained in drug detection warrants was discussed above (at paragraph 10.3.3). Approximately 44% (27 of 61) of requests that we audited involved a drug detection warrant. The *Drug Detection Dog – Preplanned job request form* contains the following instruction to police:

*If seeking a warrant please attach a copy of the information provided to the justice.*³⁸³

We noted that only 15% (4 of 27) requests complied with this requirement. In most cases a copy of the warrant, which does not contain any intelligence information, was attached to the request.

10.4.2.2. Closure order of licensed premises

Closure orders are granted where an application is made to an authorised justice that a risk to public health is occurring or is likely to occur in licensed premises. Drug detection dogs may be used when executing a closure order that relates to drug use on the premises. One request we audited related to a closure order that was issued by an authorised justice under Part 6 of the *Liquor Act 1982*. The only information contained in the request was a copy of the closure order.

10.4.2.3. COPS Information Reports and COPS event narratives

COPS Information Reports (IRs) contain general and specific intelligence information on a particular person and/or location. Usually the source of the information in an IR is a police officer or a member of the public.

Approximately 46% (28 of 61) of requests we audited made some reference to unique IR numbers. However, only 18% (11 of 61) of requests contained complete printouts of information contained in the IR. In circumstances where only the unique IR number was provided, it was not clear if the Dog Unit had reviewed the IR on the COPS system to determine the relevance of the information contained in the IR.

COPS event narratives contain a report of events of particular incidents that police attended. As with IRs, event narratives have a unique number.

Approximately 23% (14 of 61) of requests we audited made some reference to unique event narrative numbers. However, only 7% (4 of 61) of requests contained complete printouts of the information contained in the event narrative. As with IRs, it was unclear if the Dog Unit had reviewed the event narrative on the COPS system to ascertain the relevance of the information contained in the event narrative.

We examined a number of information reports and event narratives, which were referred to by number only in the request. We noted the following practices caused us some concern:

- inclusion of searches by police where no drugs were located
- inclusion of searches resulting from drug detection dog indications where no drugs were found and describing these as 'residual finds' or 'residual detections' which may be misleading given that the words 'find' and 'detect' ordinarily denote discovery of the object sought and the word 'residual' ordinarily denotes something left over or remaining
- inclusion of non-drug related incidents where the connection to drug-related activity was not apparent
- inclusion of incidents which occurred many months, or in some cases, years earlier, and
- inclusion of incidents where police activity amounted to stopping and talking to persons who had attended a methadone clinic.

10.4.2.4. COPS Charge numbers

COPS Charge numbers refer to actual charges laid by police. Two requests referred to unique charge numbers. As with IRs and event narratives, it was unclear whether the Dog Unit had reviewed the nature of the charge on the COPS system.

10.4.2.5. Summarised intelligence information

The *Drug Detection Dog – Preplanned job request form* has a section titled 'Summary of Intelligence'. Approximately 23% (14 of 61) of requests we audited contained a summary of the intelligence being relied on. However, it was usual practice to leave the section blank where either a copy of the warrant application, the warrant or operational orders were attached to the request.

10.4.2.6. Mention of suspects or persons of interest being targeted during the operation

Approximately 21% (13 of 61) requests we audited made some reference to suspects or persons who were to be targeted during the operation. Two requests contained detailed profiles of the persons being targeted, which included photographs, criminal histories, operating methods and other information relevant to the suspect such as the type of drugs that the person may be dealing.

10.4.2.7. Maps detailing drug offence ‘hot spots’ and areas where drug detection dogs have been successful in the past

Two requests we audited contained comprehensive maps detailing locations known as ‘drug detection hot spots’. Both of the maps contained information about recent detections (previous three months) and the type of drugs being detected. One of the maps also contained information about times at which the detections took place.

10.4.2.8. Operational Orders for high visibility policing (HVP) operations utilising drug detection dogs

HVP operations are generally carried out according to a plan that has been developed in advance of the operation. Operational Orders usually contain practical information required for the execution of the operation. Some operational orders contain specific information regarding targets (persons and/or locations) whilst others may contain more general aims for the operation.

Approximately 20% (12 of 61) of the requests we audited contained Operational Orders.

10.4.3. Requests involving drug detection warrants (28 requests)

Only four requests involving drug detection warrants contained a copy of the warrant application (containing the intelligence information presented to the authorised officer) notwithstanding the instruction requiring a copy of the material provided to the authorised officer be attached to the request. Thus we were not in a position to thoroughly assess these requests given that the intelligence information relied upon was not contained in the request.

However, in the four requests where a copy of the warrant application was included, we noted a variety of generally convincing intelligence information. For example, a request involving an HVP operation targeting licensed premises, railway stations and surrounding public areas contained a drug detection warrant application that referred to:

- recent information reports referring to drug purchasing, drug supply and drug use
- a recent controlled operation where police operatives purchased illicit drugs
- results of actual drug detections as a result of recent drug detection dog operations, and
- operational orders for the operation.³⁸⁴

10.4.4. Requests involving operations where a drug detection warrant was not required (33 requests)

10.4.4.1. Intelligence information provided in request justified the deployment of the drug detection dog

Approximately 48% (16 of 33) of requests not involving drug detection warrants contained credible and convincing intelligence information on which to base the deployment of a drug detection dog.

A common characteristic of requests where the intelligence information clearly justified the deployment of a drug detection dog was the inclusion of a variety of recent, specific and clearly relevant intelligence information.

For example, one request contained the following:

Summary of Intelligence:

Intelligence suggests that the [name of railway station] is a known departure point for persons frequenting [name of shopping plaza] for the purpose of purchasing illicit drugs, namely heroin. Supply also from [name of hotel], [address of hotel].³⁸⁵

The request listed four unique information report numbers. When we looked up the reports on the COPS system we found that they contained recent intelligence information on supply-related drug activity at the specified location and surrounds. The information clearly justified the deployment of the drug detection dog, although this was not apparent on the face of the information provided on the request form.

Another request involving a local railway station and surrounding licensed premises contained a variety of information reports, event narratives and charge numbers with a short description of their contents.³⁸⁶ The justification for deploying a drug detection dog was clear from the small amount of recent, relevant and specific intelligence information provided.

Similarly, a request to carry out an HVP operation at an inner-city railway station contained four information reports related to drug purchasing, drug selling and drug use in and around the station.³⁸⁷ It became clear during the audit

that a combination of intelligence information pertaining to the sale, purchase and use of drugs was sufficient to justify the deployment of a drug detection dog notwithstanding that some of the information reports appeared at first blush to be unrelated to drug activity. For example, information reports stating that a known drug user was seen in a public place, on its own, may not be a sufficient basis to justify the deployment of a drug detection dog. However, additional intelligence information regarding drug affected persons and/or suspicious transactions taking place add weight to the intelligence basis for the operation.

10.4.4.2. Little or no intelligence information in request

Approximately 27% (9 of 33) of requests not involving drug detection warrants contained little or no discernable intelligence information. These requests involved operations in licensed premises and/or railway stations. It is worth noting that section 7 of the Drug Dogs Act authorises operations in licensed premises and railway stations without a warrant and thus the operations were entirely lawful. However, we found no evidence that the NSW Police policy to base operations on intelligence had been followed in these operations.

Where intelligence information was provided, it was usually generalised information in summary form. For example, one request to carry out an operation at a local railway station and surrounding licensed premises only contained the following information:

Summary of Intelligence:

*Previous operations at these locations have been successful in the detection of offences, including "Supply Prohibited Drugs". Intelligence suggests that prohibited drugs, including cannabis and amphetamines, are used and supplied from the locations [listed in the request]. The use of a trained drug detection dog will assist police in the enforcement of legislation and the gathering of intelligence relating to supply of prohibited drugs.*³⁸⁸

Other requests contained generalised intelligence information without providing any details or explanation of the basis of the intelligence. For example, one request solely contained the following:

Summary of intelligence:

*[Name of railway station] – Large number of drug dependent people getting off the train after frequenting [nearby suburbs]. Persons frequenting [name of suburb] for purpose of committing property and drug offences.*³⁸⁹

Similarly, another request for an operation at a railway station stated:

Summary of intelligence:

*It has been identified that numerous persons travel by rail to attend the [name of location] CBD. Many of these persons have criminal histories and congregate around [name of location] Rail Station before attending the nearby pawnshop and methadone clinic. This day has been chosen as it is pension day and a large number of persons in the target group could be expected to attend this area.*³⁹⁰

In our view it would have been preferable to provide the intelligence basis for the summaries including information reports, event narratives or charges in which recent drug detections were documented as is required by the NSW Police policy. The policy provides a sensible safeguard to maximise efficient and fair use of the dogs. Without this information it is not clear how the Dog Unit Commander could make an assessment of the merits of each application.

We note that the section under 'Summary of Intelligence' requires a listing of information reports and event narrative reference numbers and that this requirement was not adhered to in the above examples. It appears that no independent analysis of the intelligence basis of the request was carried out in the above examples, which led us to characterise them as containing little or no verifiable intelligence information.

10.4.4.3. Requests based on 'borderline' intelligence information

Approximately 24% (8 of 33) of requests not involving drug detection warrants contained 'borderline' intelligence information on which to base the deployment of a drug detection dog.

We characterised borderline requests as those which included intelligence information, yet the information provided did not appear to be recent, relevant and specific to the location/s of the proposed operation. In these circumstances it was not clear how the intelligence information supported the request for deployment of a drug detection dog.

For example, one request to carry out an operation at a large concert contained five COPS information reports and event narratives specific to the location at which the operation was to take place.³⁹¹ However, the most recent information was over three years old and therefore did not meet the criteria of being recent.

Another request to carry out an HVP operation at railway stations and a specified rail line contained a list of 23 information report numbers from the previous six months.³⁹² The list of information report numbers was supplied to the

Dog Unit after they requested further information. The list of numbers contained the following notation:

*These reports are since August 2002, and are any information reports with railway station in the titles or drug users committing transport offences.*³⁹³

We checked the reports on COPS and found that three of the numbers were duplicates. Of the remaining 20 reports, seven appeared to be non-drug related (including two regarding failure to pay taxi fares), nine referred to drug users frequenting public places (such as town centres, shopping centres, railway stations), one referred to drug users purchasing over-the-counter medication at a pharmacy, and three made reference to drug dealing. Of the three reports that referred to drug dealing, none involved the location of the operation.

A further request to carry out an operation at railway stations within a local area command included results from previous drug detection dog operations.³⁹⁴ The request referred to the location of five small amounts of cannabis of which three were dealt with by way of cannabis caution. The request also referred to 23 'residual finds' which NSW Police categorise as occasions where the drug detection dog gave an indication but no drugs were located.³⁹⁵ Thus 82% (23 of 28) of the incidents referred to in the request involved situations where no drugs were actually found which led us to characterise the request as borderline. Clearly more evidence of drug-related activity or drug offences would have added weight to the request.

10.4.5. Discussion

As noted above (at paragraph 10.4.3), only 14% (4 of 28) of requests involving a drug detection warrant contained the intelligence information provided to the authorised justice and thus we were not able to thoroughly assess the intelligence information provided to authorised officers for all requests involving warrants. In addition to our audit, we inspected a number of drug detection warrant applications during the course of the review and observed that they generally contained sufficient recent, relevant and location specific intelligence information that left little doubt in our minds that the deployment of the drug detection dog was justified.

However, our examination of requests where a drug detection warrant was not required did not evoke a similar level of confidence in the intelligence material relied on to justify the deployment of the drug detection dog.

Of the 33 requests involving operations where a drug detection warrant was not required, just under half contained convincing intelligence information to be confident that the deployment of the drug detection dog was supported. Of the remaining requests, there was some doubt about the sufficiency of the intelligence information where the deployment was based on borderline intelligence information, or significant doubt where the deployment was based on little or no discernable intelligence information.

We also noted that a number of requests did not contain intelligence information related to the supply of prohibited drugs and that on some occasions drug detection dogs appeared to be utilised in high visibility policing operations where there was little or no intelligence information specifically related to drug offences.

Some requests we audited contained notations where the Dog Unit had sent correspondence back to the requesting local area command or unit asking for further intelligence information to be supplied before the request would be approved. It is also possible that additional information was sought by the Dog Unit via telephone and that conversations were not documented on the request form. Further, it is possible that all operations were conducted on a sound intelligence basis. However, the documentation of intelligence information held and assessed by the Dog Unit does not convincingly support this view.

Our audit also revealed inconsistent practice in relation to the requirement that requests contain recent and supply-related intelligence information to justify the deployment of drug detection dogs. This was a little surprising given the fact that most local area commands have intelligence units dedicated to the collection and evaluation of local intelligence information.

We did not systematically audit requests that were declined or cancelled. Some requests were declined because they did not meet legislative requirements (operations at RBT stops or on non-prescribed train routes), or were cancelled due to the unavailability of police officers and/or drug detection dogs. However, we also noted that a small number of requests were declined on the basis that there was little or no intelligence information to support the deployment of a drug detection dog. This included one request to conduct an operation at a festival/concert, which contained numerous information reports and event narratives related to drug use and supply. However, most of the information involved incidents in and around the CBD and none appeared to involve the park where the festival was to take place. Further, most of the COPS event narratives involved 'dog detection, nil find' incidents.³⁹⁶

On the basis of our audit, which found that half of the time there was little intelligence basis to support the deployment of the drug detection dog where no warrant was required, we have formed the view that the Dog Unit may not be the most appropriate unit to make assessments of intelligence information gathered at the local area command level.

In our view it would be preferable for an authorised justice to objectively assess all intelligence information in order to determine whether the deployment of a drug detection dog is justified. We note that the rate of finding drugs after a drug detection dog indication was higher for operations in public places where a warrant was obtained. This appears to suggest that the intelligence basis for operations was stronger when judicial scrutiny of the intelligence material occurred. For example, the rate of finding drugs after a drug detection dog indication at or on licensed premises and public transport, where drug detection warrants are not required, was 23% and 25% respectively. This is to be contrasted to the rate of finding drugs on roads/streets, where drug detection warrants are required, which was 37%.

Requiring objective judicial scrutiny of intelligence material would arguably lead to more consistent police practice in the presentation of intelligence material to justify the deployment of drug detection dogs. It would also ensure every deployment had an appropriate and proper basis. These matters may in turn lead to greater public confidence in the use of drug detection dogs. In addition, the requirement to provide a report after the execution of the warrant will permit ongoing scrutiny and accountability of deployments.

It is worth noting that if all operations were to require a drug detection warrant issued by an authorised justice, the Dog Unit would still have a role in processing requests, determining availability of dogs, prioritising competing requests and collating statistical data.

Requiring all operations be approved by an authorised justice would not involve a significant increase in work for police given that many operations already involve public places which currently require warrants to be obtained. For example, police carrying out operations at licensed premises, railway stations and dance parties routinely obtain warrants for the public areas surrounding these locations due in part to the ambiguity created by the expression 'seeking to enter or leave' locations specified in section 7 of the Drug Dogs Act. (See Chapter 14 'Legal interpretation issues' at paragraph 14.5 for a more detailed discussion of this issue.) In any event, current NSW Police policy requires all requests to be supported by intelligence.

If the Dog Unit is to continue to assess the intelligence information contained in requests for the deployment of drug detection dogs, it is our view that guidelines should be developed which detail the intelligence material necessary to justify the deployment of a drug detection dog. At a minimum the guidelines should require the inclusion of a variety of intelligence material that is recent, relevant and location specific. Where it is not obvious how the material is relevant, the police officer preparing the request should detail the reasons why the material has intelligence value in relation to drug offences.

A separate but related issue is the publication of information to the community about the use of drug detection dogs. The scrutiny of individual reports of executed warrants does not allow the public to gauge the overall use and success of drug detection dogs by NSW Police. One submission we received suggested that NSW Police should publicise the results of police using drug detection dogs in their annual report.³⁹⁷ We note that a similar requirement was contained in the *Police Powers (Drug Detection in Border Areas Trial) Act 2003*.³⁹⁸

In our view, the publication of summary statistics in the NSW Police Annual Report would permit broader and more meaningful scrutiny of the use of drug detection dogs. In particular, the statistics should include: the number of operations conducted including the number of police officers and drug detection dogs involved; geographic location and type of premises involved; the number of people indicated by a drug detection dog; the number of people searched as a result of an indication; the result of each search (drug or no drug located); the quantities of prohibited drugs and other items seized; and the number and nature of charges and other legal processes resulting from operations. We note that the Dog Unit currently collects most of the data referred to above and thus the requirement would not be onerous for NSW Police.

Recommendations

11. Parliament consider amending the Drug Dogs Act requiring police to obtain a drug detection warrant for *all* deployments of drug detection dogs in public places for the purpose of carrying out general drug detection.
12. If the current legislative scheme is maintained, NSW Police develop guidelines regarding intelligence material to be provided to the Dog Unit before the deployment of a drug detection dog in public places is approved. At a minimum, requests to the Dog Unit should include intelligence information that is recent, relevant and location specific.
13. NSW Police publish summary statistics of the use of drug detection dogs in their Annual Report. The following data should be included:
 - number of operations conducted (including number of police officers and drug detection dogs utilised)

- geographic locations and type of premises involved
 - the number of people indicated by a drug detection dog
 - the number of people searched as a result of an indication
 - the result of each search (drug or no drug located)
 - the quantities of prohibited drugs and other items seized, and
 - the nature and number of charges and other legal processes resulting from operations.
14. Parliament consider amending the Drug Dogs Act requiring the publication of summary statistics of the use of drug detection dogs in the NSW Police Annual Report.

NSW Police does not support recommendation 11 and have indicated that they do not believe legislative amendment is necessary to address what is 'essentially an administrative issue'. NSW Police advised that they propose:

to undertake a review of the application process with a view to developing clear guidelines for submission of material and enhanced accountability for decision making.

NSW Police also considers that a requirement for warrants to be sought for all deployments may hinder support to operational police, causing time delays resulting from the need to apply for warrants, where previously there was no delay.

NSW Police notes that one of the aims of the [Drug Dogs] Act is to disrupt drug supply and target drug couriers using public transport to move drugs from one place to another, thus the [Drug Dogs] Act permits Police to use drug dogs without warrant at specified places and on certain rail routes where drugs are most likely to be found and drug courier distribution can be disrupted. Requiring a warrant for drug detection dogs to be used at prescribed places may remove or reduce the deterrent effect for those seeking to commit drug related crime in those prescribed places.³⁹⁹

For the reasons outlined above (at paragraph 10.4.5), it is our view that requiring drug detection warrants for general drug detection is not simply an administrative issue, but a credibility issue. Requiring ongoing independent judicial scrutiny of intelligence information relied upon to justify the deployment of drug detection dogs will enhance accountability, which in turn should result in increased public confidence in the decisions to use dogs at particular locations.

NSW Police cited delay as a factor against requiring drug detection warrants for all operations. It is important to note that the proposed legislative amendment is only in relation to general drug detection. We appreciate that there may be exigent circumstances requiring the urgent deployment of a drug detection dog. For example, a vehicle screen where police have already formed a reasonable suspicion. In such circumstances police are able to rely on the general authority to use a drug detection dog contained in section 4 of the Drug Dogs Act and no legislative amendment is proposed in relation to the general authority.

Given that all operations involving general drug detection require detailed organisation and planning at the local or organisational unit level, including, as a matter of policy, the gathering of intelligence information to support the deployment, obtaining a drug detection warrant could be incorporated into the planning of all operations. The gathered intelligence can be readily put into a warrant application, which we note can be applied for in person, or by facsimile, or telephone where facsimile facilities are not available. The various ways in which appropriately prepared warrant applications can be placed before an authorised justice ensures that any delays are likely to be minimal and can be anticipated beforehand.

NSW Police also suggested that requiring drug detection dog warrants for prescribed places would impact on the deterrent effect of using the dogs. It is somewhat difficult to discern the rationale in this argument. The purpose of the recommended legislative amendment is not to restrict the places in which drug detection dogs may be deployed. Rather, it seeks to ensure that all deployments are supported by intelligence information that has been independently appraised.

NSW Police supports recommendation 12 and has agreed to:

undertake a review of the application process with a view to developing clear guidelines for submission of material and enhanced accountability for decision making.⁴⁰⁰

NSW Police indicated in principle support for recommendation 13, but they do not support the proposed legislative amendment contained in recommendation 14. In response to recommendation 13, NSW Police advised that:

Currently, NSW Police systems do not centrally record the information about the use of drug detection dogs which the Ombudsman has recommended be included in the NSW Police Annual Report. Enhancements would need to be made to corporate systems (for example, COPS) to allow for centralised recording of relevant information. Additional funding would be necessary to carry out those enhancements.

The level of detail about drug dog operations which the Ombudsman has recommended be included in the NSW Police Annual Report, goes beyond what would normally be included in relation to the use of similar police powers. NSW Police currently provides information regarding person searches within its Annual Report. NSW Police will consider what information it can reasonably include within its Annual Report, which would be consistent with current reporting.⁴⁰¹

Whilst we appreciate that NSW Police corporate systems such as COPS do not centrally record information in relation to drug detection dog operations and results, we note that most, if not all of this information is currently recorded by the Dog Unit in the Results Spreadsheet. As noted below (at paragraph 14.3.6), it is our view that the recording of this information is essential for the evaluation of the accuracy and efficacy of drug detection dogs.

In relation to the legislative amendment in recommendation 14, we note that Parliament required similar recording and publication of results of the use of drug detection dogs during trial legislation aimed at detecting the trafficking of drugs across southern borders of NSW.⁴⁰²

10.5. Prescribed transport routes

The Drug Dogs Act confers a power on police to use drug detection dogs for general drug detection without a warrant, on railway stations and platforms and on trains and buses along specified routes. Section 7 provides in part:

(1) *A police officer may, without a warrant, use a dog to carry out general drug detection in relation to the following persons:*

...

(c) *persons on, or seeking to enter or leave, a public passenger vehicle that is travelling on a route prescribed by the regulations, or a station, platform or stopping place on any such route.*

(2) *In this section, public passenger vehicle means a train, light rail vehicle or bus that is used to provide a public passenger service.*

On 10 May 2002, the Drug Dogs Regulation commenced. The regulation sets out the prescribed routes for the purpose of section 7(1) of the Drug Dogs Act. In summary, the train routes include the:

- Bankstown route via Bankstown station (between Liverpool and Central)
- Inner West route via Regents Park station (between Liverpool and Central)
- Eastern Suburbs route (between Bondi Junction and Central)
- Illawarra route (between Bomaderry and Central, but not between Lysaghts station and Port Kembla station)
- Northern route via Strathfield station (between Newcastle and Central)
- South route via Granville station and Circular Quay (between Campbelltown and Central)
- Western route via Strathfield, including the Olympic Park loop (between Penrith and Central), and
- North Shore route (between Berowra station and Sydney Central station and via Chatswood station).

The last of these routes, the North Shore route, was added to the prescribed routes in April 2004 by the *Police Powers (Drug Detection Dogs) Amendment (North Shore Line) Regulation 2004*. This amendment included 'the North Shore line as a prescribed train route on which a police officer may, without warrant, use a dog to carry out general drug detection.'⁴⁰³ Prior to its inclusion in the regulation, one operation authorised by warrant was conducted on the North Shore rail line during the review period. This operation resulted in the indication and searching of 20 persons in the railway area. Three of these people were detected with a combined total of 17.4 grams of cannabis resulting in the issue of two juvenile cautions and a cannabis caution.⁴⁰⁴

The list of train routes above, shows that police are able to deploy drug detection dogs without warrant on trains on most CityRail lines. To deploy dogs for general drug detection on the East Hills line between Turella and Holsworthy and the Illawarra route between Lysaghts and Port Kembla station, police require a warrant. A warrant is also required if rail lines beyond the CityRail network are to be the location of drug detection dog operations.

The Drug Dogs Regulation also prescribes the following bus routes:

- the Albury route via Goulburn and the Hume Highway (between Albury and Sydney), and
- the Grafton route via Kempsey and the Pacific Highway (between Grafton and Sydney).

10.5.1. Choice of prescribed rail lines and bus routes

During the second reading speech of the Police Powers (Drug Detection Dogs) Bill 2001 the (then) Minister for Police, the Hon. Michael Costa MLC stated:

*General drug detection will also operate on transport lines, as prescribed in the regulation-making power under the bill. This is a vital tool for police to follow the drug trade as it moves around. If need be, the lines prescribed will change as the circumstances change. As Minister for Police, I will monitor the effectiveness of the localities prescribed by regulation, and the Attorney General, on the basis of police intelligence, will be in a position to draft the regulations as to what transport locations need to be designated.*⁴⁰⁵

As discussed above the North Shore route was added in April 2004. We asked NSW Police for information regarding the intelligence that supported the addition of the North Shore route.⁴⁰⁶ NSW Police advised that they were unable to locate the intelligence material used to support the addition of the North Shore line.⁴⁰⁷ However, we were provided with an internal NSW Police memorandum which referred generally to the intelligence material provided to the Attorney General. The memorandum also stated in part that:

*A lack of intelligence information in relation to drug related crime in a particular area does not necessarily mean that it is not occurring or is not a problem.*⁴⁰⁸

We note that this view is not consistent with the requirement that the addition of transport routes be based on police intelligence.

The Attorney General's Department also provided us with a letter from the Minister for Police to the Attorney General in relation to the addition of the route. The letter refers to intelligence information in general terms:

I have been advised by NSW Police that intelligence suggests significant drug activity is occurring along the North Shore line, which is not specified in the Regulation.

*Police have advised that drug detections at Hornsby station – part of the already prescribed Northern Line – is persistent. An analysis of the top 50 metropolitan suburbs in which dogs can be used without a warrant has shown that Hornsby has the second highest drug detection rate. ... NSW Police advice is that most drug offenders from within the Kuringai LAC utilise the rail system for transportation. This information would all seem to indicate the potential for drug distribution utilising the North Shore line.*⁴⁰⁹

In our discussion paper we asked whether police were monitoring the effectiveness of the localities prescribed (and not prescribed) by the regulation to ensure appropriate public transport routes were targeted. NSW Police submitted:

*NSW Police conducts operations based on intelligence rather than monitoring specific rail lines as this question suggests – that is, NSW Police concentrates information on instances of drug supply/use or other relevant intelligence to inform operations using drug detection dogs, and to target specific locations.*⁴¹⁰

Thus, there appears to be no systematic monitoring of the effectiveness of the prescribed routes.

NSW Police originally requested that all City/State Rail, State Transit Authority and interstate bus networks be prescribed routes under the Drug Dogs Regulation. Under this proposal NSW Police would be able to deploy drug detection dogs on any of these routes without first obtaining a warrant.

NSW Police was concerned that:

*by prescribing certain train routes, members of the public who use public transport to transport or distribute illegal drugs will merely change their route to avoid those prescribed in the Regulation.*⁴¹¹

The final draft of the Drug Dogs Regulation prescribed an extensive list of rail routes but fell short of coverage of the entire rail system. It seems that the prescribed rail lines were selected on the basis of information about drug 'detections' identified on State Rail Authority property in 2001. There is scant documentation in relation to the selection of rail lines. We have located some documents referred to in the negotiations that occurred about the choice of rail lines. One document, entitled 'Count of Drug Detection on SRA property by Suburb in 2001' appears to have been the basis of some decisions about the choice of rail lines, however, it is unclear which agency produced the document and the nature of the drug detections to which it refers.

The bus routes were nominated by NSW Police on the basis of 'major drug detections in the recent past'.⁴¹² We have been unable to locate more specific detail about these drug detections.

10.5.2. Deployment of drug detection dogs on buses and bus terminals

During the two year review of the Drug Dogs Act police did not use the drug detection dogs on either of the prescribed bus routes in the Drug Dogs Regulation. There is no record of an indication occurring on a bus over

the two-year period. According to the Results Spreadsheet, indications occurred at bus stops or terminals on 18 occasions resulting in two detections of cannabis weighing a total of 9.1 grams and resulting in the issue of one cannabis caution and one juvenile caution.⁴¹³

On one occasion there is a spreadsheet record of police using a drug detection dog at an inner-city bus terminal, no drugs were found and no COPS record appears to have been made in relation to the use of the dog. It also appears that no warrant was granted even though the location was not part of a prescribed route.⁴¹⁴

10.5.3. Views about the selection of rail lines and the requirement for warrants on some routes

10.5.3.1. Police views

A number of police we have spoken to maintain that police with drug detection dogs should be able to access the entire rail network without warrant. For example, one senior officer commented:

*I can't see why there was a distinction between the different rail lines. I'll give you an example, in the Wollongong area, the line between Port Kembla and Wollongong is not a designated route, yet Port Kembla in the Wollongong area is one of the major drug distribution areas. So why the distinction was made not to put Port Kembla as one of the designated routes or delete it from the designated route is something that I can't follow. If drugs are being distributed on the rail network. ... I can't see why it wouldn't have been a blanket within the rail network.*⁴¹⁵

We raised the issue of the choice of rail lines in our discussion paper. NSW Police again argued for the ability to access the entire rail system without warrant and stated that this would also 'result in equitable ability to police all train lines and ensure fairer enforcement across the entire rail network.'⁴¹⁶ The submission also stated:

*There is no advantage to the community in having the Regulation to the Act apply only to certain rail lines. Dependent on relevant intelligence, an extension of drug dog use across the rail network, which would assist in closing routes that might presently be used by offenders transporting illegal drugs.*⁴¹⁷

Some submissions from local police also supported this view. One submission stated:

*It is the general belief of officers that the Act should cover the entire state. This is particularly an issue within the Western Region as there is limited access to implementation of this legislation.*⁴¹⁸

One transit police officer also spoke to us about this aspect of the legislation. Our notes of this conversation state:

*[Name of officer] believes that the whole rail network should be covered, not just limited bits. He can't see any good reason to take the dog to one train/platform/station and not another. He works from Central and they can only use the dogs on some incoming and outgoing lines and platforms and this seems illogical. [Name of officer] thinks police would get good results on the Countrylink trains and the interstate trains ...*⁴¹⁹

Many police we spoke to in focus groups and interviews were also of the view that the distinction between prescribed and non-prescribed routes was not useful. Comments from these focus groups include:

*What's the go with the rail lines? Like, I mean, what genius thought of that?*⁴²⁰

*Like if we can do one rail line, why can't we do all of them?*⁴²¹

*I think it's too restrictive. I don't know how they decided on the prescribed routes of the public transport. Why they didn't just make it ... across the state every rail and bus interchange?*⁴²²

10.5.3.2. Other views

The Attorney General's Department submission emphasised the importance of monitoring drug-related intelligence in relation to public transport routes to assess the use of the drug detection dogs on public transport.⁴²³ However, as noted above, NSW Police does not systematically monitor drug-related intelligence for public transport routes, other than requiring intelligence information for each deployment of the drug detection dogs.

The Police Association of NSW submitted that all rail lines should be 'open to Drug Dog patrols.' On the question of monitoring the effectiveness of the prescribed routes the Association stated:

*This question is irrelevant as there should be no restriction to the use of the dogs. Whether 1 drug or 1000 drugs are located, any area should be patrolled. This will increase the deterrent affect and allow police the upper hand, as offenders will not know where the police are likely to strike.*⁴²⁴

RailCorp noted in its submission:

*In regard to the restriction on the operations of drug detection dogs to certain railway lines, RailCorp would support enabling drug detection dogs to operate anywhere across the network. The lifting of operational restrictions would enhance the deployment capability of drug detection dogs to ensure they are routinely deployed to where they are needed most. In line with available strategic intelligence. However, ultimately the lifting of such restrictions is a matter for determination by parliament.*⁴²⁵

One submission from a member of the public suggested that the CityRail routes prescribed in the regulation were so extensive that they could not properly be considered 'routes' but really represented the entire system:

*This matter should go back to Parliament and it be decided whether the regulations should cover "a route" which may "change as the circumstances change" [p.72 quoting the Minister], or should cover all of CityRail's routes.*⁴²⁶

Only a few submissions commented specifically on the choice of prescribed routes in the regulation and/or the collection of intelligence about public transport routes at all. Many submissions, for diverse reasons, opposed or expressed concern about the use of drug detection dogs on public transport routes. Some submissions argued that the poor rate of detecting drugs did not justify the intrusion into the privacy of so many:

*Railway trains and railway stations provide the most obvious situation for causing embarrassment, delay and inconvenience. 77% of detections are innocent people who have been unnecessarily inconvenienced. There is a strong argument for never using dogs in these locations.*⁴²⁷

Many submissions doubted the likelihood that significant drug dealers would be caught on public transport:

*it is rare, if not non-existent for drug traffickers to transport their drugs by train on the Sydney suburban network. At best the few commuters caught with small amounts of drugs for personal use are only cautioned so the resources of police are being wasted in these circumstances.*⁴²⁸

Other submissions noted with concern the potential discriminatory impact, particularly in relation to young and less wealthy people, of using the drug detection dogs on public transport.⁴²⁹

10.5.4. Comment

We have been able to find little in the way of intelligence justifying the selection of the prescribed railway lines and bus routes for use of the drug detection dogs without warrant. Furthermore, it seems that there is no systematic method in place to ensure that those routes prescribed continue to represent significant sites of drug offending. Drug detection dogs have made 6,423 indications on public transport over the review period, finding drugs as a result of about 25% of these indications. We have not been able to separate the rate of finding drugs on prescribed routes from non-prescribed routes.

We agree with NSW Police and some others, to the extent that they argue that the distinction between prescribed and non-prescribed routes is somewhat arbitrary. We also agree that intelligence information should be the basis for any deployment of the drug detection dogs. However, our analysis of the intelligence information on which NSW Police bases its current deployment decisions has shown that the Dog Unit has set a low bar in terms of the minimum amount of intelligence information that will allow an operation to be approved.

There is little point in continuing the prescription of particular rail routes if no monitoring of the continued need for their prescription is undertaken. Furthermore, given:

- the disquiet expressed in many submissions to this review and in complaints to this office about the use of drug detection dogs on public transport
- the 75% 'no drug find' rate on public transport, and
- the extremely low number of successful supply prosecutions resulting from the use of drug detection dogs on public transport

we are of the view that independent scrutiny of all applications for the use of drug detection dogs on public transport is preferable. No strong case for a separate regime for rail lines has been demonstrated. This is reflected in recommendation 11 (discussed above at paragraph 10.4.5). Scrutiny would occur on a case-by-case basis by an authorised justice – that is, through the warrant application process. Independent decision making about the use of the dogs on public transport would better facilitate public trust that the dogs were only deployed when warranted and would be a more appropriate method of securing the right balance between the infringement of privacy and other civil liberties and the exercise of police powers to detect drug suppliers and users.

10.6. Covert operations and drug detection warrants

As noted above (at paragraph 10.3), police must obtain a drug detection warrant if they are to use drug detection dogs as part of a covert operation.

The term 'covert police operation' is not defined in the Drug Dogs Act although some light is shed on its meaning in this context by the Attorney General, the Hon. Bob Debus MP, during the second reading speech of the Police Powers (Drug Detection Dogs) Bill 2001:

*The warrant system will allow the use of drug detection dogs in specific operations in public areas, under the added protection of the warrant being issued by an authorised justice, in circumstances where the supply of prohibited drugs is suspected. The police will identify on application for the warrant that they wish to use the drug detection dogs in a specified place where they have intelligence that indicates prohibited drugs are likely to be found and supplied to users. **They will specify whether this will be a covert operation, in plain clothes, or an overt operation, in police uniform. Police will then, in both types of situations, be able to carry out random use of drug detection dogs,** which will lead to a search of a person if the dog indicates that the person is carrying prohibited drugs or plants.⁴³⁰ [Emphasis added]*

Our observations have shown that sometimes police operations using a drug detection dog are conducted by a group of police officers, some of whom are in police uniform and some of whom are in plain clothes. Sometimes it is only the dog handler who is in uniform. There is evidence to suggest, in at least some commands, that when police conduct operations of this nature (where many police are in plain clothes) in locations specified in section 7 of the Drug Dogs Act, such as licensed premises and railway stations, no warrant is applied for.

For example, at one operation in western Sydney, the operational orders noted:

Dress:

Police will be dressed in appropriate Plain Clothes which would allow entry to license[d] premises. Full appointments will be carried by each officer. A number of [name of LAC] TAG [Target Action Group] officers will wear uniform to provide security of the Police Drug Dog.⁴³¹

This operation was conducted at licensed premises. The drug detection dog handler was in police uniform. No warrant was sought for this operation.

At another operation conducted on trains and at a railway station in Sydney, the operational orders stated:

Dress

All police will wear plain clothes and have in their immediate possession their personal police identification.⁴³²

We are uncertain whether the drug detection dog handler was in uniform or plain clothes during this operation. No warrant was sought for this operation.

In contrast, we observed an operation conducted on the street and in licensed premises in an inner-Sydney location. At this operation the handler was in uniform but most other police were in plain clothes. A warrant stating that the operation would be covert had been granted.⁴³³

As there is no definition of 'covert police operation' in the Drug Dogs Act, we were concerned that it was unclear whether such operations are lawful or otherwise. For example, if the dog handler alone was in uniform would this be sufficient to characterise the operation as 'overt'? Our observations of operations have revealed that indications by drug detection dogs may occur very rapidly and it is not always the case that the person indicated is spoken to directly by the handler. Handlers sometimes prefer to point out to police when the dog has indicated a person. Searching police then provide the explanation of the indication and the caution. In crowded environments such as licensed premises or railway stations at peak times, a person may not notice the presence of the drug detection dog handler, or may not connect them with plain clothes police. Such situations would seem more covert than overt in nature.

This question represents more than an issue of technical legal interpretation. We are aware of an incident in which a person was detained and searched by plain clothes police and claimed that he had resisted because he was not aware that those searching him were police. This incident resulted in a complaint being made to NSW Police (see paragraph 12.4.1.1). In addition, if police fail to obtain a warrant, difficult questions of lawfulness, admissibility and liability may arise. Police officers, in our view, should not be placed in such invidious positions.

We sought legal advice from senior counsel on this issue. We were advised that there was no definition of 'covert operation' in any legislation identified and that dictionary definitions of 'covert' include 'concealed, secret, disguised' and 'covered, hidden, sheltered.' The advice continued:

This suggests that, in order to be a covert operation, the operation would necessarily involve elements of it which were being done in some secret or concealed manner, for example:

- *some, but not all, of those involved in the operation are not identifiable as police officers, that is they are in plain clothes;*
- *the dog is not identifiable as a drug detection dog under the control of a Police Officer;*
- *some, but not all, of those involved in the operation are undercover officers.*⁴³⁴

According to this advice, the overall characterisation of the operation was the key to determining whether it should be considered covert:

*For example, if there was an obvious police operation involving 100 uniformed officers, and a single unidentified plain clothes officer participated, that would not constitute a covert operation. What is necessary is that the operation, or at least significant elements of it, be characterised in the sense of it being essential to, or necessary for, the intended conduct of the operation that the participants have their identities as Police Officers hidden, disguised or concealed.*⁴³⁵

The advice concludes that operations where only the drug detection dog handler is in uniform would be characterised as covert and should be authorised by a warrant under section 8 of the Drug Dogs Act.

As is discussed above (at paragraph 10.4.5), our preference is to replace the current partial warrant system in relation to drug detection dogs, with a requirement that drug detection warrants be obtained for all operations. However, if this recommendation is not adopted, the following amendment will clarify the situation in regard to covert operations.

To make certain future drug detection dog operations are conducted according to law, NSW Police should ensure that all covert police operations, including those in relation to persons specified in section 7 of the Drug Dogs Act, are authorised by a warrant under section 8 of the Drug Dogs Act. To assist NSW Police in determining whether an operation should be characterised as 'covert' the Drug Dogs Act should also be amended to include a definition of the term 'covert police operation'.

Recommendations

15. Parliament consider amending the Drug Dogs Act to include a definition of 'covert police operation'.
16. NSW Police ensure that all covert police operations in public places using drug detection dogs are authorised by a warrant under section 8 of the Drug Dogs Act.

NSW Police indicated that they had no objection to recommendation 15 and stated that:

The Dog Unit considers any duty performed by Drug Detection Dog handlers in full police uniform (regardless of other police dress) to be an overt operation as the Drug Dog is deployed in an overt capacity when screening. Plain clothes operations are not by Police definition covert and Dog Unit officers rarely perform duty in plain clothes.

*However, discussion should take place with NSW Police in order to determine an appropriate definition.*⁴³⁶

We note that the Dog Unit's understanding of what is a 'covert' operation is not consistent with the legal advice we received or the apparent intention of Parliament. This inconsistency emphasises the need for clarification.

NSW Police supports recommendation 16 and advised that:

*The Dog Unit is currently reviewing its Request for Assistance document with a view to incorporating information about the status of an operation (covert vs. overt) to ensure that deployments are in line with legal requirements for covert operations. The new request form will specifically require information about the existence of an associated warrant for covert operations.*⁴³⁷

Endnotes

- ³²⁹ Ministry for Police submission, 30 August 2004.
- ³³⁰ Interview with senior police officer, May 2003.
- ³³¹ Licensee interview, Inner Sydney hotel, November 2002.
- ³³² Licensee interview, Inner Sydney hotel, March 2004.
- ³³³ Licensee interview, Inner Sydney hotel, November 2002.
- ³³⁴ This form is available to all police officers on the NSW Police Intranet.
- ³³⁵ NSW Police, *Drug Detection Dogs Management Operational Guidelines*, March 2002, p.5.
- ³³⁶ NSW Police, *Drug Detection Dogs Management Operational Guidelines*, March 2002, p.5.
- ³³⁷ *Search Warrants Act 1985*, s.3.
- ³³⁸ Dog Unit Request spreadsheet, 22 February 2002 to 21 February 2004. Some requests for operations scheduled to be held within the review period may not have been counted if the actual request was made outside the review period. Not all requests contain dates for the proposed operation. This would account for only a small number of requests.
- ³³⁹ Application for drug detection warrant, August 2003.
- ³⁴⁰ Annexure to drug detection warrant, December 2002.
- ³⁴¹ Application for drug detection warrant, November 2003. It is interesting to note that the relevant warrant granted by the authorised officer did not contain the same exclusion.
- ³⁴² Drug detection warrant, August 2002.
- ³⁴³ Application for drug detection warrant, October 2003.
- ³⁴⁴ Application for drug detection warrant, July 2002.
- ³⁴⁵ Drug detection warrant, April 2003.
- ³⁴⁶ NSW Council for Civil Liberties submission, 19 August 2004.
- ³⁴⁷ Drug detection warrant, January 2003.
- ³⁴⁸ NSW Council for Civil Liberties submission, 19 August 2004. Footnotes omitted.
- ³⁴⁹ Drug detection warrants, December 2002 and October 2003.
- ³⁵⁰ *Police Powers (Drug Detection Dogs) Regulation 2002*, Schedule 1 - Form 1.
- ³⁵¹ Application for drug detection warrant, November 2003.
- ³⁵² On some occasions more than one drug was found.
- ³⁵³ Application for drug detection warrant, November 2002.
- ³⁵⁴ Application for drug detection warrant, July 2003.
- ³⁵⁵ Application for drug detection warrant, October 2003.
- ³⁵⁶ Application for drug detection warrant, October 2003.
- ³⁵⁷ Application for drug detection warrant, November 2003.
- ³⁵⁸ Application for drug detection warrant. November 2003.
- ³⁵⁹ Application for drug detection warrant. August 2003.
- ³⁶⁰ Report to authorised justice on the execution of warrant, August 2003.
- ³⁶¹ Report to authorised justice on the execution of warrant, November 2003.
- ³⁶² Report to authorised justice on the execution of warrant, May 2002.
- ³⁶³ Report to authorised justice on the execution of warrant, August 2003.
- ³⁶⁴ Report to authorised justice on the execution of warrant, April 2003.
- ³⁶⁵ Report to authorised justice on the execution of warrant, November 2003.
- ³⁶⁶ NSW Council for Civil Liberties submission, 19 August 2004.
- ³⁶⁷ Clause 9 refers to the retention and inspection of documents relating to search warrants.
- ³⁶⁸ *Search Warrants Regulation 1999*, cl.10.
- ³⁶⁹ Applications for drug detection warrants, July 2003.
- ³⁷⁰ Phone conversation with Deputy Registrar, 30 June 2005.
- ³⁷¹ Application for drug detection warrant, October 2003.
- ³⁷² Application for drug detection warrant, July 2003.
- ³⁷³ Warrant 292/2004, cited in NSW Council for Civil Liberties submission, 19 August 2004.
- ³⁷⁴ Facsimile to Local Area Commander, 3 June 2005.
- ³⁷⁵ Telephone conversation with Local Area Commander, 17 June 2005.
- ³⁷⁶ Senior Constable I Casha, 'Suppression of information provided in support of an application for a search warrant', *Police Weekly*, Vol 17, No 30, 22 August 2005, p.15.
- ³⁷⁷ NSW Police response to draft final report, 10 March 2006.
- ³⁷⁸ Provided by Tim McGrath, Assistant Director General and Acting Director, Local Courts, 21 April 2005.
- ³⁷⁹ NSW Council for Civil Liberties submission, 19 August 2004.
- ³⁸⁰ For further details of the review see NSW Ombudsman, *Review of the Police Powers (Drug Detection in Border Areas Trial) Act 2003*, January 2005.
- ³⁸¹ NSW Council for Civil Liberties submission, 19 August 2004.
- ³⁸² NSW Police response to draft final report, 10 March 2006.
- ³⁸³ NSW Police, *Drug Detection Dog – Preplanned job request form*, p.3.
- ³⁸⁴ Request number 1.
- ³⁸⁵ Request number 2.
- ³⁸⁶ Request number 3.
- ³⁸⁷ Request number 4.
- ³⁸⁸ Request number 5.
- ³⁸⁹ Request number 6.

- ³⁹⁰ Request number 7.
- ³⁹¹ Request number 8.
- ³⁹² Request number 9.
- ³⁹³ Request number 9.
- ³⁹⁴ Request number 10.
- ³⁹⁵ See Chapter 8 'Accuracy of drug detection dogs' at paragraph 8.2.2 for further discussion of 'residual' indications.
- ³⁹⁶ Request number 11.
- ³⁹⁷ UTS Community Law Centre submission, 23 August 2004.
- ³⁹⁸ *Police Powers (Drug Detection in Border Areas Trial) Act 2003*, s.17.
- ³⁹⁹ NSW Police response to draft final report, 10 March 2006.
- ⁴⁰⁰ NSW Police response to draft final report, 10 March 2006.
- ⁴⁰¹ NSW Police response to draft final report, 10 March 2006.
- ⁴⁰² *Police Powers (Drug Detection in Border Areas Trial) Act 2003*, s.17. For further information on the trial see: NSW Ombudsman, *Review of the Police Powers (Drug Detection in Border Areas Trial) Act 2003*, January 2005.
- ⁴⁰³ Explanatory note, *Police Powers (Drug Detection Dogs) Amendment (North Shore Line) Regulation 2004*.
- ⁴⁰⁴ Results Spreadsheet, 22 February 2002 to 21 February 2004.
- ⁴⁰⁵ NSWPD, Legislative Council, 6 December 2001, p.19745.
- ⁴⁰⁶ Request for additional information correspondence to NSW Police, 29 June 2005.
- ⁴⁰⁷ Correspondence from NSW Police, 9 November 2005.
- ⁴⁰⁸ Internal NSW Police correspondence, 10 November 2003.
- ⁴⁰⁹ Correspondence from Minister for Police to Attorney General, 7 August 2003.
- ⁴¹⁰ Ministry for Police submission, 30 August 2004.
- ⁴¹¹ Memorandum from (then) Commander State Protection Group to Ministry for Police, 6 March 2002.
- ⁴¹² Memorandum from (then) Commander State Protection Group to Ministry of Police, 6 March 2002.
- ⁴¹³ Includes 14 indications on bus/rail interchanges.
- ⁴¹⁴ Requests Spreadsheet, 22 February 2002 to 21 February 2004.
- ⁴¹⁵ Interview with senior police officer, May 2003.
- ⁴¹⁶ Ministry for Police submission, 30 August 2004.
- ⁴¹⁷ Ministry for Police submission, 30 August 2004.
- ⁴¹⁸ Western Region of NSW Police submission, 4 August 2004.
- ⁴¹⁹ Transit Police Commander telephone submission, 7 July 2004.
- ⁴²⁰ Focus group with drug dog handlers, May 2003.
- ⁴²¹ Focus group with drug dog handlers, May 2003.
- ⁴²² Interview with senior police officer, February 2003.
- ⁴²³ NSW Attorney General's Department submission, 17 May 2005.
- ⁴²⁴ Police Association of New South Wales submission, 19 August 2004.
- ⁴²⁵ RailCorp submission, 17 September 2004.
- ⁴²⁶ J. Ready submission, 22 July 2004.
- ⁴²⁷ Tony Trimmingham, Family Drug Support submission, 6 August 2004.
- ⁴²⁸ The Hon. Amanda Fazio MLC submission, 9 August 2004.
- ⁴²⁹ For example: NSW Commission for Children and Young People submission, 12 July 2004; Ms Lee Rhiannon MLC submission, 9 August 2004; The Shopfront Youth Legal Centre submission, 9 August 2004; M. Gormly submission, 8 August 2004; Hepatitis C Council of NSW submission, 12 August 2004; Marrickville Legal Centre submission, 20 August 2004.
- ⁴³⁰ NSWPD, Legislative Assembly, 6 December 2001, p.19876.
- ⁴³¹ Operational Orders, June 2003.
- ⁴³² Operational Orders, October 2003.
- ⁴³³ Operation held in May 2002. Drug detection warrant application inspected at Local Court, May 2005.
- ⁴³⁴ Peter Garling SC, Memorandum of advice, 9 June 2004, at paragraph 89.
- ⁴³⁵ Peter Garling SC, Memorandum of advice, 9 June 2004, at paragraph 90.
- ⁴³⁶ NSW Police response to draft final report, 10 March 2006.
- ⁴³⁷ NSW Police response to draft final report, 10 March 2006.

Chapter 11. Obtaining information and how it is recorded and used

The creation and retention of records about individuals is not only a crucial component of policing but is also a potential source of concern among members of the community. Police using drug detection dogs routinely keep records of their interactions with members of the public. In this chapter we consider whether these records are appropriate and accurate and whether NSW Police has effective mechanisms in place for quality control.

The chapter begins by briefly describing the nature and function of information report records kept on COPS. We then examine police practices of obtaining information from people they search following an indication by a drug detection dog. This can include obtaining personal details such as name and address and/or obtaining information about the person's contact with drugs. This information may ultimately find its way into an information report. We also inquire into police practices of checking, via VKG (police radio), for any other information about the person. The focus is on police contact with persons not found to be committing any offence.

The chapter then considers how police record and use the information they obtain from searched persons, including the development of NSW Police guidelines about creating information reports to record intelligence from drug detection dog incidents. We also report on police and other views about recording practices. Following this, we discuss our monitoring of police compliance with their own policies about record creation and deletion, including a description of our audit of information reports.

11.1. The nature and function of information reports: NSW Police policy

NSW Police creates close to 200,000 Information Reports (IRs) on COPS each year. The policies and processes NSW Police has implemented regarding IRs are specifically designed to minimise the upload and maintenance of irrelevant and inappropriate material on COPS. The seriousness with which NSW Police treats this issue is evident in the necessarily time consuming and resource intensive nature of those processes.⁴³⁸

Since 2001 NSW Police have had in place an 'Information Report Policy' – Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS Information Reports – which is the overriding policy document in relation to all information reports. The policy makes no specific reference to the recording of information reports following indications by drug detection dogs.

The Information Report Policy states:

An IR is an electronic record containing information received by [NSW Police] staff. The primary source of this information may be police, other agencies, community sources, registered informants or members of the public. Information contained in an IR should relate to persons, organisations, vehicles, locations or other entities and their involvement, links or relationships to crime and/or public safety. The purpose of creating and storing COPS IRs is to facilitate the production of criminal intelligence and to inform tactical, operational and strategic policing decisions.⁴³⁹

The Information Report Policy provides for two checks on the recording of information reports. The first check occurs soon after an information report has been created and is called 'evaluation'. The 'intelligence practitioner' is responsible for evaluating these reports.⁴⁴⁰ We understand that this initial evaluation of information reports may also be performed by a supervisor or co-worker.⁴⁴¹

The Information Report Policy states that:

a thorough evaluation of IRs is imperative to ensure they are reliable and valid, preserve the rights of individuals to privacy, safety and reputation, are lawfully obtained and operationally relevant.⁴⁴²

In addition to evaluation, all information reports are subject to review. Review is to occur on or soon after a date set at the time the information report is created. According to the Information Report Policy:

The IRs continuing relevance to the [NSW Police] operation/law enforcement activities is of paramount importance in determining whether the IR should be retained or deleted from COPS.⁴⁴³

11.2. Obtaining information from searched persons

11.2.1. Requesting personal details from searched persons

From our observations of police operations using drug detection dogs, it appears that it is very common practice for police to ask people, often before a search has been conducted, to provide identification and/or to state their name and date of birth. Our observations and police data also suggest that people usually comply with this request.

Dog Unit records show that during the review period, 99.7% (10,178 of 10,211) of persons searched as a result of a drug detection dog indication gave their name to police.⁴⁴⁴

The police we observed during operations did not generally offer information to the person searched about how their personal details would be used. Nor did police inform the person that they did not have to provide their details. However, police are under no obligation to do so. We did note that on rare occasions police informed the person that their details were to be taken as a record of the search. Below are some examples of how police request personal details:

*I'll just have to get some details if that's OK with you.*⁴⁴⁵

*Have you got any ID on you mate?*⁴⁴⁶

*I'll just grab your name now.*⁴⁴⁷

*I need some form of ID.*⁴⁴⁸

*Just grab your details to record that I made a search ... nothing was found on you so that's fine ... It's only for our records. Thank you for your time ...*⁴⁴⁹

On rare occasions we observed someone decline to give their name to police after a request to do so. Below is an example of our observer's notes of such an incident:

Police searched, found nothing, then requested ID for a record of the search:

Man: "Is this something I have to give you? If it's not the law, then I'd rather not give it to you."

Police tried to persuade the man to give his name (he was not carrying ID). He politely refused saying he'd only provide it if there was a legal requirement.

Man: "I would prefer you not take down my details."

*Action by police: No Further Action. Man allowed to leave. Police wondered aloud that they were not entitled to require his name. Later concluded that they might have been, but still some uncertainty.*⁴⁵⁰

We received a number of complaints which expressed concern about the practice of police obtaining personal details. Of the 30 complainants who were searched, over a quarter (8) raised concerns regarding police recording information relating to the search, and the way in which those details were obtained. Of particular concern was that despite no drugs being found, a dog indication had resulted in police creating a record linking them to drug use.

One complainant, searched at a suburban railway station after being indicated stated:

*I explained [to police] that I didn't do drugs and that I was only guilty of drinking alcohol. After they hadn't found anything, they said they were going to put on my record that the dog indeed detected a substance, but that it couldn't be found. I disagree having my record altered.*⁴⁵¹

Another complainant, after a negative search on a different suburban railway platform asked, 'Has my name, address and phone numbers gone onto a suspected drug user list? (I don't use drugs)'.⁴⁵²

And another complainant, who was searched with nothing located, complained that, 'The officers took my personal details (without asking me) while going through my wallet, and let me carry on my way.'⁴⁵³

Solicitors acting on behalf of a woman whose bag was searched by police at an outdoor café stated:

*My client is also extremely concerned that there may be some record of the police having searched her for drugs. My client wishes to know whether a permanent record of such searches is maintained and, if so, whether it is possible to have this record deleted.*⁴⁵⁴

Police attempts to speak with this complainant were unsuccessful. No further action was taken.

The case study below relates one man's concern that he may have been the subject of a record containing incorrect information.

Case Study

Concerns regarding the records made by police

The complaint

Late one evening in September 2004 drug detection dogs indicated a man who was walking with colleagues through the shopping centre of a small town. Police asked him to step to one side, then asked whether he was carrying drugs. He said he wasn't. Police searched him and found no drugs. They then asked repeatedly whether he had been taking drugs. The man insisted he had not. The complainant stated, 'The officer said that there are no laws against taking drugs, that he was only looking for people carrying drugs and that I should just tell him the truth ... I was being polite but increasingly confused and ashamed by what was going on. The officer persisted and he asked once more if I had been taking drugs. I said to him, 'Come on mate, it's Saturday night in Thredbo and that there are drugs everywhere'. The police officer then smiled at me and said 'I hear what you're saying'.' The officer then recorded the complainant's details and the complainant was free to go. The complainant stated he had meant that drugs were everywhere and that he could unknowingly have come into contact with them. He was not admitting to drug use. The complainant was concerned that police had recorded what they believed was a confession of drug use.

Outcomes

The complaint was referred to NSW Police for investigation and resolution. A police investigator contacted the man and advised him of the policy relating to recording these kinds of searches. The investigator said he had advised the complainant of what was recorded. We were advised the complainant had indicated it was a factual record and was happy with the outcome. However, we found that the man's COPS record contained an entry noting that he had admitted to frequent use of marijuana. The investigator subsequently accepted he did not inform the complainant of that particular detail. NSW Police subsequently amended the COPS record to state that the admission could not be substantiated and that no weight should be placed on it. The complainant indicated that he was satisfied with the outcome.⁴⁵⁵

In another incident, a woman was searched by police at a railway station and no drugs were found. She asked, 'As you are arrested [for the search], does this mean you have a criminal record. If so how long does it last?'⁴⁵⁶ In resolving the complaint police advised her an intelligence report had been created in relation to the search and this would stay on the police computer system for only one year. This was subsequently confirmed in writing by the local area commander. The record was created in June 2002. In April 2004 an audit by this office found that the report was still active on the system. We wrote to police asking why it had not been deleted as indicated to the complainant. A further check in January 2005 showed the report was still on the system and we contacted police by telephone. In March 2005 the local commander forwarded correspondence to the complainant and this office advising the report had been deleted. We independently verified that the report had in fact been deleted.

In another complaint an Asian man said that he felt he had been targeted by police because of his race. No drugs were found on the man. He expressed anger at police taking his details, despite police assurances that no further action would be taken.⁴⁵⁷

When I went back to ask why that sick mad dog took down my personal details, the police answer me that they need to record my details. But for what purpose? WHY? I did nothing wrong!

The investigation of this complaint found the officers involved believed the complainant had to provide his details, regardless of the outcome of the search. The local commander subsequently accepted that the officers were mistaken and took steps to make police in his command aware of their powers and responsibilities. The commander noted that 'this misapprehension by police of their powers may not be isolated' and suggested that similar measures might be needed to educate officers across the organisation.

11.2.1.1. Taking personal details without proper consent

On a few occasions we observed police simply take a person's details from a driver's licence or other identification found during the search. For example:

She was asked to open her wallet, and police took her ID and recorded her name and details. She was told the record would not go on the computer system, that it was just for their notes.⁴⁵⁸

The second female officer began searching the POI's bag. She also took some ID from the POI's wallet and asked another officer to write down the details. The officer did not ask the POI for permission before taking the ID and recording the details, however, the POI made no comment or protest.⁴⁵⁹

he noticed that an officer was writing down his details. The following exchange took place:

Man: 'Are you recording my details?'

Police: 'Yes.'

Man: 'Aw, that's not nice.'

Police: 'We're not going to put it on the computer or anything.'

Man: 'Yeah, but you're still recording it!'

Police: 'It's not going on to the computer.'

Man: 'You don't have any right to take my details like that. You didn't find anything! I like my privacy, know what I mean?'

He seemed resigned to it however, and appeared as though he just wanted to go. He was thanked for his time and released.⁴⁶⁰

A number of complainants raised the issue that details taken from them were either not given with their consent or were provided only after intimidation by police. One man raised the issue of consent after he was searched on a busy nightclub strip in the city:

As my property (wallet, mobile phone, asthma reliever, handkerchief) were being searched, my wallet was removed from my vision and I discovered later that my NSW drivers licence had been removed and personal details had been recorded in one of the officer's notebook ... why did police record my private details and without my knowledge?⁴⁶¹

He did not return contact made by police to investigate this issue and no further action was taken.

Another complainant stated, 'One of [the police officers] asked me for ID, address and phone numbers. He took my wallet and searched it without asking permission'.⁴⁶² Police contacted this complainant and successfully conciliated the matter.

The issue of consent is often not clearly described in police reports or complaints. For example, one police record noted, 'the POI has placed his wallet and other personal items onto the table. [An officer] has picked up the POI's wallet opened it in his presence and has written down the POI's details in her notebook. [The officer] has then placed the wallet back onto the table'.⁴⁶³ It is not clear whether the person consented to the details being recorded or simply did not resist the police actions to obtain his personal details.

Some complaints we received alleged that police had pressured or intimidated people to obtain their personal details. This was raised in one complaint where police allegedly, 'demanded [the complainant's] Licence Number, her address and telephone number'.⁴⁶⁴ In some circumstances it appears complainants did not wish to attract further attention or escalate the situation, or were not sure whether they could withhold this information. One complainant stated:

Maybe I should have loudly protested my innocence, but I just did not want to draw more attention than police had already thrust upon me. Instead I meekly picked up my wallet, removed my driver's licence and handed it over.⁴⁶⁵

In the case study below a complainant's experience of feeling intimidated into providing his details is more fully described.

Case study

Felt intimidated into providing details to police

The complaint

In October 2004 a complainant was performing garbage collection duties for organisers at a rural carnival when he was searched by police after a drug detection dog indication. A female police officer then asked the complainant for his name and address. The complainant asked why she needed his name when he had done nothing wrong. The officer told the complainant it was to prove he had been searched and nothing had been found. The complainant stated, 'I suspected this was not necessary so I refused to give my name. [The officer] then picked up my wallet and began to rummage through it. I asked questioningly. 'You can't just grab my wallet and look through it when I have done nothing wrong?' She replied, 'Oh yes I can, the dog detected you!' By this time I was getting frustrated and grabbed the wallet back from her, strangely enough this did not bother either of the officers. Under the discomfort of the harassment, I pulled out my driver's licence and she took the licence from me and recorded my details of name and address. She then gave me my licence back and both officers walked away'. The complainant raised concerns that he had been told, 'that I had to give them my name and address, even though there was no charge or caution made to me'.

Outcomes

Police contacted the complainant in this matter to obtain further details and the complainant indicated he wished to discontinue the matter, he did not require any further action by police and he was now more informed as to his rights in relation to these matters. This office recommended the local commander remind police of the limits of their powers, which do not extend to demanding personal details in these circumstances. Notification to this effect was disseminated to all staff at the local area command in March 2005.⁴⁶⁶

Although there is no statutory power for police to obtain names and addresses of persons who have not committed any offence, police may request that the person provide this information. When a person complies with such a request it is often described as 'policing by consent'. The nature of this 'consent' is somewhat controversial because although people voluntarily provide the information to police, they may not realise that they are under no obligation to do so, and they are unlikely to know what the information will be used for. A number of submissions referred to the illusory nature of this type of consent.⁴⁶⁷ The Attorney General's Department submission noted:

A requirement to inform persons that they are not required to give information such as name and address is another matter which should be considered. The possibility that a person may then have a recording of unspecified "drug related intelligence" recorded against them in police records after an unsuccessful search underlies this concern.

Provision of information on the basis of assumption or misapprehension of a duty to do so should not be encouraged. Consideration should be given to requirements to inform persons searched of their right not to give information and ways in which information will be recorded, stored, used and accessible. Ignorance of the possible intelligence consequences of a positive indication must also qualify any argument as to policing by consent on the part of innocent persons. Policing by consent should be by way of free and informed consent.⁴⁶⁸

The NSW Council for Civil Liberties raised a similar point in its submission:

It cannot be said that a citizen consents to giving police their personal details when they are under the mistaken belief that they are obliged to comply with police directions.

Nor can it be said that someone has given their consent, if they are not properly informed of their rights.⁴⁶⁹

The Council recommended that prior to making a request, police inform individuals that they do not need to comply with a request to provide their personal details. The Council also recommended that police explain to individuals what will be done with the information.

11.2.1.2. Additional detention of persons to allow CNI (Central Names Index) checks

The NSW Council for Civil Liberties also raised with us that searched persons were being additionally detained to allow police to conduct radio checks on the person's details. The Council submission includes the following two quotes from people who complained to the Council:

*I was taken to a small room, forced to produce id ... I was searched ... After they had checked that there were no outstanding warrants against me I was allowed to go.*⁴⁷⁰

*After the search they made me wait while they checked my name.*⁴⁷¹

There is some evidence of this kind of detention in our observers' notes from police operations. For example, at the end of the search of one man who admitted to previously smoking marijuana, although no drugs were located by police, our observer recorded:

*A radio check was commenced and he was told to stay until it was completed.*⁴⁷²

Other observer notes included:

*When all the items were searched [and nothing found] he was told that a quick warrant check would be done ... They were still waiting on the CNI [Central Names Index] check when I left.*⁴⁷³

*He asked if they could finish the procedure on the train because he didn't want to miss it. Police said he could catch the next one. They made him wait until they had gone through all the questions, they waited for the radio check, then they let him go.*⁴⁷⁴

On another occasion our observer noted: 'it was clear that search process slowed down to permit [the CNI check] to happen.'⁴⁷⁵

The NSW Police Code of Practice for Custody, Rights, Investigation, Management and Evidence states:

Do not detain someone for the purpose of questioning. Do not detain anyone or vehicle for longer than is reasonably necessary to conduct your search.

*If you do not find anything or you are not going to ARREST let the people or vehicle go.*⁴⁷⁶

Once the search has been completed and no drugs or other offences detected, police must let the person leave. There is no power to detain a person to conduct a CNI check or to conduct further questioning. NSW Police should make clear to officers that in such circumstances they should allow people to leave as soon as the search is finalised.

11.2.2. Requesting information about drug use

Often after finding no drugs on a person, police will question them about possible drug use or other contact with drugs. There is no obligation on the person to answer these questions. After the drug detection dog indicates a person police will almost always caution the person. The standard caution delivered by the dog handler is phrased as follows:

*I want you to understand that you do not have to say or do anything unless you wish, but anything you say or do may later be given in evidence, do you understand that?*⁴⁷⁷

During our observational research we found that people were routinely cautioned by police soon after being stopped and prior to being searched.

As stated above, police have no power to detain a person once they cease to have a reasonable suspicion on which to base their detention of the person. Police would generally have no reason to detain a person once the search was completed and no drugs or other 'illegal' items were found.

However, police routinely question people during and/or after a search has been completed in order to provide an explanation for the drug detection dog's indication. The Results Spreadsheet shows that in 59% (4456 of 7547) of incidents in which no drugs were found the person made some kind of admission to police about contact with drugs. We often witnessed police persuading people to provide this information, for example:

*Police: (continuing to seek explanation for indication) ... like I said before, it's not an offence to tell me if you do smoke sometimes.*⁴⁷⁸

And on another occasion, our observer noted the following interaction:

Police: ... you smoke a bit of pot every now and then? I don't care but –

Man: Oh yeah.

Police: Regularly? Daily?

Man: Yeah. Oh, yeah.

Police: I'm not wanting to get you into any trouble – just curious.⁴⁷⁹

We also note a recent memo sent to officers at a local area command in inner-western Sydney to 'minimise adverse complaints from members of the public':

Simple, all operational orders and briefings for Drug Dog Operations are to detail: if any person provides a positive detection for the drug dog they must be questioned on all occasions even when the search proves negative so that further intelligence or information may be obtained that supports the drug detection. If the person refuses to answer your questions so be it, but record that fact and detail your opinion in the Event Rpt, ensure intelligence is also reflected in the Intel Rpt.

The focus is on trying to extract information out of them that will support the drug dog detection. These operations are closely monitored by the Ombudsman's Office and I don't need to explain why.

In many cases a negative search is because the POI is wearing a jacket/clothing they wore the night before when they smoked cannabis and the residue is providing a positive indication to the drug dog, but unfortunately many of you are not asking questions as to why the person has given a positive indication, and this is where members of the public take advantage. They complain about the fact that they were searched, and there appears to be nothing to support the reason of the search, it also tends to discredit the drug dog.

Like on all occasions when dealing with members of the public especially with sensitive issues good, direct, explanatory, thorough communication makes work easier.⁴⁸⁰

We are also aware of two incidents which starkly demonstrate the possible consequences of admitting prior drug use to police. In two incidents we are aware of, police have charged people with the offence of self-administration of a prohibited drug on the basis of an admission of prior drug use.⁴⁸¹ In one incident, a man found in possession of four ecstasy tablets, was charged not only with possession, but also with self-administration because he 'admitted that he had taken one of the tablets approximately 20 minutes prior to police speaking with him.'⁴⁸² The self-administration charge was withdrawn at court.

The other incident is described in the following event narrative:

At about 9.30am on Tuesday [date] police were conducting a drug dog detection inside [name of railway station]. At about this time the accused was standing on the concourse between platform 1 and 4 when approached by the police drug dog [name of dog] that indicated to his handler that he detected the scent of an illegal substance in the air around the accused. Police stopped and spoke with the accused who was cautioned and informed of the dog's actions. The accused indicated to police that he had no illegal drugs on his person but he had smoked several cones before he left home this morning. The accused was led to a nearby office and cautioned again. The accused readily admitted that he had smoked several cones of cannabis in his bedroom at about 7am this morning. He further stated that he was addicted to cannabis and after smoking the drug he felt a buzz. The accused was issued with a field CAN for admin prohibited drug to appear at [name of local court] on [date] before he was allowed to leave. Police noticed at the time of his arrest (sic) that the accused had a very dry mouth along with bloodshot eyes and a dreamy appearance.⁴⁸³

This man was convicted and fined \$100 for self-administration of prohibited drug.⁴⁸⁴

We appreciate that police would like to obtain information from persons searched who are not found carrying drugs. However, in fairness to that person the 'thorough communication' in this 'sensitive' exercise should also in our view, include disclosure to the person that they are neither obliged to remain with police nor to answer questions.

To ensure searched persons understand that they are not obliged to answer police questions, searching police should caution them immediately prior to questioning. If no drugs are found during the search, police should also inform the person that they are free to leave as soon as the search is finalised.

11.2.3. Summary and recommendations

During the review we found evidence showing that police routinely make requests of searched persons in circumstances where police have no power to enforce these requests. It is possible that compliance with such requests may lead to adverse consequences for members of the public, such as having their personal details recorded on the COPS system in association with a drug search, or being further delayed by police questioning or record checks. While some people may agree to questioning, detention and provision of personal details with the knowledge that their agreement is not obligatory, others may choose to end the interaction with police. However, to effectively make a decision members of the public must be informed that they have a choice, and of the consequences of complying with police requests.

Recommendations

17. If police request personal details when no offence has been committed, they advise the person:
 - that they are not obliged to provide their personal details, and
 - how any details provided may be used.
18. NSW Police ensure officers do not obtain personal identification details during a search of a person's wallet or other items by using personal identification (such as a driver's licence), unless they have explicit and informed consent to do so.
19. NSW Police ensure officers do not detain a person to conduct a CNI or other check where police no longer have a reasonable suspicion that an offence has been committed, unless they have explicit and informed consent to do so.
20. NSW Police ensure that officers inform searched persons that they are free to leave where no evidence of an offence has been detected.
21. NSW Police ensure officers formally caution persons that they are not obliged to answer questions immediately prior to the first question.

NSW Police support recommendations 17 and 18 and noted the following in response to recommendation 18:

Provided a search is lawful and there is a lawful obligation for the person being searched to disclose their identity, then if a wallet or other item forms part of the search, then there would be nothing improper in police requesting the person to provide proof of their identity through production of identification that may have been seen in the wallet (or other item) during the search.

Where police are conducting a lawful search, then provided the rules under LEPR for the conduct of searches and the preservation of a person's privacy and dignity are properly applied, the person's civil liberties do not override the legislative duties and authority vested in police by Parliament. Similarly, they do not negate any statutory obligations on the person to comply with certain requests from police. There is also a public expectation that police will take all the necessary lawful steps to ensure that criminal offenders do not escape justice through the use of false or misleading identification.

However, NSW Police agrees that it is not appropriate for officers to take a person's ID without having first requested to see that ID as proof of the details a person has provided (in accordance with a lawful direction, or via informed consent).⁴⁸⁵

In response to recommendations 19 and 20, NSW Police advised they support the recommendations, which are already part of police policy and practice.⁴⁸⁶

NSW Police supports recommendation 21 and provided the following information in relation to police policy and practice:

Wherever NSW Police officers are asking questions in relation to the investigation of an offence it is NSW Police policy, as stated in the Code of Practice for CRIME, that police must caution when they believe the person they are questioning has committed an offence. This means that police would be expected to caution a person before asking any questions once a dog has indicated that person, or they have formed reasonable suspicion that the person is carrying drugs because of some other reason (e.g. POI ran from the drug dog). Given the examples in the Ombudsman's report, NSW Police will provide advice to police in relation to cautioning and questioning following a drug detection dog indication.

Further, the Dog Unit is also seeking legal advice in relation to the pre-question preamble/caution given by the Drug Detection Dog Handlers to clarify the correct procedures for handlers to apply in the field.⁴⁸⁷

11.3. Recording information reports on COPS about searched persons

During the first six months of reviewing the implementation of the Drug Dogs Act, we were alerted to an apparent police practice of recording information reports and other electronic records of persons searched following an indication by a drug detection dog, whether or not drugs were found or any admission of drug use or other offences was made.

In some local area commands, we noted that records with a person's identification details appeared to be made on the police COPS system as a matter of course. For example, information provided to police at one pre-operation briefing stated:

*Intelligence Reports to be submitted for each person stopped and searched, regardless of result.*⁴⁸⁸

A police officer from an inner-city command which utilised the drug detection dogs regularly, also called us expressing concern about what he perceived to be an unfair requirement to record information about searches from which no drugs or other relevant intelligence resulted.

We were concerned that members of the public, who had committed no offence and made no admissions, and about whom police had no prior intelligence information, were having their details recorded on COPS solely because of an indication by a drug detection dog. We were concerned that this record had the potential to prejudice future police dealings with this person.

We have also been informed by NSW Police that when conveying information about persons of interest to officers in the field, VKG Officers (officers working on police radio) are unlikely to distinguish between information reports on COPS where drugs are found and reports where no drugs are found. The following is an extract from correspondence from NSW Police:

Below is a list of how drug detection dog related incidents would likely be recorded on COPS and how those incidents will most likely be reported by VKG radio officers, where the person has no other incidents/warnings recorded on COPS, and no warrants etc outstanding:

- *COPS Event, Person Search (Item/Object Not found) – VKG Advice: (person's name) is not known as a person of interest.*
- *COPS Event, Person Search (Item/Object Found) – VKG Advice: (person's name) is known for a single search event, object found, nil outstanding.*
- *COPS Event, Drug Detection – VKG Advice: (person's name) is known for a single drug detection event, nil outstanding.*
- *COPS Intel Report resulting from a drug dog indication (includes intel where item/drug is found and where item/drug is not found) – VKG advice: (person's name) is known for intel, drugs other, nil outstanding.*⁴⁸⁹

The relay of this information to a police officer in the field may be influential in decision making about the conduct of searches and the exercise of other police powers. For example, it may tip the balance in favour of searching a person or their vehicle when otherwise a search would not have been performed.

At one police briefing we attended, a senior officer advised police that an event record should be created for every person searched. He advised that officers should not create an information report but must create an event record. He told officers that it was unfair to do an intelligence report on 'clean skins'⁴⁹⁰ because 'you know all they tell you on the [police] radio is that there's a drug-related intel' and it was unfair if the person had not really had anything to do with drugs.⁴⁹¹

Since discovering this recording practice we have raised this issue formally with NSW Police and in our discussion paper, analysed a number of complaints which show concern about police practice in regard to obtaining and recording personal details, canvassed the issue in focus groups and interviews of a range of police and conducted an audit of information reports.

11.3.1. Development of NSW Police guidelines for recording drug detection dog incidents

We approached NSW Police about their recording practices and requested that NSW Police formulate a clear policy on the specific issue of recording incidents involving drug detection dog indications. In response, in August 2002 NSW Police called a meeting of a number of senior police and representatives from two local area commands. This meeting resolved:

1. *With regard to individuals identified by the dogs on whom nothing is found, individual officers should retain discretion on the submission of Information reports (IRs).*
2. *Such discretion involves officers considering all information available at the time (e.g. admission of prior use; prior knowledge of the individual; the location where the individual was identified by the dogs etc.). Contextual information should be considered in light of the usual requirements for the submission of IRs.*
3. *Officers involved in drug detection dog operations may need to be reminded of the NSW Police policy for the recording of IRs established by the IIC [Information and Intelligence Centre]....*⁴⁹²

There was also consensus at the meeting that:

1. *In the case of searches arising from a positive indication from the dogs with nil find, notebooks were considered an adequate means of recording this search in the case of a future complaint.*
2. *The present system of recording searches on the drug detection dogs in-house database was deemed adequate for NSW Police statistical purposes. ...*
3. *The risk of nil find IRs being used to engage reasonable suspicion for subsequent searches was acknowledged. However, the approach agreed on (above) was seen to mitigate substantially against such risk.⁴⁹³*

We were also informed that the representatives of State Crime Command at this meeting did not endorse 'the routine submission of IRs for all occasions where the dogs make a positive identification'.⁴⁹⁴

Following from these decisions an information sheet was developed by NSW Police to guide police on this issue.⁴⁹⁵ The information sheet was sent to all Dog Unit Staff on 17 September 2002. Dog Handlers were advised to reinforce the guidelines in the information sheet at all briefings they attended.⁴⁹⁶ The information sheet stated, in part:

All officers involved in Operations using drug dogs will face occasions where the dogs indicate the presence of a prohibited drug or plant on an individual, but no prohibited material is found during a subsequent search of that individual.

Under no circumstances are officers required to file an Information Report (IR) for all such positive indications by the dogs; a 'blanket rule' to submit an IR of all these instances is not appropriate...

In relation to Operations using the drug dogs, officers should be reminded that a positive indication from the dog does not in itself provide sufficient justification for the filing of an IR. In the case of a nil find, officers should carefully examine all other available information before deciding to submit an IR.⁴⁹⁷

According to the information sheet, all drug detection dog indications are to be recorded in a police officer's notebook and on the spreadsheet on search outcomes kept by the Dog Unit.

The information sheet also reiterated a list of eight questions contained in the Information Report Policy and asked officers to ensure they could answer 'yes' to at least one of the questions, before creating an information report about a person who had been indicated by a dog but on whom nothing had been found:

- a. *Does the IR relate to a person who is the subject of a current intelligence plan, for example a High Risk Offender (HRO), Medium Risk Offender (MRO) or a Very Important Person (VIP)?*
- b. *Does the IR relate to a person who is not a HRO or MRO but is engaging or suspected of engaging in criminal activity or suspected criminal activity?*
- c. *Does the IR relate to the activities of a group or organisation who is the subject of a current intelligence plan and/or who is engaging in criminal activity or suspected criminal activity?*
- d. *Does the IR relate to a person who has an outstanding warrant?*
- e. *Does the IR relate to a known or suspected location for crime?*
- f. *Does the IR relate to an entity (non-person) involved in a crime or suspected crime?*
- g. *Does the IR relate to a Registered Operation?*
- h. *Does the IR relate to threats against police or members of the public?*

In practice, for the purposes of drug detection dog search incidents it seems that the list of questions from 'a' to 'h' above has been simplified into three key considerations: admissions, criminal history and other relevant intelligence information. That is, if a person is not found to be carrying any drugs, police should use their discretion in determining whether to make an information report and in doing so take into account whether the person made an admission, has a relevant criminal history or there is any other activity or information to justify making the information report (for example, the person made threats against police during the search).

Our observers' notes from police briefings document that in explaining the information sheet, handlers made the following comments to police prior to drug detection dog operations:

If you search them and don't find anything, ask them if they've been smoking, "and say to them, 'If you have been smoking, I don't give a crap. There's nothing I can do.'" If they say, 'No, no, no' they are probably lying. But even if you don't believe them, if there is no other intel you are not justified in making an intel report. It is

*possible that it has rubbed off a person sitting next to them. But if you have reasonable suspicion that they are lying, e.g. the person has red eyes, you can do an intel report.*⁴⁹⁸

*If the dog stops someone and they deny that they have anything to do with drugs, and no drugs are found then this should be a notebook entry only. If there is additional intel then use your discretion whether to make a COPS record.*⁴⁹⁹

*[Handler]: If you search someone and no drugs are found and there is no admission you must put their details on the [Dog Unit] spreadsheet but do not record this on COPS... [Handler] further clarified that if there was no admission but the person was known to the police officer as a dealer or user then they could make an intel report.*⁵⁰⁰

Both the written policy and its verbal explanation by police leave quite a lot of room for interpretation. Advice is not given, for example, on what constitutes an admission, the recency or subject matter of any criminal history, or the nature of any other intelligence that might, or might not, justify the creation of an information report.

11.3.1.1. Registered Operations

Question 'g' asks whether the IR relates to a registered operation. Many of the operations using the drug detection dogs have particular operation names, however we are uncertain whether all such operations are 'registered operations' according to the policy. If they are all registered operations then potentially all drug detection dog related searches occurring as part of such operations could be recorded in information reports and still comply with the information sheet. This could undermine the emphasis in the information sheet that there is no blanket rule that information reports should be created for every search following an indication by a drug detection dog.

We asked NSW Police to define a registered operation. NSW Police informed us that:

*A registered operation as mentioned within the Information Report Policy is one which is recorded on COPS as a registered operation. ... Commands record operations as a registered operation on COPS as it allows information (such as Intelligence Reports) regarding an operation to be centrally stored on the COPS system. Also, recording this information on COPS ensures it is both auditable and accountable.*⁵⁰¹

NSW Police also informed us that there are a number of categories of registered operation, including the categories, 'Alcohol and Drug Related Crime (Investigative)' and 'Alcohol and Drug Related Crime (Enforcement)'.

This information, while useful, did not assist us in determining whether all named operations were necessarily registered operations. However, we understand that at least some operations deploying drug detection dogs are registered operations, for example, those conducted through Operation Vikings.

While it may make sense to record centrally all information reports attached to a particular registered operation, the mere fact of the operation should not provide a reason to make the information report in the first place. This is particularly the case in the context of operations focussing on the deployment of drug detection dogs, where most of the people police come into contact with have committed no detectable offence. In addition, audit policies require the removal of certain intelligence reports after 12 months, making this an inappropriate accountability tool. The Dog Unit also keeps records of all indications. If NSW Police continues to make use of the information sheet in its current form, consideration should be given to removing question 'g'.

11.3.2. New police recording policy

On 18 May 2004, a state-wide memo was issued by NSW Police, stating in part:

Police are directed to record person searches following positive drug dog indications as Events under the category 'Person Search'. This replaces the previous common practice of recording such searches as 'Street Offences' or using the various categories available under Information Reports. This applies regardless of whether or not drugs or other items are found or admissions made ...

*Police retain the discretion to create an IR regarding a drug dog search provided that it meets the creation criteria specified in the Corporate Information Report Policy.*⁵⁰²

The memo clearly directs police to record *all* such incidents on COPS as event records entitled 'Person Searches'.

In July 2004 we received information from NSW Police that to reflect the new policy, the information sheet had been amended in the following terms:

Wherever a Drug Dog search is carried out, an event should be created on COPS under the new Person Search category – regardless of whether an object is found, or admissions made; and,

The policy will continue to advise that where warranted (given the professional judgement of the officer) and according to the guidelines currently set out within the Drug Dog Policy, Police may still choose to enter an IR.⁵⁰³

Under the revised policy, searches following drug detection dog indications are recorded in the same manner as other searches, for example those conducted under the *Summary Offences Act 1988*. The person searched is recorded as a 'POI' or person of interest. NSW Police has stated that 'POI is not synonymous with "offender".' And that missing persons and children at risk are also classified as POIs.⁵⁰⁴ NSW Police further explained:

COPS IRs are mainly concerned with recording non-evidential information about known persons and groups, while COPS Event records are an official, permanent record of actual events coming under police notice and actions taken with respect to those Events.

Events are more searchable than IRs, more auditable than IRs and provide a more appropriate and complete record of police actions should a complaint be made about a particular search ...⁵⁰⁵

11.4. Police views about recording on COPS

Since the information sheet was introduced, several police officers have approached us with their reasons why police should record details of all persons searched, including:⁵⁰⁶

- If the person makes a complaint in relation to the search and there is a record on COPS with the person's name, police can easily track down the incident and provide an explanation to the person. If necessary police can also easily establish the identity of officer(s) involved in the search.
- A concern that useful intelligence information might be lost.
- A general concern that any incident in which police invade a person's privacy should result in a record being kept documenting the incident and the reasons for it.
- A concern that police statistics will not properly reflect the work performed by police if these searches are not recorded.

We note in regard to the last point that NSW Police policy clearly states that information reports are not to be made 'as a means of simply recording work activity levels'.⁵⁰⁷

In correspondence to this office, one local area commander, after first stating that he would abide by the corporate guidelines, commented:

By way of a personal view, all people searched who are not otherwise prosecuted, ought to be recorded on COPS. I think the reasons are obvious. Too often this organisation has been criticised for suboptimal record keeping arrangements. By recording these interactions, there is a transparent record of all such incidents.

In my opinion, the current arrangements as espoused in the document titled 'Filing Information Reports following Drug Dog Detections' is also problematic particularly as it concerns Note Book entries and Result Form records. In my view, that information should be recorded so it can be readily retrieved, transparent and linked to individual's names. For example, an individual might be the subject of several indications in different places at different times though subsequent searches were fruitless. That information may be of use in arriving at cogent inferences about the individual, eg, the individual is found in the company of persons found to have illicit drugs in their possession. If that individual's details are hidden in individual officer's notebooks and only numbers on the Drug [Dog] Handler's running sheets, those kinds of inferences cannot be drawn.⁵⁰⁸

We noted these views in our discussion paper and asked for comments from respondents about the recording of search incidents following drug detection dog indications.

NSW Police commented that all search incidents should be recorded as a 'Person Search' on COPS (according to the newly developed policy). One other submission from a NSW Police local area command supported this view.⁵⁰⁹ NSW Police also informed us that:

With regard to Information Reports (IRs), it [is] NSW Police policy to only record Drug Detection Dog Person Searches as IRs where such a record has intelligence value, in accordance with the NSW Police "Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS Information Reports".⁵¹⁰

An Operations Manager from a western NSW Command told us that ‘information reports were not essential particularly where an event has already been recorded’ and that an information report ‘should only be recorded where additional information has been obtained as a result of the search.’⁵¹¹

Most police we spoke to in interviews and focus groups were supportive of the recording of all searches as events on COPS. Two main reasons were asserted for this view:

- 1) That a record was important in case there was a complaint. For example:

*they may go and make a complaint and we haven't put anything on there. Then it looks like we've got something to hide. We put on there that they have been searched, no drugs were located, [and] everything's above board.*⁵¹²

- 2) That the record was important to measure work performance.

it needs to go onto the system for the sheer, because the sheer fact of ... the work performance of the officer. [So] that we know they are actually doing something because otherwise, the notebook doesn't get recorded on the computer system.

*we want to know that Constable Bloggs in the Month of May actually, you know, did something ...*⁵¹³

During the review period there was no specific instruction provided to police about how and whether to use the event system to record searches of persons following indications by drug detection dogs. The information sheet was only applied to the creation of information reports. Some commands chose to adopt a policy of recording all searches as events, regardless of the result of the search.⁵¹⁴ As discussed above, recording events for all searches later became the official NSW Police policy.

We asked the Commander of the Drug Squad whether he thought use of the intelligence system could be hampered by the inclusion of too much low-level information, such as information reports arising from drug detection dog indications where no drugs were found. The commander said he acknowledged that it could be laborious for his intelligence staff to sift through these reports but, overall, his attitude was that ‘any intel is good intel’ and ‘you can never have too much as far as I’m concerned’. He further explained:

*put it this way, if we don't know then we can't do anything with it but if we do know, and there is something we can capture from it, well, then obviously that's good. Yeah, we can sort out that chaff from the wheat I think.*⁵¹⁵

Some police appreciated the privacy concerns in relation to making records of people who had committed no offence. For example, one officer told us during a police focus group:

*the issue you're raising is the fact that someone's name's recorded in that information that's been captured and kept on a COPS system, and yet some people place that name on an intel report, and when they get stopped again it's got, ... "intel for drugs". And they can, they admitted to a search or they consented to a search, nothing was found and they made no admissions to taking drugs and yet there's an intel link for that person ... for drugs, and ... that's a valid civil liberties issue in my view.*⁵¹⁶

One senior officer suggested that an event could be made without reference to the person’s name – providing a description of the person and the incident, date, time and location.⁵¹⁷ This suggestion was also made by Redfern Legal Centre and the UTS Community Law Centre in their submissions, as noted below (at paragraph 11.5). Another senior officer suggested that after an operation a single event could record all the people searched who had nothing found on them. These two suggestions may provide a way of making a record of an incident, to allow for better complaint investigation, without necessarily making the record ‘searchable’ against a particular person’s name on COPS. VKG operators, for example, would not locate these events when they did a radio check for police in the field.⁵¹⁸

The Police Association of NSW supported the existing recording practices and explained the advantages of keeping records on COPS as follows:

*The advantages are that police have a recorded version of an interaction with a person, where that person's liberty has been affected and where a search was conducted. It allows instant access to information where a complaint is received. It allows police to have information available to them in future interactions with that person, which is critical in officer safety issues.*⁵¹⁹

Concern from police about the need to effectively deal with complaints was a frequent response to our questions about the necessity of recording incidents on COPS. While we appreciate that this is a genuine concern for some police, it should be viewed in the context of both the small number of relevant search-related complaints received by this office over the review period (16) compared to the large number of drug detection dog related searches (over 10,000) and the fact that a number of complainants expressed concern about police recording practices.

11.5. Other views about recording on COPS

Those submissions which commented on the recording issue generally expressed concerns about records being made for persons who had committed no offence and made no admissions. This view was expressed in at least ten submissions. Some of these submissions favoured no records at all being made in such situations, while others acknowledged police accountability issues and submitted that only de-identified records should be made.

Some examples of the views expressed in these submissions are set out below:

Police are concerned that the lack of a COPS entry of a false positive may result in “useful information” being lost. What sort of useful information could there be from someone who committed no offence and made no admissions? The only thing that can result is that this law-abiding citizen is subsequently regarded with suspicion during later dealings with the Police, and may in fact end up being denied Police assistance because they are regarded as “just a druggie” even if there is no positive evidence for that.⁵²⁰

We are very concerned about the collection of “intelligence” on individuals who are searched with a negative result. By the time a person has been “indicated” by a drug detection dog, and then searched by police their privacy has already been interfered with to some extent. In cases where no drugs or other illegal items are found, it is difficult to see a justification for further interfering with a person’s privacy by recording personal details and entering them into police recording systems.

We acknowledge that the collection and maintenance of intelligence reports can be a useful policing tool. However, we believe a balance needs to be struck between effective policing and personal privacy. We suggest that the maintenance of intelligence reports on persons found not to be in possession of drugs tips the balance unreasonably in favour of the former.⁵²¹

No record should ever be kept of any person found to be innocent. If any records exist they should be destroyed immediately.⁵²²

Police believe that these records serve a useful purpose, however, my opinion is that any “intelligence benefit” is far outweighed by infringements of civil liberties. The argument that entry onto the COPS database provides a transparent record of the search is weak. A written receipt given to the person searched is all that is required along with an anonymous “unsuccessful search” entry made on the COPS data base. One wonders how much useless and/or incorrect information is contained on the COPS data base – is there any way a citizen can verify the information listed against their name if it is contained on the COPS data base?⁵²³

Redfern Legal Centre argued that if police need to keep records for complaints purposes, these records should be de-identified. The legal centre went on to explain:

For example, if Fred Smith is subject to a ‘sniffer search’ and no drugs are found on him following a search, then rather than recording his name and address, the officer could record an entry as follows:

“Male, early 30’s, blonde hair, wearing jeans and red checked collared shirt, positive indication by dog at corner of Pitt and Bathurst Streets at 9.15am on Tuesday 13, March, 2003, no prohibited substances found in subsequent search, search conducted by officers Jones and Hancock”.⁵²⁴

The UTS Community Law Centre agreed with this proposition and went further, submitting that ‘all individuals, whether the drugs were found on the person or not, be provided with a copy of the record.’ The submission also stated that records on the use of police powers should be reported in an annual report.⁵²⁵

The NSW Council for Civil Liberties recommended that:

no identifying information of people identified by drug detection dogs be kept at all by police – unless an individual is charged with a criminal offence.⁵²⁶

The Attorney General’s Department submission also raised the possibility of de-identification of records as a safeguard against inappropriate use of such information. The submission also stated:

The recording of “drug related intelligence” against a person on whom no drug is found is of itself a matter of significant concern. Future police conduct in relation to a person who has been the subject of a positive indication by a dog where no drug is found may be prejudiced or influenced by such intelligence recordings. This concern applies in cases where some admission of ‘drug contact’ is made but especially in cases where there is no admission of any kind.⁵²⁷

As we detailed above (at paragraph 11.2), eight complaints raised concerns about the information recorded on COPS following a drug detection dog indication. These complainants were particularly concerned that despite no drug being located on them by police, a dog indication had resulted in the creation of a police record linking them to drug use.

Concerns have also been expressed to us about the consequences of the record made by police in conjunction with a cannabis caution. For example, the concern that such a record might influence a person's ability to obtain some types of employment and concern that such a record will never be expunged. NSW Police has informed us that 'routine criminal history checks for employment purposes do not include cannabis cautions as they are not convictions.' Police have also informed us that records of 'unsuccessful' searches (where no offences are detected) would not be included in 'routine' employment checks.⁵²⁸

We are aware that in some Australian jurisdictions (South Australia, Western Australia, Australian Capital Territory and Northern Territory) a person found in possession of a small amount of cannabis may be issued a fine. Upon payment of the fine official records of the incident are destroyed.

11.6. Monitoring compliance with the information sheet

Some time after the information sheet had become active policy, we noticed, after checking events following our observational research, that some commands continued to create information reports to record the details of persons searched where no offence was committed, no admission made, and no other information seemed to justify the making of the record. We raised this issue of compliance with the policy with three commands which had come to our notice. The commands responded to our inquiry by re-assessing the records on COPS for the particular operations and arranging for non-compliant records to be deleted or amended.⁵²⁹

The first command located 137 relevant records attached to a particular operation, and found 63 to be non-compliant.⁵³⁰ The command indicated that these incidents would remain on the system until their review date at which time they would be deleted.⁵³¹

The second command located ten information reports which did not comply with the policy and arranged for the reports to be deleted.⁵³²

The third command responded to us via the (then) Acting Deputy Commissioner (Operations). The command undertook to check all relevant records made over the last 12 months and delete those which did not comply with the policy. The command identified 208 events which required amendment. Five information reports were deleted. In addition, this command sent a memo to its officers advising of the procedures for making information reports following drug detection dog indications where no drugs were found. The memo stated:

DRUG DOG INDICATION – NO DRUGS LOCATED

- *DO NOT record on COPS*
- *If the person makes ADMISSIONS as to have used, possessed or having come in contact with a prohibited substance prior to the indication, make a record of the search in your official notebook, the persons details and submit an INFORMATION REPORT.*
- *If NO ADMISSIONS are made as to the use, possession or contact with a prohibited substance and if the person voluntarily provides their details, record the search and their details in your official notebook. DO NOT record on COPS.*⁵³³ [Original Emphasis]

Since the compliance matter was likely to be more widespread than just these three commands we also wrote to the Deputy Commissioner (Operations) about these issues. In particular we emphasised the following:

*I am concerned that further action to ensure adherence to the guidelines may be warranted at a corporate level. I am also concerned that since the adoption of the guidelines, an unknown number of persons have records on COPS though they are not known to have committed any offence and there is no other relevant intelligence information warranting a COPS entry.*⁵³⁴

We requested the following advice from the Deputy Commissioner:

1. *Advice about any actions taken by NSW Police to ensure the implementation of its guidelines "Filing Information Reports following Drug Dog Detections"; and*
2. *Advice about any actions taken by NSW Police in regard to the existence of inappropriate records on COPS of persons searched following drug dog indications, where no illegal substances were found and no admissions made.*⁵³⁵

In response to our first question the Acting Deputy Commissioner advised us of the existing practices to ensure compliance with the guideline. The Acting Deputy Commissioner's response to this question is set out below:

NSW Police ensure the implementation of the "Filing Information Reports following Drug Dog Detections" policy (the policy) through the NSW Police Dog Unit.

LACs using drug dogs in their operations first receive a copy of the policy when they download the “Drug Detection Dog – Preplanned Job Form” from the NSW Police Intranet. A copy of the policy is attached to that form.

In addition, drug dog handlers are aware of the policy and provide instruction to LAC officers when they conduct operations regarding the policy and correct recording of drug dog indications where no admissions are made and no drugs are found.⁵³⁶

The Acting Deputy Commissioner also advised that a state-wide memo would be sent out ‘reminding officers to ensure they adhere to the policy when determining the appropriateness of submitting information reports following drug detection dog indications.’ We were also informed by the Dog Unit that a memo had been re-issued to handlers advising them of the procedures in relation to recording.

In response to our second question, the Acting Deputy Commissioner noted the action that would be taken by the third local area command mentioned above to delete inappropriate records. No other actions were proposed to deal with any incorrectly recorded information reports that may have occurred elsewhere in the state. We wrote to the Deputy Commissioner again, requesting his advice ‘should NSW Police propose to take any action’ about the likely existence on COPS of inappropriate information reports resulting from drug detection dog indications. Approximately eight months later (after the end of the review period) the Deputy Commissioner replied. This letter dealt with new recording procedures (described above at paragraph 11.3.2) that had been devised for all search incidents. It also noted that:

NSW Police is currently undertaking a substantial amount of work to improve the quality of COPS records regarding drug detection dog searches, and given the significant imposition on Police resources that any further audit or subsequent amendment of COPS records would present, I do not propose to undertake any further action at this time other than that outlined above [i.e. the new search recording procedures].⁵³⁷

Thus, other than at the three local area commands we directly contacted, NSW Police chose to take no action in relation to the likely incorrect recording of an unknown number of information reports about persons searched following drug detection dog indications where no drugs were found, no admissions made and no other relevant intelligence existed.

11.7. Our review of compliance with the information sheet

To see what impact, if any, the information sheet had on police recording practices we examined information reports created before and after the changes in recording procedures. In September 2002, the policy was circulated to dog handlers who had a key role in explaining the revised approach to officers. We allowed some time for the new procedures to take effect, setting 1 November 2002 as the ‘cut-off’ date and examining police practice before and after that date.

According to the Results Spreadsheet, during the review period there were 2280 drug detection dog indications prior to 1 November 2002 and 7931 indications on or after 1 November 2002.

Table 14. Information Reports (IRs) created following drug detection dog indications

	Feb to Oct 2002	Nov 2002 to Feb 2004
Total drug detection dog indications	2280	7931
% recorded as IRs	54%	34%
% recorded as COPS events	38.5%	50%
% recorded as IR, COPS events or both	90%	79%
% no IR or event, but admission of drug contact	3.5%	8%

Source: Derived from the Results Spreadsheet, 22 February 2002 to 21 February 2004 and COPS.

Table 14 shows a marked shift in recording practices following the introduction of the information sheet in late 2002, with the proportion of drug detection dog indications leading to the creation of information reports dropping from 54% to 34%.

Part of this shift away from information reports is attributable to an increase in creating COPS events, indicating that some officers simply substituted one type of electronic recording for another.⁵³⁸ Yet the overall fall in drug detection dog indications subsequently linked to information reports or COPS events (from 90% to 79%) shows that more officers were opting not to create *any* electronic records of these searches.

One possible indication that some officers were being more selective in their recording is data showing a rise in the number of instances where no electronic record was created despite the person searched providing some admission or explanation for why they were indicated by the drug detection dogs – rising from 3.5% to 8% of all drug detection dog indications. It might be that officers considered the information gained to be of little intelligence value or not serious enough to warrant creating a record that might affect future police dealings with the person searched.

If the change in policy was encouraging officers to be more discerning about the information they record electronically, then the falling number of information reports should be associated with a rise in data quality. That is, electronic police records should contain fewer instances of searches that yield no drugs and no useful information about associated drug activity. Table 15 summarises factors associated with information reports created before and after the policy change.

Table 15. Information reports created following drug detection dog indications

	Feb to Oct 2002	Nov 2002 to Feb 2004
Total IRs	1225	2687
% IR relating to searches where drugs found	5%	3.5%
% IR – no drugs, but admission of some drug contact	63%	68%
% IR – no drugs, no admission	32%	28.4%

Source: Derived from the Results Spreadsheet, 22 February 2002 to 21 February 2004 and COPS.

Although only one in three drug detection dog indications were leading to information reports after the policy change (compared with one in two before the change), the push for more selective recording of information reports did not appear to greatly improve data quality. Comparing data from before and after the policy change shows that:

- the small number of information reports noting searches where drugs were found fell further – from 5% to just 3.5% of all information reports, and
- despite a small rise in information reports containing some admission or explanation of drug contact, more than a quarter of information reports were for incidents in which no drugs were found and there were no admissions or explanations for the dog's indication.

We also noted that after the introduction of the information sheet, some titles of information reports continued to be potentially misleading. For example:

- Title: Drug detection – [name of person] – Coffs Harbour
Intelligence Category: Drugs Other

in relation to a person on whom no drugs were detected and who was recorded as denying any drug contact.⁵³⁹

- Title: Drug dog detection – [name of person]
Intelligence Category: Drugs cannabis/possess drug/plant

in relation to a person on whom no drugs were detected and who was recorded as denying any drug contact.⁵⁴⁰

- Title: [name of person] – positive drug dog indication – [name of railway station]
Intelligence Category: Drugs cannabis/possess drug/plant

in relation to a person on whom no drugs were detected and who was recorded as admitting only that his brother smoked.⁵⁴¹

- Title: Sniff detection of prohibited drug
Intelligence Category: Drugs other

in relation to a person on whom no drugs were detected and who was recorded as denying any drug contact.⁵⁴²

- Title: [Name of person] may carry drugs.
Intelligence Category: Drugs cannabis/possess drug/plant

in relation to a person on whom no drugs were found and who admitted to smoking pot on previous occasions.⁵⁴³

A quick scan of the records in most of these examples would suggest that actual drugs were detected on the person when in fact no drugs were found. The final example, whilst possibly accurate, shows the ramifications of admitting to cannabis use when there is no obligation to do so. Information on COPS that a person 'may carry drugs' would seem likely to influence the decisions of an officer in the field.

Information reports are significant because of their potential to influence future police dealings with the person searched. It is important for police and members of the public that they contain reliable and useful information. As noted earlier in this chapter (at paragraph 11.3), VKG Officers (officers working on police radio) routinely refer to these reports when providing advice to officers in the field. NSW Police has advised that often only summary information is provided, so a report where no drugs were found and no admissions made might be reported as: '[person's name] is known for intel, drugs other, nil outstanding.'

11.8. Information reports audit

To better understand the nature of information reports on the COPS system we examined information reports following searches where no drugs were found. We audited a sample of 509 reports – that is, 13% of all such records created during the review period.

11.8.1. What is contained in information reports?

We examined the information reports for *any* information that the person searched:

- admitted to using drugs – even months or years before the search
- conceded actual or possible contact with drugs or drug users, including being at parties or venues where users not known to the person searched might have used drugs, or
- gave any other explanation for the dog indicating the person searched, such as wearing a jacket owned by someone who might have used drugs.

All such searches were grouped as 'admissions' for the purpose of this review.⁵⁴⁴

Table 16 shows that many records contained some evidence or possible explanation for the dog's indication, using this very broad definition of 'admission'.

Table 16. Information reports relating to searches where no drugs found

	n = 509	%
IRs – some admission or explanation of drug contact	319	63%
IRs – no admission or explanation of drug contact	190	37%

Source: Audit of Information reports recorded on COPS, 22 February 2002 to 21 February 2004.

Table 17 summarises police records of the kinds of admissions made or explanations provided that might have justified the creation of information reports with respect to these searches.

Table 17. Information reports where no drugs found, but some 'admission' of drug contact

	n = 319	%
Associates of person searched <i>might</i> have been using illicit drugs	16	5%
Associates of person searched had used illicit drugs	52	16%
Person searched admitted personal drug use	251	79%

Source: Audit of Information reports recorded on COPS, 22 February 2002 to 21 February 2004.

Of the 251 people who made a clear admission about their personal drug use, 168 (67%) also provided information about *when* they last used an illicit drug. Table 18 summarises information relating to recency of personal drug use.

Table 18. Explanation by persons admitting personal use regarding when drugs last used

Less than 1 hour before search	10	6%
Same day as search	92	55%
Day before the search	37	22%
In the past month	22	13%
More than a year earlier	7	4%
TOTAL	168	100%

Source: Audit of Information reports recorded on COPS, 22 February 2002 to 21 February 2004.

When information reports contained comments about when the person searched said they last smoked marijuana or used some other illicit drug, more often than not the drug was used within a day or two of the search.

However, there was a surprising proportion of people (13%) whose last admitted use of illicit drugs was some days or weeks earlier – indicated by comments noting they last used drugs ‘last week’, ‘a couple of weeks ago’, ‘about a month ago’ and so on. Moreover, a further 4% said they had not used drugs for a year or longer. This raises questions about:

- whether residue of drug use from weeks, months or even years earlier could still cause the dogs to indicate a passer by, and more significantly for the current analysis
- what value there could be in recording this in an information report.

Most of the information reports containing admissions related to the personal use of cannabis. Below are some examples of admissions:

POI 1 admitted being a cannabis user.⁵⁴⁵ [Categorised by police as: ‘No information’]

The POI stated he had smoke (sic) a joint approx 40 minutes earlier.⁵⁴⁶ [Categorised by police as: ‘Denial’]

Police spoke to the POI who admitted being around people who had been smoking Marijuana. The POI refused to answer if he had been partaking. The actions of the POI suggested that he had been involved in the consumption of drugs.⁵⁴⁷ [Categorised by police as: ‘Admission’]

The POI admitted to police that he was a regular user of cannabis and cocaine and had had a joint about half an hour before.⁵⁴⁸ [Categorised by police as: ‘Admission’]

The data for the other two categories (associates used/possibly used drugs) show 21% of ‘admissions’ did not indicate any illegal behaviour on the part of the person searched. Adding these 68 records to those records where there was no admission or explanation of drug contact (190) shows that just over half of all information reports contain no evidence of drugs and no admission indicating illegal behaviour on the part of the person searched.

Although no admission was recorded in 37% (190 of 509) of records we audited,⁵⁴⁹ in some cases there was other information included in the record which may have justified the creation of the information report.

55% (105 of 190) of reports with no admission contained other information such as criminal history or intelligence information. This information was of varied detail and relevance. Some examples are set out below:

A search of COPS reveals POI has priors for possess/supply drugs, assault and traffic offences.⁵⁵⁰

The POI was later arrested with regard to 4 first instance warrants for unrelated matters.⁵⁵¹

Location For Suspected Criminal Activity.⁵⁵²

The POI became verbally abusive and threatened legal action against police.⁵⁵³

Upon searching the bag of the POI police found a bottle of Visine Clear Eyes and also noticed his eyes were extremely glassy, possibly affected by Cannibas (sic).⁵⁵⁴

PRIORS: Traffic, domestic violence, assault police.⁵⁵⁵

PRIORS: Fraud.⁵⁵⁶

16% (83 of 509) of information reports showed no reason for their creation on COPS. Slightly more than half of these (45) were created after the information sheet took effect from 1 November 2002.

In our view, although many records could be seen to comply with the policy by using a very broad definition of admission, many 'admissions' should not suffice as a reason for the creation or retention of an information report. In particular, it would not seem reasonable to make or retain an information report on the basis of an 'admission' that a person's friends or acquaintances do or may use drugs. Nor would it seem reasonable to create or retain an information report about an individual on the basis that a person was or may have been in a location where others were or may have been using drugs.

As noted earlier in this chapter (at paragraph 11.2.2), our observations of searches and questioning of people where no drugs were found noted that it was common for officers to assure the person searched that there would be no adverse consequences if the person searched provided an explanation for why the dog might have indicated them. We saw many instances where the people searched readily provided the information sought. However, the creation of the information report clearly has potential consequences for future contacts with police.

11.9. Where information reports are made, how long do they remain on COPS?

11.9.1. The NSW Police policy

The Information Report Policy notes the importance of balancing the interests of the 'subjects' of the reports with policing needs and legal requirements.⁵⁵⁷

In relation to review and possible disposal, the policy states:

*All IRs entered on to COPS must be reviewed to ensure they are current, relevant and accurate ... Within [NSW Police], personal information is to be reviewed on a regular basis and should be disposed of if the initial justification for its collection ceases to apply.*⁵⁵⁸

Information reports have a default review timeframe of 12 months, which may be altered by the intelligence officer at the local area command.⁵⁵⁹

NSW Police policy requires that all information reports created should be reviewed to ensure their currency and relevance. The policy also states that it is the role of the 'designated intelligence practitioner' to review information reports. If the decision is made to retain an information report on COPS, the reviewing officer must give a reason to justify why the report is being retained. This is a mandatory field in COPS. Some information reports are given 'Auto Cull' dates, which means the report will be automatically deleted once the 'Auto Cull' date is reached. According to the Information Report Policy 'automatic cull dates may be set for a period of between 2 to 10 years.'⁵⁶⁰

Some information reports are listed as 'To Be Culled' which indicates that the report has been reviewed and assessed as suitable for deletion.

The Information Report Policy states that the first question to be asked in considering whether to retain an information report on COPS is:

*Can the IR be justified as having potential ongoing operational/law enforcement relevance for [NSW Police] (i.e. can you justify its continued relevance/potential relevance)?*⁵⁶¹

According to the policy, unless this question can be answered in the affirmative the information report should be deleted. If the answer is affirmative further criteria, relating to reliability, currency and intelligence priorities, need to be applied.

11.9.2. Information reports deleted from COPS

It was found that 99 out of the 509 records in our audit sample had been deleted from COPS. This represents less than a quarter (99 of 444) of all records past their review date.

We were able to examine the narrative of deleted information reports on PODS,⁵⁶² apart from two records that had no narratives. This left a pool of 97 records to analyse.

Approximately 61% (59 of 97) of deleted information reports contained admissions. 18.6% (18 of 97) recorded no admissions but showed a previous criminal history, intelligence or other information which may have warranted the creation of the information report.

11.9.3. Comparison of deleted and retained information reports

Our analysis of the 509 information reports showed a lack of consistency in the application by police of the information sheet guidelines. The content of records that were retained could not easily be distinguished from records that were deleted. Here are a few examples of similar information reports, some of which were retained and some deleted:

11.9.3.1. Information reports containing admissions

The following two records include admissions. One record has been retained on COPS and one has been deleted:

*The POI made admission that he is a cannibus (sic) user and is wearing the same clothes that he was smoking in.*⁵⁶³

The above search had a nil result and there was no prior criminal history/intelligence stated. The record has been reviewed and the reason entered for its retention documented as 'Information'.

*The POI stated that he "had a smoke" earlier in the day of marijuana.*⁵⁶⁴

Similarly the search above had a nil result and there was no prior criminal history/intelligence stated, however, it has been deleted from COPS.

11.9.3.2. Information reports containing criminal history/intelligence

The following two records refer to criminal history/intelligence. One has been retained and the other has been deleted:

*PRIORS: Nil – known for pawning 2 items.*⁵⁶⁵

This search had a nil result and there was no admission. However, it has been reviewed and justified for being retained as 'Intell (sic) possibly still of relevance.'

*Prior Cannabis Caution, Intel for Robberies.*⁵⁶⁶

Similarly, this search had a nil result and there was an admission. It has been deleted.

11.9.3.3. Information reports containing suspected criminal activity

The following two records indicated that police were of the view that the person searched was engaging in 'suspected criminal activity'. While one has been retained the other has been deleted:

*On searching the POI, bruising was noticed around the left anticubical (sic) fossa of the POI and what appeared to be fresh needle marks. The POI stated that these marks were a week old however the POI's pupils were fixed and dilated. No admissions made to any recent drug use.*⁵⁶⁷

The above search had a nil result. It has been reviewed and justified for being retained as 'Intel'.

*The poi stated that he is on the methodone (sic) program. He takes 120mls a day. The poi had fresh needle marks on his arms. The poi has previously been seen to enter the [name of hotel] for a short amount of time then return home. The [name of hotel] has recent intel to suggest drug dealing inside the hotel.*⁵⁶⁸

This search also had a nil result, however, it was deleted from COPS.

11.9.4. Audit of review compliance

To check whether information reports were being routinely reviewed and retained or deleted according to the NSW Police policy we extended our audit of information reports to inquire into this question.

Of the 509 records in our sample, 444 (87%) were past their review date and did not have an auto-cull date.

At the time of our audit (February and March 2005) 189 information reports (42.6%) had not been reviewed by police. The review of many of these information reports was considerably overdue.⁵⁶⁹

- 39% (73) of these information reports passed their review date in 2003.
- 51% (97) of these information reports passed their review date in 2004.
- 10% (19) of these information reports passed their review date in 2005.

255 information reports had been reviewed by police. Table 19 shows that most of these reviewed information reports were retained on COPS.

Table 19. Information reviewed by police

	n = 255	%
Information reports reviewed and retained on COPS*	156	61
Information reports reviewed and deleted from COPS	99	39

* Includes 7 records listed as 'To be culled'.

Source: Audit of Information reports recorded on COPS, 22 February 2002 to 21 February 2004.

Information reports that had been reviewed and retained were checked to examine the reasons that police had recorded to explain why they had been kept on the system.

Table 20 shows how police documented their reasons for keeping information reports on COPS.

Table 20. Reasons given by police for retaining information reports on COPS

	n = 156	%
Broad non-descript entry such as 'Current', 'Info', 'Current intel'	133	85
Symbols such as full stops, 'X', 'Y'	12	8
Reasons with some detail such as 'Associated with [Motorcycle gang] visiting licensed premises'	11	7

Source: Audit of Information reports recorded on COPS, 22 February 2002 to 21 February 2004.

The figures above show that for 93% of retained records the reasons for retention recorded by police were either meaningless or inadequate. In addition, 18% (28 of 156) of retained information reports contained no admissions, no previous criminal history or anything else warranting the *creation* of the report.

NSW Police has informed us that a review of compliance with its Information Report Policy was conducted in 2002 and found 'overwhelming compliance'.⁵⁷⁰ A further review was anticipated for July 2004.

We have also been informed by NSW Police that:

Commands are expected to ensure the prompt review of IRs. IRs requiring reviews are automatically flagged to the relevant units attention via COPS functionality. Resource and prioritising issues may result in instances where a unit may develop a backlog of IRs requiring review. However, persistent and significant lapses in this area are likely to draw attention from the Audit Group.⁵⁷¹

However, it appears from our audit that police are not suitably timely in their review of information reports in relation to drug detection dog incidents. Nor are the reasons for retaining information reports on COPS being properly documented. Where possible reasons for the *creation* of the report were discernable, the value in retaining the reports on COPS after review was far from clear.

11.10. Summary of findings and discussion

The following is a summary of the evidence concerning information reports:

- The introduction of the information sheet resulted in fewer records being made on COPS in relation to drug detection dog incidents.
- The information sheet is ambiguous and does not provide suitable guidance for police officers.
- The introduction of the information sheet did not improve the quality of information reports on COPS.
- Roughly one in ten information reports created after the information sheet was introduced clearly did not comply with NSW Police guidelines.⁵⁷²

- Of those information reports which might be viewed as complying, a significant proportion appeared to be of little or no intelligence value and sometimes indicated no illegal activity by the person searched.
- Review mechanisms to ensure quality and relevance were subject to significant delay, did not effectively screen out reports of minimal value, and showed very poor documentation of reasons for keeping information reports on COPS.
- Review guidelines were applied in an inconsistent manner such that deleted and retained reports were often effectively indistinguishable from each other in terms of narrative content.

We have written to NSW Police on a number of occasions expressing our concerns about non-compliance with the information sheet. NSW Police has taken no additional steps to monitor compliance with the policy as a result of our correspondence. Instead we were assured that the NSW Police Audit Group would identify problems.⁵⁷³

The review mechanisms should operate as a safeguard to ensure that the police intelligence system is operating efficiently and that individuals who have dealings with police can be confident that records made about them are not unnecessary or inappropriate.

Information reports made on an unreasonable basis represent an unnecessary source of concern for the persons subject to such recordings. Such information reports may influence police if they have contact with these people on subsequent occasions. Information reports made or retained on an unreasonable basis would also seem to be of little value to police. In this respect, we are mindful of one of the risks of non-compliance identified in the Information Report Policy:

*Degradation of the [NSW Police] capabilities due to irrelevant/outdated/unreliable information being retained on COPS.*⁵⁷⁴

It appears that the lack of specificity and clarity in both the Information Report Policy and the information sheet have led to the realisation of another of the stated risks of non-compliance identified in the Information Report Policy:

*A lack of Service-wide consistency in the way IRs are created, classified, evaluated, stored, reviewed and destroyed.*⁵⁷⁵

11.10.1. Creation of events and information reports

There is no doubt that the new policy to record 100% of searches as events on COPS is clear and unambiguous. Little has changed, however, in relation to the guidance provided to police about what, if anything, to include in information reports.

Our audit has shown that when an information report and an event are made for a single incident, all the essential information in the information report is often included in the event. For many drug detection dog incidents it is difficult to see the justification for creating both types of COPS entry. In cases where no drugs are located, there would seem to be little reason to record an information report unless intelligence information of real significance was identified. The issues raised in terms of accountability in the face of complaints are adequately dealt with by the creation of an event, especially in the light of the small number of complaints made about drug detection dog related searches.

In our view, if a record of every search incident must be created, then the creation of an event is to be preferred over the creation of an information report because there is less potential for event information to unfairly prejudice an individual's future dealings with police.

However, as discussed above, NSW Police should adopt more restrictive and prescriptive guidelines in relation to the circumstances which would justify creation of information reports.

11.10.2. Is the creation of a record always necessary or useful?

In considering the creation of potentially prejudicial records on COPS it is important to strike the right balance between accountable and intelligent policing on the one hand and rights to privacy and reputation on the other.

While event records may be used in a less prejudicial manner than information reports they still represent a permanent COPS record against a person's name. As evidenced by our audit, in many cases these records document incidents where no offence is detected. Submissions to our review and complaints to our office indicate that this is a matter of concern to some in the community.

As suggested by some police and some submissions to our discussion paper, there may be ways of recording police activity for complaint investigation or work performance reasons, without creating a record with the personal details of the person searched. For example, it is possible to make an event record without noting the person's name on COPS or by noting the name in the narrative only. Group events which document all persons searched without finding drugs in a single event would act in a similar way. Sufficient detail could be recorded to identify a person who later complains (time, date, location, result, appearance, etc) and the officer the subject of any complaint, without potentially tarnishing a person's otherwise good record on COPS.

Statistical information about the use of the drug detection dogs can be obtained from the Dog Unit's Results Spreadsheet. This information is not, and should not be, used to provide intelligence information about individuals.

The issue of recording personal information brings a number of valid concerns to the table. After weighing up these concerns we have concluded that the principles of informed consent provide useful guidance.

Recommendations

22. NSW Police conduct an audit of information reports related to drug detection dog incidents and delete all records which do not comply with the information sheet. Records that are inappropriate, unnecessary or misleading should also be deleted. This auditing should occur on a regular basis.
23. NSW Police provide clear guidelines to officers about when to create information reports. Such guidelines should advise that where no drugs are found, information reports are made only when valuable intelligence is available. Guidelines should include examples of what is NOT considered to be valuable intelligence information.
24. NSW Police provide training to intelligence practitioners and police officers about the correct recording procedures in relation to searches following indications by drug detection dogs.
25. If police officers are to record on COPS the personal details of individuals not found to be committing any offence, police must have first informed the person:
 - that they are not required to provide personal details, and
 - of the purpose for which those details are being obtained, i.e. making a record of the incident on COPS.
26. NSW Police advise officers of the correct way to record on COPS searches where the person searched did not provide personal details.

NSW Police supports recommendation 22 although two issues were raised. First, NSW Police noted 'the NSW Police Policy for the Creation, Classification, Evaluation, Storage and Destruction of COPS Information Reports provides clear guidelines about the creation, evaluation, storage, review and deletion of information reports.' Second, NSW Police identified that there are possibly between 8,000 and 10,000 information reports that 'would need to be identified and manually reviewed to conduct the audit recommended, ... which would create significant administrative burden for NSW Police intelligence practitioners and [would] result in a diversion of staff from key operational duties.'⁵⁷⁶

NSW Police also advised the following in response to recommendation 22:

NSW Police proposes to address this recommendation through advice to intelligence practitioners, who conduct information report reviews. NSW Police Intelligence Coordination will inform intelligence practitioners of the Ombudsman's recommendation and provide them with a copy of the information sheet and NSW Police criteria for the creation of information reports. When information reports relating to drug dog searches become subject to review, in accordance with standard review processes, the information will be checked to ensure conformity to these guidelines. Records that are inappropriate, unnecessary or misleading will be deleted at this time. All information reports are subject to review, which provides a regular audit process. This proposal significantly reduces the impost on intelligence practitioners, and incorporates the auditing process within their daily duties. Further, Intelligence Coordination will conduct a dip sample of drug dog related information reports on an annual basis to ensure compliance to policy.

Also of relevance to this recommendation is the Data Cleansing Project, which NSW Police is currently undertaking to improve the accuracy and integrity of NSW Police holdings. The issue of inappropriate drug dog related intelligence reports will be formally referred to the Project for their consideration. The Project has finalised its scoping study and is in the process of creating a resource structure to undertake the identified data cleansing issues. All data cleansing subject to the scope of the project is due to be completed in June 2007.'⁵⁷⁷

NSW Police does not support recommendation 23 and advised that:

NSW Police does not support the creation of further guidelines in relation to recording of drug dog incidents. Currently, an information sheet attached to the application form for use of Drug Detection Dogs provides guidelines for creating events and intelligence reports in relation to drug dog searches, in accordance with the NSW Police Policy for the Creation, Classification, Evaluation, Storage and Destruction of COPS Information Reports. The information sheet was updated and implemented in mid 2004. NSW Police believes that this information sheet provides concise, correct and unambiguous information to police.

However, given the results of the Ombudsman's reviews of drug dog related intelligence reports, NSW Police Intelligence Coordination will reinforce the NSW Police Policy for the Creation, Classification, Evaluation, Storage and Destruction of COPS Information Reports within the context of the NSW Ombudsman's Draft Final Report and provide examples of appropriate and inappropriate information reports relating to drug dog searches.⁵⁷⁸

NSW Police supports recommendation 24 and advised that it is now part of police practice:

*Training material is already available to NSW Police officers in relation to this issue. Advice on how to correctly record search details, on COPS, following indications by a drug detection dog have been provided to all NSW Police. This information is available in the LEPRA User Guide that is accessible on the NSW Police Intranet. A summary of this advice also appeared in the Police Weekly of 19 December 2005 as part of LEPRA News and training.*⁵⁷⁹

NSW Police supports recommendations 25 and 26.⁵⁸⁰

Endnotes

⁴³⁸ Correspondence from NSW Police, 14 July 2004.

⁴³⁹ NSW Police, *Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS Information Reports*, August 2001, p.8.

⁴⁴⁰ NSW Police, *Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS Information Reports*, August 2001, p.30.

⁴⁴¹ Correspondence from NSW Police, 14 July 2004.

⁴⁴² NSW Police, *Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS Information Reports*, August 2001, p.30.

⁴⁴³ NSW Police, *Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS Information Reports*, August 2001, p.33.

⁴⁴⁴ Derived from the Dog Unit Results Spreadsheet, 22 February 2002 to 21 February 2004.

⁴⁴⁵ Ombudsman observer notes, March 2003.

⁴⁴⁶ Ombudsman observer notes, October 2003.

⁴⁴⁷ Ombudsman observer notes, August 2003.

⁴⁴⁸ Ombudsman observer notes, March 2003.

⁴⁴⁹ Ombudsman observer notes, June 2002.

⁴⁵⁰ Ombudsman observer notes, May 2002.

⁴⁵¹ Complaint 35.

⁴⁵² Complaint 10.

⁴⁵³ Complaint 43.

⁴⁵⁴ Complaint 2.

⁴⁵⁵ Complaint 26.

⁴⁵⁶ Complaint 11.

⁴⁵⁷ Complaint 8.

⁴⁵⁸ Ombudsman observer notes, September 2003.

⁴⁵⁹ Ombudsman observer notes, August 2003.

⁴⁶⁰ Ombudsman observer notes, September 2003.

⁴⁶¹ Complaint 36.

⁴⁶² Complaint 10.

⁴⁶³ COPS Event 11.1.

⁴⁶⁴ Complaint 2.

⁴⁶⁵ Complaint 26.

⁴⁶⁶ Complaint 37.

⁴⁶⁷ For example, J. Ready submission, 22 July 2004.

⁴⁶⁸ NSW Attorney General's Department submission, 17 May 2005.

⁴⁶⁹ NSW Council for Civil Liberties submission, 19 August 2004.

⁴⁷⁰ 'CCL complaint #5 (February 2003) at Ashfield Railway Station – no drugs found no charges laid.' Cited in NSW Council for Civil Liberties submission, 19 August 2004.

⁴⁷¹ 'CCL complaint #13 (14 May 2004) King St, Newtown – no drugs found no charges laid.' Cited in NSW Council for Civil Liberties submission, 19 August 2004.

⁴⁷² Ombudsman observer notes, June 2003.

⁴⁷³ Ombudsman observer notes, October 2003.

⁴⁷⁴ Ombudsman observer notes, April 2003.

⁴⁷⁵ Ombudsman observer notes, November 2003.

-
- 476 NSW Police, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, 5 August 2002, p.72.
- 477 NSW Police, *Drug Detection Dogs Management Operational Guidelines*, March 2002, p.9.
- 478 Ombudsman observer notes, February 2003.
- 479 Ombudsman observer notes, June 2002.
- 480 Complaint 41.
- 481 *Drug Misuse and Trafficking Act 1985*, s.12(1).
- 482 COPS Event 11.2.
- 483 COPS Event 11.3.
- 484 COPS Event 11.4.
- 485 NSW Police response to draft final report, 10 March 2006.
- 486 NSW Police response to draft final report, 10 March 2006.
- 487 NSW Police response to draft final report, 10 March 2006.
- 488 Operational Orders, June 2002.
- 489 Correspondence from NSW Police, 18 April 2005.
- 490 This is a term used to refer to persons with no criminal record and/or prior dealings with police.
- 491 Ombudsman observer notes, December 2003.
- 492 Outcomes of meeting confirmed in fax from R. Marsh, 22 October 2002.
- 493 Outcomes of meeting confirmed in fax from R. Marsh, 22 October 2002.
- 494 Outcomes of meeting confirmed in email from R. Marsh, 11 September 2002.
- 495 A full copy of the information sheet can be found in Appendix F, NSW Ombudsman, *Review of the Police Powers (Drug Detection in Border Areas Trial) Act 2003*, January 2005.
- 496 Email from R. Marsh, 21 October 2002.
- 497 NSW Police, *Filing Information Reports following Drug Dog Detections*, undated.
- 498 Ombudsman observer notes, September 2003. Comments are paraphrased except for those in double quotation marks.
- 499 Ombudsman observer notes, October 2003. Comments are paraphrased.
- 500 Ombudsman observer notes, August 2003. Comments are paraphrased.
- 501 Correspondence from NSW Police, 14 June 2005.
- 502 NSW Police State-wide memo, D.B. Madden, Deputy Commissioner, 18 May 2004.
- 503 Correspondence from NSW Police, 7 July 2004.
- 504 Correspondence from NSW Police, 7 July 2004.
- 505 Correspondence from NSW Police, 7 July 2004.
- 506 Telephone conversation with Local Area Commander, 4 November 2003; telephone conversation with police officer, July 2003; and telephone conversation with police officer, October 2003.
- 507 NSW Police, *Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS Information Reports*, August 2001, p.17.
- 508 Correspondence from local area commander, 20 December 2003.
- 509 Crime Manager (endorsed by Commander), Western Sydney Command submission, 31 July 2004.
- 510 Ministry for Police submission, 30 August 2004.
- 511 Western Region of NSW Police submission, 4 August 2004.
- 512 Police Focus Group 1, July 2004.
- 513 Interview with senior police officer, May 2004.
- 514 Ombudsman observer notes, December 2003.
- 515 Interview with Commander of Drug Squad, August 2004.
- 516 Police Focus Group 1, July 2004.
- 517 We understand that the current COPS configuration allows search events to be entered without entering POI details.
- 518 It is unclear whether the anticipated upgrade of the COPS system will alter this situation by making it easier to search for names within event narratives.
- 519 Police Association of New South Wales submission, 19 August 2004.
- 520 J. Ready submission, 22 July 2004.
- 521 The Shopfront Youth Legal Centre submission, 9 August 2004.
- 522 Tony Trimmingham, Family Drug Support submission, 6 August 2004.
- 523 Associate Professor Michael Dawson (Head, Department of Chemistry, Materials and Forensic Science, University of Technology, Sydney) submission, 2 August 2004.
- 524 Redfern Legal Centre submission, 20 August 2004.
- 525 UTS Community Law Centre submission, 23 August 2004.
- 526 NSW Council for Civil Liberties submission, 19 August 2004.
- 527 NSW Attorney General's Department Submission, 17 May 2005.
- 528 NSW Police Comment on NSW Ombudsman Draft Discussion Paper, 8 June 2004, p.8.
- 529 One command preferred to deal with the matter at a corporate level and we included details of its non-compliance in our correspondence to the Deputy Commissioner.
- 530 This command searched all records attached to a particular operation name, although our inquiry related only to one day of this extensive operation.
- 531 Correspondence from NSW Police, 13 January 2004.
- 532 Correspondence from NSW Police, 15 September 2003.
- 533 Email from Crime Manager to local police, 1 August 2003.
- 534 Correspondence to NSW Police, 10 September 2003.
- 535 Correspondence to NSW Police, 10 September 2003.
- 536 Correspondence from NSW Police, 4 October 2003.

- ⁵³⁷ Correspondence from NSW Police, 7 July 2004.
- ⁵³⁸ A further change in police policy in May 2004 requires that all searches, regardless of outcome, result in the creation of a permanent 'event' record on COPS. This includes all searches following indications by drug dogs. Creation of Information Reports remains at the discretion of officers, subject to the guidance provided by the Information Report Policy.
- ⁵³⁹ Audit record 115.
- ⁵⁴⁰ Audit record 122.
- ⁵⁴¹ Audit record 177.
- ⁵⁴² Audit record 217.
- ⁵⁴³ Audit record 375.
- ⁵⁴⁴ We could not use the classifications already in the Results Spreadsheet and on close inspection it became clear that admissions of drug contact could be found in all classifications. We note that none of the relevant police policies provide police with guidance about what constitutes an admission for the purposes of the Results Spreadsheet.
- ⁵⁴⁵ Audit record 233.
- ⁵⁴⁶ Audit record 245.
- ⁵⁴⁷ Audit record 271.
- ⁵⁴⁸ Audit record 302.
- ⁵⁴⁹ One-fifth of these (38 of 190) had been reviewed and deleted from COPS at the time of our audit.
- ⁵⁵⁰ Audit record 100.
- ⁵⁵¹ Audit record 71.
- ⁵⁵² Audit record 90.
- ⁵⁵³ Audit record 193.
- ⁵⁵⁴ Audit record 255.
- ⁵⁵⁵ Audit record 134.
- ⁵⁵⁶ Audit record 185.
- ⁵⁵⁷ NSW Police, *Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS Information Reports*, August 2001, p.2.
- ⁵⁵⁸ NSW Police, *Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS Information Reports*, August 2001, p.26.
- ⁵⁵⁹ NSW Police, *Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS Information Reports*, August 2001, p.26.
- ⁵⁶⁰ NSW Police, *Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS Information Reports*, August 2001, p.29.
- ⁵⁶¹ NSW Police, *Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS Information Reports*, August 2001, p.34.
- ⁵⁶² Police Oversight Data Store (PODS), which is maintained by the Police Integrity Commission. Periodically COPS data is downloaded and placed on PODS. Information reports that have been deleted from COPS are still available to be viewed on PODS.
- ⁵⁶³ Audit record 187.
- ⁵⁶⁴ Audit record 34.
- ⁵⁶⁵ Audit record 144.
- ⁵⁶⁶ Audit record 167.
- ⁵⁶⁷ Audit record 247.
- ⁵⁶⁸ Audit record 232.
- ⁵⁶⁹ We conducted our review in late March and April 2005.
- ⁵⁷⁰ Correspondence from NSW Police, 14 July 2004.
- ⁵⁷¹ Correspondence from NSW Police, 14 July 2004.
- ⁵⁷² 353 information reports in our audit were created after the introduction of the information sheet. 44 of these information reports showed no evidence of complying with the information sheet requirements.
- ⁵⁷³ Correspondence from NSW Police, 14 July 2004.
- ⁵⁷⁴ NSW Police, *Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS IRs*, August 2001, p.8.
- ⁵⁷⁵ NSW Police, *Policy for the Creation, Classification, Evaluation, Storage, Review and Destruction of COPS IRs*, August 2001, p.8.
- ⁵⁷⁶ NSW Police response to draft final report, 10 March 2006.
- ⁵⁷⁷ NSW Police response to draft final report, 10 March 2006.
- ⁵⁷⁸ NSW Police response to draft final report, 10 March 2006.
- ⁵⁷⁹ NSW Police response to draft final report, 10 March 2006.
- ⁵⁸⁰ NSW Police response to draft final report, 10 March 2006.

Chapter 12. Privacy, civil liberties and police relations with the community

Throughout the review period individuals, organisations and police expressed a range of views about community perceptions of and reactions to drug detection dogs. Police media releases typically emphasised the positive reactions they received when patrolling with the dogs.⁵⁸¹

Letters to the editors of various local and Sydney newspapers that we collected during the review were largely negative about the dogs. Below is a sample of views expressed:

*Random public screening for possession of illegal drugs infringes on cherished civil liberties and is a waste of taxpayers' hard-earned money.*⁵⁸²

*Nabbing the occasional pot smoker isn't fighting crime and to be sniffed at by a drug dog as one goes to work isn't a vote winner.*⁵⁸³

*And last sniffer dogs! To me, it seems they will mostly catch people carrying drugs for personal use – so what! Catch the dealers, not the users.*⁵⁸⁴

*Just what, exactly, is meant to be achieved by the deployment of so many officers in this way? Fair dinkum, the armed robbers, burglars, criminal gangs and drug barons of this city must be laughing at this absurd waste of police resources in the fight against crime, particularly organised crime.*⁵⁸⁵

*Pro-active law enforcement measures such as sniffer dogs are just one way crime can be reduced, and anyone using illicit drugs should be brought into court.*⁵⁸⁶

We are aware of three local public rallies expressing opposition to the use of drug detection dogs⁵⁸⁷ during the review period and an Internet site was briefly in operation which set out to alert people to locations where the dogs were used.⁵⁸⁸

This chapter examines perceptions about the drug detection dogs that were raised directly with us or via other sources. We also report on the findings of our survey of people in the vicinity of drug detection dog operations and summarise feedback from interviews with managers and licensees of licensed premises.

12.1. Behaviour of the drug detection dog

Section 9 of the Drug Dogs Act provides:

- (1) *A police officer carrying out general drug detection under this Part is to take all reasonable precautions to prevent the dog touching a person.*
- (2) *A police officer is required to keep a dog under control when the officer is using the dog to carry out general drug detection under this Part.*⁵⁸⁹

The Management Operational Guidelines ('MOGs') also provide that after an indication:

*The handler is then to remove the dog from the scene as soon as practicable.*⁵⁹⁰

Our observational research has shown that handlers usually make efforts to comply with this instruction. At one briefing a handler commented that, after an indication:

*I don't want to leave my dog with that person and have him harass that person.*⁵⁹¹

On rare occasions observers witnessed handlers conduct searches of persons who were indicated. These searches usually occurred because no other police were available or because the handler was the only female police officer available. The search was often performed with one hand – the other hand holding the lead for the drug detection dog.

The MOGs also state that handlers should avoid letting the dog come into contact with property.⁵⁹²

In introducing the Drug Dogs Act the (then) Police Minister, the Hon. Michael Costa MLC stated:

*if despite the best efforts of the police officer handling the dog, an inadvertent or incidental touching takes place then the touching by the dog does not constitute an unlawful search by the police officer.*⁵⁹³

During our observations of the use of drug detection dogs, we have noted that the actual sniffing or screening by the dogs was generally unobtrusive. Sometimes the dog and handler were moving rapidly and through crowded environments and observation conditions were not always ideal. Slight touching may have occurred without being observed, however, any significant contact would have been viewed.

Sometimes the dogs were observed to touch people while sniffing but often these people were not indicated. For example, observer notes from one operation state:

*The dog and handler were walking up and down a platform at the station. The dog made no clear indications but walked up to, and nosed, several people before turning away. The dog appeared to be touching several people as he did this. No one complained or said anything to the dog handler.*⁵⁹⁴

When the dog appeared to detect the scent of an illegal substance on a person, the sniffing usually did not appear to involve contact between the dog and the member of the public. Occasionally a dog would be observed to touch or nudge a person with its nose:

*Two men are standing still, talking, with their arms around each other on the street. Dog nudges one man from behind with his nose and the man is then taken into an alcove to be searched.*⁵⁹⁵

Sometimes a dog would be observed to 'excitedly' sniff amongst a group of people, nudging the legs or belongings of people in an apparent attempt to determine the more precise location of the scent. When the dog was in a very crowded area it would often brush past people and occasionally nudge them. Sometimes people were surprised by the presence of the dog but very few appeared to be seriously in fear of the dog. Very rarely did we observe a dog attempt to rise up on its back legs towards a person, and the handler always pulled the dog back if this occurred. Occasionally, a dog was seen to walk on or stand on bags or other belongings.

Some complaints received by this office alleged that the dog made more than minor contact with the person indicated:

*On [date] I was approaching the ticket office of [name of railway station] when I felt something nudge my backside. When I turned around there was a white Labrador dog nudging me. This dog then tried to hump my leg. There was a woman standing about 4 meters away holding a lead, so I asked her to control her animal as she was showing no sign that she had complete control of this animal. A man came over to me and said he was a police officer and I would have to go with him to be searched for drugs ...*⁵⁹⁶

Another complainant stated:

*I was immediately aware that the dog was following me because it had its head up my backside.*⁵⁹⁷

In our interviews of operators of licensed premises we asked them to describe the behaviour of the drug detection dog and to comment on whether handlers kept the dogs under control. Comments were overwhelming positive about this aspect of the policing. Of the 27 people we interviewed most felt the dogs were well controlled. One licensee commented that in his experience the dogs were 'a little erratic'⁵⁹⁸ and another commented that 'When you've got a dog in your crotch it's not one of the most pleasant things'.⁵⁹⁹ Some of the other comments made are listed below:

*the dog's a really nice dog. It's not intimidating. A lot of the customers want to pat it. So, it's not the dog itself that's intimidating.*⁶⁰⁰

*I think the dog's very unintrusive. Obviously it stands out in a pub, people notice the dog, but it's very unintrusive. It just goes around and has a sniff. Might stop at certain patrons or spots in the hotel and has a sniff, then moves on under the control of the person on the lead.*⁶⁰¹

*They sniff around the ankles and knees, but they don't jump up. They're very well behaved. I think they're well trained.*⁶⁰²

One submission to our discussion paper also noted:

The Drug Dogs Act requires that the Police take reasonable precautions to prevent the dog from touching a person and to keep the dog under control. My observation of the practice of the Police has seen no attempts at all to prevent the dog from touching a person, and in fact most of the 'detections' that I have witnessed in Kings Cross and on some Railway Stations have been indicated by the dog physically touching the person.

Far from your observation [on page 10 of the discussion paper] that "occasionally, the dog's nose may touch a person or their property" my observations seem to indicate that this is by far the most common method of

operation. Perhaps that is because I am not on an official observation visit where a particular dog and handler are provided by the Police wishing to show their best.⁶⁰³

A submission from the NSW Council for Civil Liberties documented a complaint from a pregnant woman, who stated that a drug detection dog had jumped on to her while she was seated at a nightclub.⁶⁰⁴ Another submission to our discussion paper described the use of the dog by police in an amusement parlour as follows:

*whilst watching someone playing a video game, I observed 3 or 4 police officers entering the room via the staircase together with a dog on a lease (sic) led by one of the officers. The officer leading the dog proceeded to walk behind each of the people playing the video games, pausing very briefly behind each person to allow the dog to sniff them, in some cases, if the person was wearing a backpack, the officer pointed to or occasionally lightly touched the backpack, to encourage the dog to sniff it (which it did in some cases, but not in others). The officer led the dog around the entire room, allowing/encouraging it to sniff about 90% of the people present, in most cases the people sniffed by the dog were oblivious to what was going on as they were concentrating on the games they were playing.*⁶⁰⁵

On the other hand, one junior officer working in a busy inner-city command commented:

*I seriously can't see how they could consider it an invasion of privacy. The dog literally walks past them. It might occasionally brush up against a person, but it does nothing but walk past them and sniff the air as it walks past them. You know, they're going into nightclubs where they are getting searched with metal detectors and things like that. And the bouncers are there, the security are there, checking their pockets and handbags. How can they consider that less of an invasion of privacy than a dog walking past sniffing the air as it does?*⁶⁰⁶

The legal implications of drug detection dogs touching persons is discussed further in Chapter 14 'Legal interpretation issues' (at paragraph 14.4).

12.2. Fearful or anxious reactions to the drug detection dog

On a number of occasions during our observations of the use of drug detection dogs, we have observed people behaving as if they were afraid of the dog. Sometimes this appeared to be no more than a reaction to the unexpected presence of a dog. For example, one observer noted:

*Woman indicates she was given a shock by the presence of the dog. "Bloody hell you scared the shit out of me." She jumped up as she said this.*⁶⁰⁷

On other occasions people were noticeably fearful of the dog or anxious in its presence. This was most common during operations we observed in western and south-western Sydney. Many who reacted in this way appeared to be of Asian or Arab background. For example:

*Two Muslim women in head scarves walk past and turn to look at the dog with no obvious concern. A bit later, one Muslim woman sees the police and dog pass [by] and backs off against a wall. She smiles but is clearly scared. She is approximately 60 years old.*⁶⁰⁸

*Two Asian women (15 to 20 years of age) move back their legs and put [their] hands on their chests as the dog walks past. Their action suggests some concern/anxiety about the dog.*⁶⁰⁹

*There are a number of women dressed in Chador who use the station. Most seem unconcerned by the presence of the dog but some flinch, hesitate or move away from the dog.*⁶¹⁰

*An Asian woman is obviously very scared of the dog. She makes a number of semi-screams as the dog moves towards her. This is not an indication. Police tell her it's alright. She eventually proceeds through the ticket gates.*⁶¹¹

At one police briefing we attended in an area of Sydney with a relatively high proportion of Arab and Asian residents, a police officer asked the handler what the handler would do if someone reacted to the drug detection dog in a fearful way. The handler replied that Asian people and some religious groups – especially in that location – may be afraid of the dog. The handler attempted to deal with this concern by saying patrolling police would be told if there were drugs on the person, and this would stop police from acting simply on the basis of a person's apparent fear of the dog. Avoidance of the drug detection dog or a fearful reaction might not indicate that the person has drugs on them.⁶¹²

We asked Keysar Trad, (then) Vice President of the Lebanese Muslims Association, whether there might be any religious basis for the fearful reactions of some women we had observed. Mr Trad told us that some Muslim people might want to keep away from the drug detection dog because contact with the dog would require that they wash prior to prayer or attendance at a mosque. Many Muslims believe that dogs and similar animals are unclean.⁶¹³

We raised these issues in our discussion paper and received a number of relevant responses. NSW Police responded that the dogs were placid and passive and kept under control by their handlers. The submission stated:

*Wherever possible the handler does his/her best to ensure that the detection dog does not come into physical contact with any person. By maintaining this standard, members of the community can be assured they have nothing to fear from detection dogs and will only come under Police notice if they have possession of illegal drugs.*⁶¹⁴

Other submissions from local police made similar points such as:

*Having worked with these dogs, in reality, I find it extremely difficult to believe any person, regardless of their fear level, could be threatened or feel fear when approached by a drug detection dog. They are the most docile and friendly animals. I suspect some groups are using their alleged fear of dogs to persuade authorities they should be exempt from this legislation.*⁶¹⁵

The Police Association of NSW stressed that drug detection dogs are not trained to be aggressive and that handlers often have to deter people from patting the dogs during operations. This is something we have also observed during our observational research. The Association asserted:

*The need to police drug offences and the myriad of other related offences, far outweighs any need to be concerned with the reactions of an extremely small minority of people.*⁶¹⁶

Most police we spoke to in interviews and focus groups recognised that there were some people and some ethnic or religious groups that were afraid of dogs. However, they stressed that this was a small minority and that most people reacted positively to the dogs.

The NSW Community Relations Commission noted the discussion paper's comments in relation to the reaction to dogs by Muslim people and people of some ethnic backgrounds and stated:

*The Commission wishes to stress the importance of handlers ensuring that the sniffer dogs do not touch people.*⁶¹⁷

Redfern Legal Centre suggested that the dogs should be muzzled and restrained.⁶¹⁸ The legal centre also suggested:

*Police should not 'sneak up' on or surprise a person whom they propose to search. Police need to ensure people are aware of the dog's presence firstly from a comfortable distance. Many of our clients suffer mental illness and experience hyper-sensitivity disorders and have defined and profound phobias which can be very debilitating. These could be triggered by a 'surprise' or unexpected encounter with a drug detection dog and lead to serious mental health consequences for the person.*⁶¹⁹

The submission from the AIDS Council of NSW (ACON) also reported that some Asian communities were intimidated by the drug detection dogs, stating that girls had reportedly run into traffic to avoid the dogs. ACON also reported that people from 'authoritarian communities' may be fearful of the dogs because of negative experiences in their country of origin where police dogs may have been used to harass and intimidate. ACON recommended that 'better training in police community liaison be provided to dog handlers.'⁶²⁰

12.2.1. Discussion

We have already noted our observations that the drug detection dogs generally behave in an unobtrusive manner. However, while it appears that only a few people are fearful of the dogs, police need to be mindful of this whilst conducting operations. Many police acknowledged fear of the dogs to be genuine even if not widespread. However, some police did not accept that such fears were legitimate. In any event, dog handlers could only benefit from specialist training in cultural issues surrounding the use of their dogs.

It is also essential that legitimate fears of the dog are not misconstrued by police and interpreted as an indication of guilt or fear of being detected by the dog. Police need to observe great caution when interpreting reactions to the dog in the formation of a reasonable suspicion to conduct a search.

Recommendations

27. NSW Police provide training to drug detection dog handlers to ensure they are aware of cultural factors that can influence individual reactions to the drug detection dogs.
28. Prior to operations, dog handlers convey information to police briefings about cultural sensitivities to the drug detection dogs.

NSW Police supports these recommendations and advised that:

The Dog Unit will review and develop training for handlers regarding cultural issues that may be relevant to specific sections of the community when exposed to police dogs.

*Once appropriate training has been provided to handlers, information on cultural sensitivities will be provided at briefings and operations, where appropriate.*⁶²¹

12.3. Privacy of searches, feelings of embarrassment and civil liberties concerns

The NSW Police Code of Practice for Custody, Rights, Investigation, Management and Evidence ('CRIME') is a 'succinct reference to the powers of police when investigating offences'.⁶²² CRIME advises police in regard to searches:

*When searching make a reasonable effort to reduce embarrassment and loss of dignity to those being searched. Conduct the search at or nearby the place where the person or vehicle was stopped.*⁶²³

The Drug Dogs Act does not include a power to conduct searches nor does it refer to the manner in which searches should be conducted.

While the Dog Unit's Management Operational Guidelines do not make reference to searching practice, as handlers rarely conduct searches, the guidelines do require that the Operations Co-ordinator ensure for each operation:

- *The possible impact on innocent parties has been considered.*
- *The probable impact on the community at large has been given due weight and consideration.*⁶²⁴

A range of views were expressed in Parliament about the degree of embarrassment that might be associated with an approach by a drug detection dog and whether such embarrassment was an acceptable consequence of enforcing the state's drug laws.⁶²⁵

Many submissions to our discussion paper raised issues of privacy in relation to searches in public places and being singled out by drug detection dogs. Most of these submissions broadly argued that searching in public places as a result of a drug detection dog indication was an unwarranted invasion of privacy. The following are some examples of comments in submissions:

*We have also received several reports where innocent victims of an unsuccessful search have also been the subject of local community gossip arising from the public nature of the search. In one disturbing case a Mt Druitt mother was bailed up and publicly searched (in the company of her child) in Blacktown. Despite the search being negative it led to gossip circulating at her child's school causing distress for mother and child alike.*⁶²⁶

*Overall, the experience of Legal Aid NSW has shown that in a significant proportion of cases, searches are conducted in view of the general public because of a lack of private facilities in the immediate vicinity at the time of the search.*⁶²⁷

*Marrickville Council's opposition relates to the invasion of privacy and concerns of public safety that arise due to these operations.*⁶²⁸

*I have been in a pub when the dogs entered and was sniffed at by the dogs, (although I was not carrying drugs of any kind), and this felt like an incredible invasion of privacy.*⁶²⁹

Some submissions referred in particular to the privacy of train commuters:

*Further the use of drug detection dogs at major railway stations, subjecting commuters to the humiliation of being "sniffed out" in public is unsustainable based on the levels of detection reported.*⁶³⁰

*I think that screening people by drug detection dogs and searching them in public places (e.g. railway stations) is an infringement of individual privacy. It causes people to feel humiliated and embarrassed whether they are in possession of drugs or not. A person in our community should not be subjected to that humiliation when they are on their way to catch a train. People do not want their personal property emptied out of their bags and pockets for the public to see.*⁶³¹

A few submissions commented on the efforts made to conduct searches as privately as possible and commended police efforts to search with sensitivity.

*Very occasionally patrons are searched, I have noted it is performed with decorum and sensitivity. No patron has ever made known to me a complaint regarding breaching of civil liberties etc.*⁶³²

*I have worked on several of these operations. People being screened have always been treated with the utmost respect and their privacy is paramount. The majority of people searched made only positive comments in relation to these operations. The minority who object are often in the 18 to 25 age group and under the influence of alcohol.*⁶³³

Some submissions stated that where possible police should make use of private rooms or public toilets for searching.

*RailCorp has a tradition of working cooperatively with the New South Wales Police Service in achieving the best safety and security outcomes for our customers. One example of this ... involves the use of rooms at railway stations by police officers conducting searches in conjunction with drug detection dog strategies. Making such facilities available, where possible, assists the role of drug detection officers as well as protecting the privacy of RailCorp customers searched by police.*⁶³⁴

*To minimise embarrassment, police could utilise rooms away from public view when these are available. Areas such as public toilets or stationmaster's office at a train station can be used. Bearing in mind the need for officer safety, which far outweighs any need to ensure people are not "embarrassed", the public nature of these operations may preclude total privacy of persons searched. Regardless, when over 90% of persons searched have drugs on them or have admitted to drug usage, privacy concerns are not particularly relevant.*⁶³⁵

*If a search is to take place at the location (of a drug dog indication), Police take care to minimise embarrassment to the POI and identify the most suitable and private area to use for that search. This often involves Police removing a person to an area where fewer people are present. This might be a room allocated for Police use, such as during operations at railway stations, or toilet areas of licensed premises etc. It is not always practical to have a completely private area available for the searches – however, as stated, Police are aware of the need to maintain privacy of persons being searched, and do their best to ensure an appropriate level of privacy is provided.*⁶³⁶

The NSW Council for Civil Liberties stated in its submission to the discussion paper that many of the complaints about 'sniffer dogs' it had received 'centred on the indignity and humiliation of the search that follows from being identified by a sniffer dog.' The Council provided a number of extracts from its complaints to support this point. One of these is set out below:

... as I was exiting the [name] Nightclub, I was absolutely sober as I do not drink or take drugs.

Now when I got asked questions about being a drug user I naturally answered no – to which the officer replied don't be a smart arse ...

Now during the search the officer continually was abusive in his comments – whenever I answered a question honestly he would say "if you want to be a smart arse I'll take you straight down to the station".

... then he made me take off my shoes at 2am on a cold autumn night, made me stand there while he went through my shoes (very simply designed canvas shoes – so it should not take longer than a minute to go through them) and I was standing there shoeless, feeling like a criminal for something I had not done ...

*I have never felt so ashamed, embarrassed and harassed in my life. The police officers didn't even apologise for wasting half an hour of my time for nothing (on a cold stone street in bare feet no less).*⁶³⁷

We are also aware of two instances in which hospitality employees lost their jobs as a result of their employers finding out about the results of searches following indications by a drug detection dog.⁶³⁸ Reports of other incidents indicate that on some occasions hospitality workers have been embarrassed because they were indicated by the dog in front of customers. One licensee told us in an interview:

*I suppose the only thing is that at one occasion on [location of venue], the chef was having a break, and the dog sniffed her foot, and they had to undergo a search, and they obviously found nothing on her which was a bit embarrassing 'cos she had to be counselled the next day because she was a bit upset about it.*⁶³⁹

At pre-operation briefings we observed, operation commanders routinely advised police officers to seek private spaces to conduct searches. In practice, however, truly private search areas in public places are rarely available. Police often remove a person from the place at which the indication occurred to an area where fewer people are present. Sometimes police utilise a room allocated for their use, such as during operations at railway stations. However, more often than not the searches we observed were conducted in public view. It appears that the singling out of the person by the dog and the often very public nature of the subsequent search of the person by police accounts for the embarrassment reported by some people.

There are many examples in our observers' notes of persons complaining about embarrassment or humiliation during or after the search by police. Below are some comments from searched persons and descriptions of situations we witnessed:

"I'm so embarrassed".⁶⁴⁰

*As we arrived outside [the Centrelink office], a woman appearing in her late 30s was being told "We'll get a female to search you." She appeared quite upset and said, "And if you don't find anything?" Police said, "We'll just report it." And she said, sarcastically, "Well, that's nice." The officer I was with led her back into the building. Once in the room [a meeting room in the Centrelink office], she was told that the indication doesn't necessarily mean she has drugs on her, but that she just had the smell of drugs on her. She was cautioned again, and then she said "I have never been so humiliated in my life." Police said, "We'll try and make it comfortable." And she said, "I'm already uncomfortable." She was asked for ID, then asked to put the contents of her bag onto the table. Her wallet was searched. The woman began appearing visibly upset. She was asked if she knew anyone who does drugs, and she said "Probably, but no one tells me if they do." She was asked to turn out her pockets. She was told, "OK, we'll leave you with that." She was asked for a phone number. We waited while she re-packed her bag.*⁶⁴¹

The search below occurred after a man was indicated by the drug detection dog in licensed premises:

8.50pm. A man aged 40-ish was brought from the [name of hotel] into the street. When he was brought out the officer was stating that the dog was a drug detection dog. The POI stated, "I haven't got anything" to which the officer replied, "OK, we'll just do a quick search."

By this time there were three men on the main street outside the pub being searched. The POI was quite upset and stated, "Don't touch me. I'm not an idiot." Officer: "We know you're not an idiot. Can you please take your shoes and socks off?" POI: "Mate you shouldn't do this to people. I got nothing." Officer: "Do you understand why we are doing this? That our dog picked up a smell on you. That's why this is being done." POI: "I don't have to be humiliated out here. There's people in there (indicating the pub) that I know." Officer: "Do you want to supply your name?" POI: "Yes, [name, date of birth]" Officer: "I apologise for upsetting you but the dog picked up a scent." POI: "Yes, I understand. It's just very humiliating."

*Nothing was found on the man, and he made no admissions. He repeatedly told officers that he was feeling very humiliated. The officers were very courteous and professional throughout.*⁶⁴²

Other searches we witnessed highlight the very public nature of many searches. The following search was conducted on the street at around midday in front of a gym. Our observer notes record:

*Belongings searched on footpath. Body search in alcove off footpath and at entrance to gym. POI was very uncomfortable with whole procedure. Stated that "you make me look like a robber", "you make me feel like a criminal", "you get me into trouble for nothing". Onlookers who worked (or worked out) in gym complained that the search in front of it was "not a good look for business". Pat search only.*⁶⁴³

The search described below occurred at local markets in a northern-NSW town.

Location: [Name of town] markets.

Person: Male, late 50s, stallholder

Circumstances: Drug Detection Dog spent several minutes around, and then in, the stall before indicating a chair inside the stall with a jacket and plastic containers on it. A crowd of about 40 people gathered to watch as the dog checked the stall, and then police searched it.

*Search: Police explained the indication and introduced themselves. No caution. Requested ID, licence provided. Asked whether there was anything on the chair that could explain why the dog sat beside it, he replied, "Only food." POI stated he bought the coat that morning from the markets. Police checked the coat and the plastic container as well as the area under the chair. POI commented, "It's a bit of an intrusion on market day." Police thanked him for his cooperation to which he replied, "It's a bit embarrassing with 50 people standing around watching. Now I have no customers."*⁶⁴⁴

The following searches occurred at railway stations:

Dog indicates a man of approximately 25 years. The dog jumps on his briefcase. He says, "I'm on my way to work. Can't you search me on the train?" Dog handler replies, "I'm sorry mate, we just can't hold up the train for everyone else."

*The man is searched very publicly on the platform. At least eight people are in the near vicinity, some less than one metre away. Eight police are waiting on the platform or assisting with the search. Two people are sitting close by on a seat adjacent to where the man is sitting and they are leaning forward to listen to what is being said. The man's hands are shaking.*⁶⁴⁵ *[Nothing was found on this man. His train left without him]*

*[Dog indicates] man who gets off train. [Man is aged] 20 to 30 years. Handler gives him the warning. He is taken to the side of the platform, near the top of the stairs. He is given a second warning by a male police officer. He is asked if he has anything and he says 'No'. Handler wants to see inside his shoes and indicates this to the police officer conducting the search. Man says that he has been serving customers and that one of them was smoking pot. He lifts up his jumper and takes his shoes off. About 10 people on the platform are watching and making comments, for example, "Look in his arse". The police officer goes through the man's wallet in detail. Dog moves on ...*⁶⁴⁶

Many of the complaints we received also raised allegations of invasions of privacy and public embarrassment. In 15 complaints we received, the complainant commented that they had felt humiliated by the search and around half (24) of the complaints raised civil liberties issues related to the use of drug detection dogs.

Post operation de-briefs were rarely formally conducted. However, at one operation in south-western Sydney we noted that the commander of the operation provided feedback to his team about privacy. Our observer noted:

*Commander raised one incident where he saw a person being searched in the middle of a crowded platform and advised that this person could've been moved to a more private spot. He advised that this was the type of thing that resulted in complaints. He told officers to put themselves in the searched person's shoes – how would you feel? [He advised police to] try to make the searches as private as possible.*⁶⁴⁷

We conducted interviews and focus groups of police during the review. We asked these police for their response to the privacy concerns that had been raised with us. The views expressed were mixed.

A senior police officer no longer involved in street searches commented to us:

I'd feel very uncomfortable if I was searching them in the middle of the street 'cause the drug dog has indicated to me. I'd probably feel less uncomfortable if I was taking them from the street location.

*I mean the extreme of that could be that we just get out of the car and run [the drug detection dog] over people sitting on the Town Hall steps and maybe get a hit ... and if the dog goes positive then you stand them up on the steps of the Town hall and search them. I could see reasonable complaint in that.*⁶⁴⁸

Another senior police officer commented to us about the difficulties of searching people in a manner which will afford them some privacy:

*At the end of the day, you know what I mean, if we pull them out on the street and we search them ... if I search them inside the hotel in front of all their mates and the patrons, they complain about their privacy being infringed. If I was to take them back to a police station and search them, they'd complain about being detained when you find nothing. I think we do the best we can to balance the person's need for privacy and amount of time to deal with that person balanced with our need to provide safety to the officers and to provide a safe working environment in which they can adequately search a person and control that person and the crowd numbers and things like that. So, I think that's going to be an eternal question for you, you know, "Where do we search?" You know it's always going to be a judgement call on the night ...*⁶⁴⁹

12.3.1.1. Complaints about humiliation and lack of privacy

At least 15 complainants (29% of complaints reviewed) reported experiencing 'humiliation' arising from a drug detection dog operation. This was most commonly associated with being singled out of a group of colleagues or peers, questioned or spoken to abruptly by police in front of other people, or having to remove clothing. The following case study provides an example of a public search reported by one complainant:

Case study

Manner of search in view of persons at complainant's workplace

The complaint

A chef employed on licensed premises was indicated during a drug detection dog operation at her workplace in mid 2001. She said she had been working with food all day and was still in her work clothes when the dog indicated her. Police asked her to step to one side and asked whether she was carrying any drugs. She explained she was employed at the premises, was concerned that there were approximately 80 patrons witnessing the incident, and requested her manager be in attendance. She alleged police told her to shut-up, and she was placed against a wall with her legs spread and searched. Police found no drugs and the complainant alleged they simply walked away. She raised concerns that police had ignored her request to be taken to a private room, out of sight of patrons at her workplace. She felt she had been treated like a criminal and was degraded by the experience.

Outcomes

This office asked police to investigate. The investigator found the officers exercised poor judgement by failing to comply with the complainant's request. An apology was offered to the complainant and she was happy with the outcome. The officers were counselled in relation to their manner in dealing with the public.⁶⁵⁰

Complainants who reported experiencing humiliation, often referred to their age or standing in the community. All denied any involvement with illegal drugs. One described herself as a 52-year-old grandmother, in employment for 20 years.

*I am a law abiding respectable member of the community and have never in my life been in any trouble with police ... I was shocked and humiliated at being forced to empty my personal belongings onto a table in a public bar in front of everybody. Nobody offered me an apology and I was left feeling violated and humiliated.*⁶⁵¹

One woman felt 'increasingly confused and ashamed' by persistent police questioning in relation to drugs in front of work colleagues.⁶⁵² Another complainant was angry about being questioned in relation to drug use.

*I feel so disgusting that he ask me [a] few times that 'Do you take drugs?' What a stupid question he was asking. If I were the drug dealer or drug user, would it be found out just by questioning?*⁶⁵³

One complainant asked:

*Do the public have to be frisked down on a public railway platform like common criminals? Surely the police could have an office at the railway station so that innocent people are not subjected to public humiliation.*⁶⁵⁴

Another complainant who was taken out of licensed premises by police and searched around the corner described this as a 'humiliating experience in a public place'.⁶⁵⁵

A woman at a suburban railway station described her embarrassment and humiliation at being taken by police to be searched in a room, and further humiliation when a railway employee entered the room and looked at her.⁶⁵⁶

In response to this complaint police noted:

*If the search is to take place at the location [of the drug detection dog indication] care is taken to minimise embarrassment to the person of interest and the most suitable area with regard to privacy is used for that search. It is not always practical however, to have a completely private area available for these searches.*⁶⁵⁷

In relation to the same complaint, the Local Area Commander of the police who undertook the search wrote to the complainant:

*I do agree with you that the searches conducted by Police during such operations need to be undertaken in private. In this regard I will write to the [name of railway station] Manager and request that when a police operation is being undertaken a private room, for the exclusive use of police, be allocated for the purpose of conducting searches.*⁶⁵⁸

Another complainant experienced a high degree of discomfort arising from a police pat search. No drugs were found. He alleged a plain clothes officer:

*ran his hand all over my buttocks in a homosexual manner I found this most distressing and uncomfortable. I would interpret this as a sexual assault towards me.*⁶⁵⁹

A police inquiry found the complainant in this matter was uncooperative with the investigation of his complaint and no further action was taken.

12.3.1.2. Complaints about infringement of civil liberties and damage to community support for police

Of the 24 complainants who raised concerns relating to civil liberties issues, ten reported being directly searched by police. Other complainants reported witnessing drug detection dog operations, or reading about them, which caused them concern. The issues raised related to:

- perceptions of over-policing and the erosion of personal privacy and freedom, and
- lack of effectiveness of drug detection dog operations in dealing with larger scale drug supply and police resourcing issues.

Complainants who raised the issue of over-policing and erosion of civil liberties often focussed on the legislation. Many saw the drug detection dog powers as a reversal of the onus of proof. One stated:

*I am writing to you as a middle aged man who, in my youth, was always taught to be proud of the British system of Justice which we inherited, where a Citizen was presumed innocent until proven guilty, rather than where a likely looking suspect was presumed guilty and required to prove his/her innocence.*⁶⁶⁰

Another wrote:

*It is essential that the fundamental principles of law which have been developed in the courts over many years are not eroded by legislation which effectively removes human rights which are fundamental to civilised society. The use of sniffer dogs in public places poses serious problems in terms of the legal principles relating to privacy and the freedom of movement.*⁶⁶¹

And:

*Sniffer dogs are indicative of fascist and authoritarian regimes in which the common person is assumed criminal and must prove otherwise.*⁶⁶²

Many likened the legislation to conditions under totalitarian regimes:

*Specially trained sniffer dogs in the hands of plain clothes undercover police officers conducting random searches upon members of the public without reasonable suspicion is something I associate with totalitarian police states that have no regard for human rights and political freedom.*⁶⁶³

One complainant observed police stopping vehicles coming into a country town for random breath testing of drivers:

*The vehicles were then searched by sniffer dogs and police. The image struck me as if it was Cold War propaganda from Eastern Europe.*⁶⁶⁴

The conduct of officers was sometimes raised. One complainant was motivated to write after:

*a terrified teenage girl ran crying into my shop, seeking comfort after a street search by some of your un-uniformed ruffians who found nothing illegal on her but delighted in their bullyboy power to harass ... Each time I witness such scenes of cavalier behaviour by your storm troopers toward my fellow Citizens, invariably the younger and more marginalised among us, the more ashamed I become of both our Society and our elected 'leaders', for allowing such outrages to take place.*⁶⁶⁵

Another shop owner in an inner-city suburb witnessed a drug detection dog operation which disturbed her:

*I witnessed in excess of 20 uniformed police officers with a sniffer dog randomly approaching people on King Street ... I have serious concerns about both the way in which police officers approached and searched citizens, and about the sheer number of officers ... The scene on the street was one of confusion, intimidation and fear. I must object in the strongest possible terms to this operation. It is an unnecessary and heavy-handed harassment of citizens causing serious disruption and anxiety.*⁶⁶⁶

There were concerns about the excessive number of officers involved in some operations. A witness to a drug detection dog operation on a busy nightclub strip wrote:

*The use of 600 (yes six hundred!) officers in an attempt to weed out (pun intended) recreational use of cannabis in the entertainment district of Darlinghurst, could only be described by reasonable thinking people as OVERKILL. I was under the impression officers in this state needed reasonable cause before conducting searches of people for drugs. I was clearly mistaken.*⁶⁶⁷

Many questioned the effectiveness of drug detection dog operations as few serious drug suppliers were arrested and the operations criminalised people with small amounts of drugs for personal use. One complainant stated:

*As you are no doubt aware, these razzias [drug detection dog operations] have netted no major criminals and seem to apprehend only very minor violators of the 'drug laws', usually people carrying only a few grams of Cannabis. Surely such police actions cannot be considered effective, either in results or financial expenditure, even by the standards of the fantasies which seem to motivate the so-called 'leaders' of this State and Nation.*⁶⁶⁸

Another said:

*Such use of dogs is likely to have little impact on the use of illicit drugs and the trade in the same, given that their use in public places is directed primarily at users of drugs rather than traders of drugs. It is essential to consider the social impact of our increasing tendency to criminalise sections of our society, particularly young people, for personal use of illicit drugs.*⁶⁶⁹

One North Coast complainant expressed a view that the drug detection dogs were being used 'to harass a minority of people who cause harm to no-one'.⁶⁷⁰

The operator of a local bus service in the North Coast alleged police subjected her passengers to harassment by using a sniffer dog on alighting from her bus:

I was under the impression that laws against marijuana have been relaxed recently to reflect the growing public acceptance of the drug. I ask that you consider drug sniffer dog operations in the light of this fact. ⁶⁷¹

A member of parliament forwarded the concerns of one of her constituents in relation to an embarrassing search he had experienced and his concerns regarding the erosion of civil liberties. The MP stated:

I have several times requested that the Minister for Police ensure that drug detection dogs are used for targeted operations involving drug dealing, and not generally used in public places. I believe that drug users should be directed to health services for help, and all citizens should have their dignity respected. Drug detection dogs are only one strategy to tackle drug dealing, and should be used judiciously, especially given scarce resources. ⁶⁷²

Others also raised the issue of limited policing resources:

Apart from the invasion of personal liberty hundreds of motorists were subjected to, surely this is an enormous waste of police resources. ⁶⁷³

Another stated:

Please register my comments as a strong objection to the continued use of this form of policing. It is contrary to the values of my community, and a frightening misplacement of limited police resources. ⁶⁷⁴

Others queried the priorities of police. One man identified himself as a non-drug user and said he felt safer on the streets with a police presence. He went on to say:

But 600 officers? People are regularly assaulted or worse, murdered on or near Oxford Street but these crimes never attract the numbers of officers used to fight the vicious crime of recreational drug use. Clearly the persons directing policing in NSW equate the use of Cannabis as far more serious than MURDER. Instead of using 600 police on one night, would not 2 officers each night for 300 days per year be a much more effective use of taxpayer funded resources. I suspect 2 officers for 300 days would have a far greater crime prevention effect in this area. ⁶⁷⁵

12.3.1.3. Strip searches

Some submissions and complaints referred to experiences of being strip searched following drug detection dog indications. It is our experience that the term 'strip search' can embody a range of different meanings to different people. While some might regard being 'stripped' of their outer clothing (such as a jacket or jumper), shoes and socks as a strip search, the term is more correctly applied to more intrusive searches such as when a person is required to remove all their clothes down to their underwear or complete nakedness. ⁶⁷⁶ From our observations of police operations, strip searches were rarely conducted.

Police were provided with advice at some briefings as to procedures to follow if they felt a strip search was warranted. For example, at one briefing we attended police were informed that strip searches should be performed in toilet areas and one officer should guard the door to isolate the toilet from use. In the event that this was not possible, the person should be taken back to the police station.

Two strip search situations that we observed are described below:

10.30pm Female in early thirties indicated in pub.

Dog indicates a woman. She has to wait for a female police officer to search her and she is not looking happy. Handler gives explanation and warning. She is asked if she has anything – I do not know if she replied.

A man passing by asks what is happening and a police officer explains about the drug detection dog.

The woman is waiting in a back area of the pub near the poker machines – there are not many people around though some pass by on their way to and from the poker machines. Many police are standing around waiting for the search to be conducted. The policewoman puts on her gloves and the woman person of interest is looking increasingly nervous.

The woman asks if she can move into a more private place and is moved into a slightly more discreet area. She is still in view of one man playing the poker machines. She is cautioned by the police officer.

The police officer goes through her wallet and finds small bags of cannabis. A man walks past. She holds up her top for police to check under it – revealing her stomach. She takes off her jacket and sloppy joe. She says 'I didn't even realise that was in there.' There are [a number of] bags with something in them. She is told 'Do you understand that you are under arrest for these?'

A man walks past.

She doesn't have any ID. She is asked for her name [name and date of birth.]

The three bags are weighed. Two police do most of the work with the woman. A further two police assist with weighing.

The woman is asked to open the back of her phone. It has nothing in it.

Police weigh the bags and contents in front of her. She is asked to confirm that the scales started at zero. The officer states that the scales say 2.7 grams. The woman points out that this is including the bags. The empty bags are also weighed and come to 0.5g. The woman looks at the scale but will not say what it reads or confirm the officer's statements.

The woman is asked if she has been in trouble with police before. She says 'Yes, about five years ago.' [She explains that] it was drug related and there were a few charges. The drugs are put in an exhibit bag on site. A radio check is conducted.

The woman has become more upset and is now crying. Some of the bags have a crystal substance in them. Police tell me that the woman has 'intel' for a range of matters. Police believe the substance in the bags is crystal meth (amphetamine). Two female police then take the woman away. Police advise me that she has been taken into the toilets for 'a more thorough search'. Given how upset the woman is I do not accompany police.

[When she returns from the search] she is told again that she is under arrest and will be taken back to the station. She will not be given a field court attendance notice [which could be issued on the spot] because of her history. She is taken away in a caged truck.⁶⁷⁷

9.54 am Male in early twenties indicated by dog at the ticketing area of a railway station.

[The man was] very cooperative and accommodating. Asked if he had drugs on his person, said 'no'. Found a drug kit down his shorts (a needle and plastic spoon). Said he had had it on his person since yesterday. Asked if he had anything else on him. Said 'no'.

Asked if he had used anything that day. Said nothing since that morning. Asked if he understood why he was being stopped and searched, and he said yes.

Admitted that he had smoked this morning. Said that he had no other needles on him. He then pulled a hash pipe out of his pants. He then admitted that he had used the needle that morning. The officer then asked him "What else have you got down your pants?"

Was taken into a private room for a strip search. [Police] didn't find anything.

With further questioning said that he had smoked cannabis about 40 minutes ago.

Thanked for his cooperation. He then said that he had just been released from custody 1.5 weeks ago. Radio check done.⁶⁷⁸

We are also aware of one strip search which was recorded as follows in the relevant COPS event and information report:

Location: [name of railway station] platform one POI: [Name, address].

On Monday [date] police were patrolling (sic) [name of railway station] as part of the commands [name of operation] operation. Along with police the drug dog accompanied. About 10.30am the drug dog approached the POI and began to sniff the crutch area of his pants. Police then spoke to the poi who stated that he had nothing on him. The drug dog kept with the poi. As a result the poi was searched and then taken into a public toilet along with other police and strip searched. As CNI check was conducted with intel for drug and transport crime. There was nothing adversed (sic) found on the poi and he was allowed to leave. The [name of rail route] has known intel for drug users and criminal activity.⁶⁷⁹

We conducted a 'CNI' (Central Names Index) check on the person searched and found no evidence of any drug or transport offences. The only records we found related to the incident described above.

12.3.1.4. Complaints involving strip search allegations

We also received a number of complaints which contained allegations that 'strip searches' conducted within sight of the public led to experiences of humiliation and anger. This was exacerbated where officers were in plain clothes and allegedly did not clearly identify themselves to complainants. A man who had his pockets and bag searched at a railway station commented that police in plain clothes, who had not shown him police identification, 'could have been anybody going through my wallet and belongings'.⁶⁸⁰

One man was asked to alight from a suburban train and alleged he, 'was strip searched in a public place in full view of the public and was refused details of the officers who performed the search'.⁶⁸¹ Although he described police conduct as 'absolutely outrageous and unacceptable', he did not wish to pursue this matter when contacted. The involved officers indicated they had searched the complainant in a public waiting room rather than a private room in order to hasten the process for the complainant. Both were advised to conduct searches in accordance with police procedures in future.

Another man alleged police threatened to charge him with 'hinder police' if he did not accede to a strip search on a busy inner-city street, with people coming and going from a nearby train station, the local hotel and other shops. He described standing in public:

*with my pants pulled down shirt up and shoes and sox off ... And guess what, they found NOTHING. Do you Comprehend what NOTHING means. I was PUBLICLY DEGRADED HARASSED THREATENED SEARCHED ILLEGALLY DEFAMED AND PUBLICLY SLANDERED.*⁶⁸² [Original emphasis]

Police responded to this complaint by asserting their entitlement to search suspected persons 'without qualification'.

Another complainant indicated by a drug detection dog at a suburban railway station reported having to undress in view of members of the public. Advocates on behalf of this complainant stated the incident was all the more distressing because of his previous experiences of police violence in the Middle East:

*Despite an extensive and unsuccessful search by the drug dog he was forced to undress to his under-shorts in full public view on the platform of the railway station. This was humiliating and an invasion of normal human privacy.*⁶⁸³

12.3.2. Discussion

Privacy and embarrassment issues are raised by both the initial indication by the drug detection dog and the subsequent search by police. While the actual behaviour of the drug detection dog could generally be characterised as controlled and passive, being singled out by the dog in a public place and often in the presence of friends, colleagues or acquaintances can be a source of embarrassment and feelings of invasion of privacy for a number of people.

The searching of persons in public places following indications by drug detection dogs can rarely be performed in a truly private manner. Although many police do attempt to search the person in an area offering slightly more privacy than the site of the initial indication, the improvements afforded are often minimal. The fact of the search itself is a substantial intrusion on a person's privacy. The public nature of the search has also been reported to us as a source of embarrassment and humiliation for a number of people.

The fact 7497 searches (or 74% of searches) conducted during the review period resulted in nothing being found by police also impacts on the privacy issue. People detained and searched who are not found to be committing any offence will be particularly susceptible to feeling that the intrusion into their privacy is unwarranted or unfair. While a proportion of these searches may be of people who have recently been in possession of cannabis, for many thousands of others there is no sure reason for the indication by the dog. While some level of searching without finding drugs might be an acceptable consequence of a policing strategy which otherwise delivers good results, it is unclear whether the current rate of drug finds is sufficient to justify the large numbers of people searched with no result. As the Attorney General's Department stated in its response to our discussion paper:

*The large majority of the trespasses and intrusions carried out after a positive indication by a drug detection dog will be on persons innocent of any offence. In those circumstances the lack of protection for the privacy of those searched is of great concern and a significant factor to be considered in the cost-benefit analysis.*⁶⁸⁴

It is important in the context of searching 'innocent' people, that police take particular care to deal with members of the public in a courteous and professional fashion. As one senior officer told us:

*So, the implications [of the 74% no find rate] are that you have got to tell your police that when you deal with these people that they are not necessarily, in police speak "a druggie". ... because the person who you are talking to could be anything from you know, a high profile business person to someone's mother, wife, your mother, brother, sister or whoever it might be. So you just need to talk to them how you would normally talk to them.*⁶⁸⁵

One licensee of an inner Sydney hotel also told us his staff had informed him:

that there's an old guy that comes in, a really old guy, and he's a really consistent customer. We've never caught him with drugs or really have any reason to believe he has drugs, but for some reason the police officers bailed him up on the night, and they were reasonably brusque with him. The attitude wasn't – it could have been a bit

*easier. Just because the dog pulls them over, and they still haven't found any drugs, they don't have to treat them like a criminal straight off the bat. You can be a bit more considerate. I mean, this was a really old guy.*⁶⁸⁶

Redfern Legal Centre made similar comments in its submission:

*Police should be conscious that in most detection cases they will be questioning and searching a person who does NOT have a prohibited substance on their person. Because of this people may feel hard-done by, targeted, and unreasonably singled out. This may cause a person to be volatile and irritable. Police should be trained to deal specifically with people in this situation. They need to be responsive, understanding and conciliatory.*⁶⁸⁷

To reinforce to police the importance of the protection of privacy, it may be of value to ensure that all operational orders in relation to drug detection dog operations in public places include guidance to police about appropriate search locations and direct police, where possible, to make use of private rooms or other facilities. As we mentioned above, private rooms can commonly be utilised at railway stations. Although many police operations we observed at railway stations did make use of such facilities, we also witnessed a significant number of searches at stations which were conducted in open view. None of the orders we examined for these operations referred to the privacy of persons searched, although mention was made of privacy concerns at a number of police briefings we attended.⁶⁸⁸

However, even with the best police efforts in communication and taking privacy into consideration in search locations, it is highly unlikely that privacy can be well protected in the types of public operations that have been conducted during our review. If privacy concerns cannot be overcome, then police must consider whether the current approach to using drug detection dogs justifies the level of intrusion involved – especially as relatively few searches lead to any drugs being found and very rarely is evidence of drug dealing or trafficking exposed.

We note that section 32 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA), which commenced on 1 December 2005, specifically provides for the 'preservation of privacy and dignity during [a] search'.⁶⁸⁹ Section 32(4) requires that a police officer must conduct a search:

(a) in a way that provides reasonable privacy for the person searched, and

*(b) as quickly as is reasonably practicable.*⁶⁹⁰

These provisions will apply to all personal searches including searches conducted as a result of drug detection dog indications. We are reviewing these, and other, provisions in LEPRA for two years from the commencement of the legislation.⁶⁹¹

Recommendations

29. Operation commanders ensure that operational orders for operations using drug detection dogs provide guidance to police about appropriate locations for the conduct of searches.
30. Where available, operation commanders ensure that private rooms or other private facilities are set aside for searches.

NSW Police supports these recommendations.⁶⁹²

12.4. Escalation of incidents following indications by drug detection dogs

The police-community contact initiated through drug detection dog indications can sometimes escalate, leading to criminal charges against members of the public or allegations against police. We have detailed some complaints and other incidents below to illustrate how some drug detection dog incidents can result in individuals being charged with offences such as 'offensive language', 'hinder police' and 'resist arrest', or police being accused of assaults and other misconduct.

On some occasions, alcohol appears to play a major role in the escalation of drug detection dog incidents. In one incident police arrived at licensed premises just before midnight. Police records show that a man was indicated by a drug detection dog and searched by police. He was abusive and physically aggressive, striking one officer on a number of occasions. Although no drugs were found, he was charged with resisting police, hindering police, assaulting police and using offensive language, convicted and fined a total of \$1,900.⁶⁹³

Redfern Legal Centre related an incident of escalation in relation to a female client who had been the subject of 'a number of police searches and questionings' prior to a drug detection dog incident which escalated and resulted in multiple charges. According to the submission, their client was sitting on a seat at a railway station. The legal centre went on to comment:

The drug detection dog gave two positive detections, but on further search, our client was found not to possess any prohibited substances. Not only is this an example of the risks of false-positive readings, but also the poor way in which the operation and subsequent search were conducted. It resulted in our client being charged with offensive language, resist arrest and assault police.⁶⁹⁴

These types of incidents show both the difficulties sometimes faced by police when exercising their powers, as well as the serious consequences that may result for individuals who come to police attention on the basis of a 'negative' drug detection dog indication.

12.4.1.1. Complaints involving escalation of search leading to an arrest or alleged assault

Of the 30 complainants who reported being searched, 12 (40% of those searched) reported situations in which a search escalated, resulting in their arrest or in allegations of assaults by police. These complainants expressed concern in relation to their treatment. All noted that no drugs were located on them. The charges against complainants included 'hinder police', 'resist arrest' and 'offensive language'.

One complainant was charged with 'resist arrest' after an allegedly violent search in which no drugs were located.⁶⁹⁵ He was escorted from licensed premises and searched in a railway car park by up to seven plain clothes police. The man had been socialising with work colleagues at the time and said he was embarrassed by being marched out of the pub with his hands behind his back. He admitted to resisting police when they tried to handcuff him in the car park, but said he feared for his safety as he was not sure the persons were police and he did not know what was going on. The charges were later withdrawn on legal advice.⁶⁹⁶ A police review of the matter found the officers had not used unreasonable force, as the complainant conceded he had resisted police. Police reported that the complainant did not appear to be satisfied with the outcome of this investigation.

Another incident arising from a drug detection dog operation in licensed premises led to a man being arrested and charged with 'offensive conduct', 'fail to quit licensed premises' and 'resist/hinder police'.⁶⁹⁷ He had not been indicated by the dog and claimed he had been unlawfully arrested. Police alleged the man was intoxicated and scaring the drug detection dog by pointing his groin in the dog's direction and saying, 'Sniff me, sniff me'. Police asked the complainant to leave the premises and the situation escalated. As the issues raised were to be considered at court, the complaint was considered suitable for redress by the courts.

A few complainants claimed the police searches led to them being assaulted by police. One alleged his head was pushed into a wall causing grazing to his forehead after he was indicated by a drug detection dog in licensed premises and taken outside by up to 12 police officers.⁶⁹⁸ No drugs were located. He inferred the push was a form of punishment by one of the officers. Although the involved officers denied the complainant had been pushed into a wall, the investigator apologised for the search and the complainant indicated he did not wish to pursue the matter.

Case study

Arrest of the complainant's partner during a search

The complaint

In November 2004 a man at licensed premises during a drug detection dog operation was asked by police to accompany them downstairs. Police told him they believed he might be carrying drugs, although the belief was not as a result of a drug detection dog indication. The complainant said he was not allowed to walk freely but had an officer either side, holding his arms tightly. His partner and a friend were concerned about the police actions and followed them outside. Police took the complainant around the corner. The complainant thought this was so that his friends could not see him being searched. He told police he was offended they had searched him because the dog was a long way from him and had not indicated him. Police told him that his actions in moving away from police as they entered the room aroused their suspicions. No drugs were located and police apologised. He returned to the entrance of the premises where he was told his partner had been apprehended and was in the police van. He was told his partner went to see if he was OK but police prevented him from approaching the search. The situation escalated and the partner was arrested and charged with 'assault police' and 'resist arrest'. The complainant was concerned that police actions had resulted in his partner being unjustifiably charged.

Outcomes

When the matter was determined at court the magistrate held that the officers 'were acting outside their duty'⁶⁹⁹ when arresting the complainant's partner. The 'resist arrest' charge was dismissed because the alleged resistance 'was not outside what might be expected once police overstepped the mark and were not acting within the course of their duty.'⁷⁰⁰ The magistrate also dismissed the 'assault police' charge because she was not satisfied that the assault occurred. The magistrate was particularly critical of the police brief of evidence insofar as witnesses were not identified and awarded costs of \$12,000 against NSW Police.⁷⁰¹

12.5. Targeting and unfair discrimination

Concern about targeting and discrimination, particularly of the gay and lesbian community, was probably most pronounced prior to the commencement of the Drug Dogs Act. A number of highly publicised operations at nightclubs in Darlinghurst and Kings Cross met with vocal opposition from individuals and organisations in the gay and lesbian community.

Before releasing our discussion paper, we had received reports from various sources suggesting that police use of drug detection dogs discriminated unfairly against certain groups in the community. Members and representative organisations of the gay and lesbian community, for example, cited the frequency of police use of drug detection dogs in Oxford Street, Darlinghurst as evidence of inappropriate targeting of gay men and lesbians.

Our discussion paper included information from interviews with two people who had been searched by police following an indication by a drug detection dog. Both were gay and lived in areas of Sydney with high populations of gay residents and visitors.

*if I hadn't lived in Surry Hills I wouldn't get caught. If I lived in another neighbourhood – you don't even have to go as far as Mosman or Vaucluse either. When they are marching with their dogs on Oxford Street I think most people in Sydney are aware that's where the gay neighbourhoods are, and most of the gay venues. Just putting two and two together, it looks like they are targeting people there.*⁷⁰²

*I feel doubly victimised by being gay and living in Kings Cross.*⁷⁰³

Although both of these men were searched *prior* to the commencement of the Drug Dogs Act, the suburbs in which they were searched were amongst the top 10% of suburbs in which the drug detection dogs most frequently made indications over the review period.

We also reported that others had asserted that the provisions in the Drug Dogs Act which specify the ability to use the drug detection dogs without warrant on prescribed public transport routes, unfairly target the poor and the young who rely on public transport for legitimate purposes.⁷⁰⁴ The specific inclusion of dance parties and concerts in the legislation has also been argued to discriminate against the young.

12.5.1. NSW Police and Police Association of NSW views

The NSW Police response to the discussion paper clearly stated that targeting 'of one section of the community over another when deploying drug detection dogs' does not occur. According to the submission, the location of drug detection dog operations is dictated by intelligence and approval through the 'chain of command'.⁷⁰⁵

The Police Association of NSW also argued that the fear of discrimination expressed by 'minority groups is unfounded':

*The dogs are taught to identify a scent and to follow that scent until they can sit beside it. This is the only basis as to why a person is stopped and searched by police. The locations are determined by intelligence on drug supply.*⁷⁰⁶

These views were reflected in the submission of one local area command:

*In this command, no particular group is targeted. Being an intelligence driven organisation, drug dog operations are conducted in areas and establishments where intelligence indicates drug activity is occurring. Should any minority group attend these locations they should be exposed to screening by the drug dog, the same as any other group.*⁷⁰⁷

We also spoke to police in focus groups about the perceptions in the community that the use of the drug detection dogs discriminated against particular groups. Police who patrolled areas known for their patronage by the gay and lesbian community felt that only a minority opposed the dogs:

It still comes down to – well – my perception [is that] the people who are using [drugs] don't want to see the dogs. And they will arc up as much as they can and use whatever scenarios they can to try and have [the dogs] reduced, taken out of the way altogether. But be it the gay and lesbian community, the hetero community, the backpackers, visitors, just people in and around the street, I'd say the majority of them don't care.⁷⁰⁸

Yeah, we do get negative feedback because a lot of these places here – the night clubs and the dance scene – it's very much a drug culture. And for us invading this drug culture, it's obviously affecting what they want to do, on the fun they're going to have and all that sort of thing. So obviously we get negative feed back from these people ...⁷⁰⁹

Police at another focus group, noting that many of the nightclubs in 'gay areas' were not actually 'gay night clubs' commented that the gay and lesbian venues were not the ones where they were finding drugs:

We're only getting the drugs in the non-gay establishments in that particular area. ... We've been to a lot of the gay establishments and not got anything.⁷¹⁰

Generally police at these focus groups felt that there was no targeting of the gay and lesbian community:

it'd be ludicrous to suggest that we would sit down and say, 'Let's go get the gays and lesbians' – we are intelligence led as a group.⁷¹¹

[The] Magistrate won't sign a search warrant unless he or she has just cause ... You're not going to get – A search warrant doesn't say target at gay and lesbian joints only.⁷¹²

We just work in areas where there's a high possibility of getting drugs. If there happens to be gay or lesbian establishments in that area then it's got nothing to do with the intelligence we've had.⁷¹³

Another senior dog unit officer said that there must be drug-related intelligence about licensed premises, streets and other places in which the drug detection dogs are used. He explained that this is the only basis for targeting a location with a drug detection dog.⁷¹⁴

While the drug detection dog might not discriminate between people on any basis besides how they smell, searching police might alter their behaviour depending on how a person looks or their attitude. Officers' comments to us included:⁷¹⁵

And the police look at someone and because they're not a junky looking person, because they might be in a suit or something the police'll just give them a quick search ... I'm sure you guys [gesturing to other police officers] ... have got blokes in suits and that, and they [police] won't search them anywhere near as good.

They just say turn your pockets out and that's it.

A lot of them go on the person's attitude too but people sort of act really innocent and say, 'Oh, I don't know why the dog's indicated on me'. I've noticed that the police don't seem to search them the same way they do someone else. They sort of take their word for it.

12.5.2. Other views in submissions and interviews

Many submissions commented on the issue of discrimination and targeting. Most commonly cited, was perceived discrimination against young people, low-income earners and the gay and lesbian community.

The NSW Council for Civil Liberties commented in its response:

Obviously, the poor and the young, who frequent public spaces and public transport, are disproportionately targeted by drug detection dog operations.⁷¹⁶

The Youth Justice Coalition highlighted in its submission, the problematic relations that young people traditionally experience with police:

further opportunities to worsen relations between police and young people which are provided by the use of powers under the Drug Dogs Act seriously compromises both opportunities for positive, respectful policing...⁷¹⁷

The Shopfront Youth Legal Centre acknowledged that the dogs themselves do not discriminate, but that their use was nevertheless discriminatory because 'the places in which the dogs are used may amount to indirect discrimination':

We are of the view that the use of drug detection dogs on public transport routes, particularly railways, discriminates against young people and low income earners, who usually have no option but to use public transport.

We also believe that the use of dogs in certain areas and venues creates a legitimate perception that particular communities are being targeted (for example, the gay community in Darlinghurst.)⁷¹⁸

The Hon. Amanda Fazio MLC also submitted that the use of the dogs discriminated unfairly against young people, stating in her submission:

Young people attending music festivals in NSW have been subjected to searches by drug detection dogs. Yet no such searches have been conducted outside large sporting events such as football matches which are often marred by poor crowd conduct and violence in the aftermath of the matches. This sort of poor conduct and violence is not usually associated with patrons attending music festivals, so why are they being unfairly targeted.⁷¹⁹

Ms Clover Moore MP also argued in her submission that the use of the dogs targeted younger people, persons on lower incomes, people from ethnic minority backgrounds or migrants/refugees, Aboriginal people and gay/lesbian/bisexual and transgender people. In particular, the submission noted that:

Discrimination is an important issue for the large lesbian, gay, bisexual and transgender communities in the Bligh electorate, where police/community relations have traditionally been poor, and where police have worked to remove discrimination and ensure effective policing [of] marginalised groups.⁷²⁰

One licensee we spoke to also commented about damage done to police relations with the gay and lesbian community:

I think it's caused enormous damage to all that was built up. The gay and lesbian police liaison officers, the police march in Mardi Gras – all that's for nothing now. There is so much ill will in Oxford Street and in the gay bars about the dogs, that I think a lot of that good will has been eroded – seriously eroded ...⁷²¹

However, an alternative view was expressed by one person, who described himself as a 45-year-old gay man, who called us directly to relate his experience of being searched. Although concerned that the use of drug detection dogs was 'a bandaid' on a much larger problem, the man was adamant that the dogs did not discriminate against gay people. The man described the police who searched him (finding nothing illegal) as 'professional, courteous, not aggressive, not rude'. He said he did not feel intimidated by the police or the dog.⁷²²

A submission from a member of the public argued that the use of the dogs discriminates against young people and noted that young people:

are more likely to use public transport, are less likely to own a car and less likely to have secure housing where they are free to use drugs, and more likely to be in a dance club.⁷²³

The UTS Community Law Centre expressed concern that:

Drug dog detection increases the exposure of young people, in particular, from culturally diverse backgrounds to potentially discriminatory and harmful contact with the police. As 68% of adults under 29 years of age have used cannabis, enforcing small scale possession law serves to criminalise a large proportion of young Australians.⁷²⁴

The NSW Commission for Children and Young People expressed concern at the proportion of young people under 18 years who were being searched. The Commission stated in its submission:

I note from your Discussion Paper that for the period February 2002 to February 2003 approximately 250 young people less than eighteen years of age were searched, 198 of which were searched on railway property.

While this figure represents approximately 6% of all searches for the relevant period, I am concerned about the high proportion of searches on children and young people occurring on public transport or at public transport hubs. Given the limited transport options available for children and young people, they must not be discouraged from using these services for fear of being subject to what can amount to quite unnecessary and embarrassing searches. This is particularly so in light of the low proportion of searches that have resulted in drugs being located.⁷²⁵

The Results Spreadsheet shows that for the two-year review period, this pattern has remained unchanged. Young people under 18 years of age were most commonly searched at railway stations or on trains over the two years. Over 79% (563 of 711) of young people were searched on trains or at railway stations. Of these young people 79% (444 of 563) were not found to be in possession of drugs.

The NSW Users and AIDS Association (NUAA) reported an incident where an Aboriginal woman was 'warned to leave a public park by drug dog officers who warned her the park was being used by people consorting with the intent to use illicit drugs.' NUAA stated that in the woman's opinion she was removed because she was Aboriginal.⁷²⁶

The Hepatitis C Council of NSW, submitted that the use of drug detection dogs targeted 'particular small time drug users in the community and not others.' The Council asserted that the dogs were more likely to detect public transport users over car users and 'homeless or street-based drug users rather than those [who] have secure accommodation.' The Council also stated:

*it is our understanding that police dog handlers sometimes 'direct' the dog towards a person with a particular look or image, and style of dress, whether the dog detects the smell of drugs on them or not.*⁷²⁷

Occasionally, during our observational research dog handlers have appeared to lead the drug detection dog towards a particular person that they wished the dog to sniff.⁷²⁸ However, while this leading of the dog may have been because police suspected on the basis of the person's appearance or location that the person may have been carrying drugs, the dog's reaction did not appear to be manipulated in any way.

Targeting was mentioned at only one of the briefings we attended. On this occasion the handler made it very clear to police that a person would not be targeted just because the police asked the handler to do so.

12.5.3. Complainants who felt victimised by police because of racial or other minority status

Six complainants (12% of complaints reviewed) raised concerns they were singled out by police because of their race, ethnicity or minority status and targeted by drug detection dog operations.

One expressed anger that police searched him on the basis of his Asian appearance.⁷²⁹ He did not believe the dog indicated him and stated he had walked past the dog once and patted it on the head. He felt the dog handler had subsequently instructed the dog to sit down in front of him:

Not that dog pick on me, otherwise the dog will not leaved me away after the first time its smell on me. But those sick mad dogs [two police officers] were thinking I was the bad drug people by my looking, and asked the female police bough the dog to sit in front of me. They made some reason to search me.

The man perceived there was a double standard in operation for Asian people as he had seen another search take place where police did not look in the person's wallet:

I mean if they need to do that kind of rude searching, then tread all the people the same but not just the Asian! ... [the police officer] assumed all Asians are the bad guys. He assumed all Asians were the drug dealer.

Advocates who complained on behalf of an Iraqi national with temporary protection status in Australia attributed the police treatment of him to his Middle Eastern appearance.⁷³⁰ They suggested there was no real belief by police he was carrying drugs. The man was questioned and searched on a suburban railway station by four police with a drug detection dog. The man told police of his refugee status and the police questioning became 'extremely hostile and he was repeatedly accused of carrying cocaine'. The complaint letter stated, 'We believe the manner of his treatment by the police was more to do with his obvious Middle Eastern appearance and his status as a TPV [temporary protection visa] holding refugee than any real belief that he might be a drug carrier or dealer'.

Another complainant speculated as to the reason he was singled out by police during a drug detection dog operation on a busy nightclub strip in the city:

*As I am an openly gay male and of Indian extraction I also have cause to wonder if homophobia and racism are still rampant in the NSW Police Force? I was singled out from among the many straight white pedestrians who frequent the nightclubs around the area, and from among my group of friends who are all white Anglo-Saxon.*⁷³¹

Another complainant suggested police use of discretion discriminated against persons by their general appearance:

*The sniffer dogs are used discriminatorily. For example cocaine and marijuana is used by more upwardly mobile businessmen in their 20s than unemployed men in their 20s. The police and their dog come to a T-junction and have to decide whether to turn right or left. They look to their left and see a group of young men in ties and to their right a gaggle of men in jeans and long hair ... Which way do they turn?*⁷³²

Case study

Perceived targeting of Aboriginal people

The complaint

An Aboriginal woman witnessed a drug detection dog operation in the main street of a western NSW town in mid 2001. She said two of her sons were strip searched. Neither were carrying drugs. The complainant alleged police continued the drug operation through licensed premises in the town but only targeted premises frequented by Aboriginal people. She was standing with a group of people talking about the dog operation when police approached and she was sniffed by the dog. This made her feel very uncomfortable. The complainant raised a number of issues concerning the police actions and the lack of consultation with Aboriginal residents. Calls received from other members of the same community indicated the operation had undermined Aboriginal support for police.

Outcomes

A meeting was organised between police, the complainant and Ombudsman staff. The complainant accepted the local commander's apology and explanation for the incident. She was informed that these kinds of operations would be subject to new local police procedures. The measures included:

- local police known to the community would assist the drug dog unit
- an Aboriginal liaison officer would be present for future operations
- police conducting the operation should be in uniform
- persons indicated by the dog would be searched in private where requested, and
- the operations should be video recorded.

A local Aboriginal community working party meeting later passed a motion supporting the continued use of drug detection dogs as one of a number of measures aimed at combating drug-related problems in that community.⁷³³

12.5.4. More demographic information

Information about the ages of people searched is set out in the summary data in Chapter 6 'Overview of results'. The records of persons searched during the review period show that 7% (711 of 10211) of people searched were 17 years or younger – the youngest person searched being recorded as 13 years of age. According to the 2001 Census approximately 6.9% of the NSW population is aged between 13 and 17 years.⁷³⁴

41% (4136 of 10211) of persons searched were between 18 and 25 years of age, and 17% (1780 of 10211) were between 26 and 30 years of age. Census data indicates that these age groups comprise 10.5% and 7.3% of the NSW population, respectively.⁷³⁵

According to the 2004 *National Drug Strategy Household Survey*, 15.3% of the Australian population had used illicit drugs in the 12 months prior to the survey. The survey also found that 31.5% of 20 to 29 year-olds, and 21.3% of 14 to 19 year-olds had used illicit drugs in the last 12 months.⁷³⁶

Our audit of events showed that men were far more likely than women to be indicated by the dogs. Of 126 records where gender could be established, only five showed women being searched.

NSW Police does not systematically collect reliable information about ethnicity or sexual preference and therefore it is not possible to present statistical information about the use of drug detection dogs in relation to these categories.

12.5.5. Discussion

Our review has found no solid information to suggest that the drug detection dogs or their handlers discriminate against particular groups in their work of identifying persons to be searched by police.

It is more difficult to discern whether the location of drug detection dog operations may have some discriminatory impact. The Drug Dogs Act and the Drug Dogs Regulation prescribe the locations where the drug detection dogs may be used. As discussed above, the choice of some of these locations has been criticised because they are frequented by some groups in the community more than others.

While police argue that intelligence information dictates the deployment locations of the drug detection dogs within the prescribed areas, our examination of that intelligence in Chapter 10 'Drug detection warrants and police intelligence' found that it was often lacking in detail and/or indicated only low level drug use activity, especially when a warrant was not obtained.

While it is clear that people aged 18 to 25 years make up a far greater proportion of persons indicated (41%) than they do in the general community (10.5%) this may be partly explained by the greater likelihood of this age group to use or be in contact with illicit drugs. However, it may also be that the younger age groups are more likely to frequent the locations at times when drug detection dogs are most commonly used.

There could be many factors which suggest men, much more than women, would be searched, including the greater proportion of men than women who consume illicit drugs. Other factors may relate to drug taking patterns in public and private, frequency of changing clothes, likelihood of carrying drugs in public, and rate of frequenting the various locations where police make use of the drug detection dogs. The mere fact that persons searched by police do not mirror the make up of society generally, does not necessarily indicate discrimination or targeting.

However, it is clear that a range of people in the community believe that some level of discrimination or targeting is occurring. Perceptions of discrimination and targeting may be amplified by the fact that police more often than not, do not find drugs on people they search following drug detection dog indications. Experiences of this type may encourage people to believe that they were singled out in an arbitrary and unfair way. This may be further exacerbated by the taking by police of personal details and record making on COPS.

A United Kingdom Home Office Briefing Note, providing an overview into research about stops and searches, set out the following three points as the 'primary threats to public confidence' in police conduct of stops and searches:

- a disproportionate rate of stops and searches of those from minority ethnic backgrounds
- poor management of encounters by police officers, and
- inadequate explanations by officers to those stopped or searched.⁷³⁷

It is important that police interacting with members of the public during drug detection dog operations provide a clear explanation as to why the person has been singled out for a search. In the event that nothing is found on the person, it may be appropriate for police to offer an apology for the inconvenience of the search and/or to thank the person for their cooperation. We have observed many police take this approach and it may go some way to ameliorating the sense of unfair treatment that some people experience during these operations. Just as police deal with community perceptions of fear of crime which may not accord with real risks, police also need to take into account other perceptions which impact on community well being and police/community relations.

Concern among some in the community about targeting and discrimination may also be somewhat alleviated by increased confidence that the drug detection dogs are only deployed in locations which have sufficient drug-related intelligence. Our recommendation that all operations be authorised by warrant may go some way to achieving this.

12.6. Impact on licensed premises

We interviewed 27 operators of licensed premises (both licensees and managers) about their experiences of the use of drug detection dogs on their premises. We interviewed operators from inner Sydney, western Sydney, inner-western Sydney, and southern NSW. We also received three relevant submissions.

Below is a brief discussion of some of the common themes from these interviews.

12.6.1. How the operations are conducted

Although most operators felt that the dogs were well behaved and controlled by their handlers, a number of issues were raised with us about how police conduct operations. Below are some of the commonly raised concerns and some relevant extracts from interviews:

- A preference that police introduce themselves to management when they arrive at an establishment.
- A desire for some feedback about the outcomes of the operation on their premises.
- A preference for small groups of police on the premises rather than large groups.

*I don't mind them coming in. It sort of helps with our job. As long as it's not 25 of them. If 2 of them came in with a police dog, or even 6, and 4 of them were in plain clothes... [Otherwise] it makes people feel intimidated.*⁷³⁸

*they bombard us to the point of being ridiculous. And they don't come through in ones or twos. We've had them come through in packs of 15 at a time. Now, if that's not intimidating to customers and damaging to business, particularly a new business, I don't know what is.*⁷³⁹

*I think the large array of uniformed police going through your venue is not a very good look at any time. Even if they come through as a walk through and check you know, think two's enough.*⁷⁴⁰

*Not only the people here but the bar staff were thinking, 'Have we done anything wrong?' I don't know what happened to every pub, but I'm sure that every other pub would feel the same. When two or three come in you think, oh, you know, they're just doing a bit of a check but when 15 come in, like with two dogs! Gees! Like, what's happening here?*⁷⁴¹

- A preference that searching of patrons be conducted outside the premises.

*It's messy for business. We would prefer that they take them outside.*⁷⁴²

- A concern that police should have better intelligence or evidence before they go on to premises. A few operators felt that police should have a warrant.

*If police have sufficient evidence that there are drugs on the premises, I'm all for the dogs going on to the premises. If there is no evidence of drugs being sold on the premises, I don't think they should go in at all.*⁷⁴³

Most licensed premises indicated that police were in and out of their premises fairly quickly, with estimates of 30 seconds,⁷⁴⁴ five minutes⁷⁴⁵ and twenty minutes.⁷⁴⁶ However, one large venue indicated that police had remained on their premises for two to three hours on two occasions. The owner and licensee of this venue expressed concern about the number of police on their premises for such a long period and with only a small number of 'tiny' amounts of drugs located.⁷⁴⁷ Police records corroborate this to some extent. The Results Spreadsheet shows that police were present at this venue for at least one to one and a half hours on each occasion.⁷⁴⁸ On the first occasion police records show they located a total of 8.2 grams of cannabis and 3.2 grams of ecstasy. On the second occasion 2.6 grams of meth/amphetamine, 2.5 grams of cannabis and 1.8 grams of ecstasy were found.

One dance party operator also wrote to us expressing dissatisfaction with the large amounts of time (up to three and a half hours) police spent at their events.⁷⁴⁹

Another operator expressed concern about possible safety issues when police blocked off entry to his toilets without permission:

*these two plain clothes, ununiformed guys shut up our toilets in the middle of a show – in fact the show had just finished. Now when the show's on, everyone is crowded towards the front. We've got 180 or 190 people crowded there and it suddenly stops. Half want to go to the loo and half want to go to the bar. Now we have a big safety problem with 60 people in a crush trying to get between the DJ box and the wall to the loo and two goons are standing in the way refusing to identify themselves. Now I think that is a safety concern ...*⁷⁵⁰

While largely supportive of the use of drug detection dogs, the Chief Executive Officer of ClubsNSW wrote to us of his concern that large numbers of dogs may pose a risk to safety of patrons and staff. ClubsNSW also expressed concern that some clubs were being targeted by police but received no feedback about the success or failure of police visits.⁷⁵¹

Most operators, even those expressing concerns about the operations, also stated that they felt they had a good relationship with local police.

12.6.2. Effectiveness of operations

Our analysis of the results of operations at different locations indicates that deployment of the drug detection dogs at licensed premises yielded the lowest rate of drug detections of all major location types.⁷⁵² Only 23% of indications at licensed premises led to the detection of drugs.

Most licensees and managers felt that the operations were probably not effective at dealing with the drug trade. A couple felt that the operations would have some deterrent effect but the most commonly expressed view was that drug suppliers would not be affected by the operations:

*and [when] they do find anything it's only going to be personal stuff. I find that a big waste of time because what they have to, what they really need to do is get the big dealers instead of worrying about people that smoke a bit of pot, you know what I mean?*⁷⁵³

*Its effectiveness is very, very limited and in that as I've said, you may as well have a parade and say you're arriving because anyone who is involved in that type of crime knows about it immediately and they communicate very quickly with mobile phones and they're gone.*⁷⁵⁴

personally I think it's a misuse of resources and I know the resources are limited ...⁷⁵⁵

To be honest with you I don't think it has that much effect. Not with twice a year or once a year ... The element of surprise is good [but] I don't think there is an element of surprise in this town 'cause once they go to a pub, everybody knows. So it takes one phone call, one text message to a friend ...⁷⁵⁶

What are they going to catch? Someone with one joint in their pocket. They're not going to catch the dealers are they? The dealers aren't dealing out of hotels in this sort of community.⁷⁵⁷

A major dance party operator also wrote to us expressing concern that drug detection dog operations did not effectively target drug traffickers or disrupt drug supply.⁷⁵⁸

A number of operators felt that the timing of the police operations was unusual and did not accord with their own sense of when drug dealers or users might frequent the area.

I think of the night time, I know there's a lot more people, but of the night time they'd probably have a better chance with anybody to have something on them, so ... I find having a walk through in the middle of the day in the week is pretty useless and a waste of time.⁷⁵⁹

And I think the times they were taking the dogs through was at a time when it was just ridiculous. They were bringing them through at eight, nine o'clock at night. The club's not even open but the lounge, other areas of the bar would be open and they'd be running, trailing these dogs through and a lot of times they'd be trailed by 8, 10 coppers you know. It's just overkill you know ... it's pretty much just people relaxing after work having a cocktail or two before they go home or they go out.⁷⁶⁰

A couple of operators felt that the increased police presence did have a temporary positive impact on crime in the area. For example, one operator commented:

anytime they do an operation of any sort, the chances of people, you know, sort of petty crime up and down the street diminishes, yes. 'Cause they've gone – they go somewhere else. And you know that's things like people mugging people that are drunk, petty assaults, vandalism and things like that ...⁷⁶¹

Most operators also described their own efforts to remove active drug users and dealers from their premises. Common strategies included:

- video surveillance
- regular checking of toilets by security and other staff

There's toilet checks every 15 minutes, there's light things [to stop people injecting drugs], and I think sometimes you can ... just look at some people and go, "I've got a funny feeling about that one." – so you keep an eye on them...⁷⁶²

- speaking to people suspected of drug dealing and asking them to leave the premises

We just get our security to turf them out. You can pick them a mile away. They look like characters out of central casting most of them.⁷⁶³

- banning people from the premises if they are caught using or dealing drugs
- calling police when people are found with drugs, and
- bag checks as a condition of entry to venues.

12.6.3. Impact on business and patrons

Operators of licensed premises where the drug detection dogs had patrolled on numerous occasions were more likely to report that they felt the patrols had a negative impact on their business. Inner Sydney and inner-western Sydney operators were more likely to express concerns about patron's reactions and impact on their business than western Sydney operators and southern NSW operators. Many commented that their patrons were intimidated or made uncomfortable by the presence of police and dogs.

I have found that if you've got a crowd of people, for example in the gaming room and the dogs do pull up at one particular person, within ten minutes of the dogs being there, everyone in the gaming room's gone. Everyone leaves. Whether they just feel intimidated, I mean I don't know ... but they do [go].⁷⁶⁴

Well, it's like driving a car. If the police car starts following you in a car you start to feel nervous that you might do something wrong. ... and I think customers are a bit like that too. They sort of, even though they're doing nothing wrong they see the police and the police presence and they think that there might be something going on so they get out of here sort of thing, maybe. But I certainly don't have a problem with [police with drug detection dogs] coming in.⁷⁶⁵

*So, it wasn't happening enough pretty much to have any real long term, detrimental affect to our business, but it's just the stigma attached to it more than anything else I think.*⁷⁶⁶

*Patrons say, "Why are you being raided?" I explain the best I can. Some go away and never come back again.*⁷⁶⁷

*we've got a \$25 cover charge and people's fear will be that they'll come and pay this to the venue and they're, you know, it will end up a lights on, music off and they're going to lose \$25 and you know, have a bad night. So, nobody wants to, if you come up to a club and see ... ten to fifteen police vehicles outside, you think, "Oh well, what's happening?" or "Are you going to get raided?" and walk off.*⁷⁶⁸

*You spend a lot of time making sure the food is right, the social environment was right, the service is right, and if you have a bad experience or you're frightened, then all that work is undone. It does impact as far as I'm concerned, yeah. But I can't quantify it.*⁷⁶⁹

ClubsNSW also expressed concern that club patronage may be affected by police drug detection dog patrols 'both at the time the dogs are used and possibly in the future as patrons may feel uncomfortable in visiting the club again.'⁷⁷⁰ Transmission Promotions, a major dance party operator, told us that a range of their customers 'complained to [them] that the dogs and police are an intimidatory presence.' The operator felt that police operations were costing them substantial amounts because of significantly reduced patronage.⁷⁷¹

A few operators felt that the use of the dogs had a positive impact or was largely neutral:

*I mean if it sends a message to the general community and our clientele that, you know, at any time randomly they come through then that suits me as licensee. You know, we have had situations here where we've found remains of drug use and stuff so I'm more than happy that, you know, it happens.*⁷⁷²

*Most of the time I think people panic when they see that sort of entourage of police come in. And then, the initial reaction is to panic, and then 'Oh, OK, it's only a dog. OK sweet.' They go back to what they were doing.*⁷⁷³

*No, I don't think it's affected adversely or positively in any way. They're in and out in a couple of minutes. They don't hang around ... First of all, nobody's complained and secondly nobody's expressed any bad feeling about the dogs at the hotel.*⁷⁷⁴

*The good thing is that it makes sure the pub is clean. Especially now these days with the date rape and all that sort of stuff. All the drugs around, bad drugs around. Probably keeps the dealers out. I'd like to think that I run a very tidy establishment. I don't want them in here anyway.*⁷⁷⁵

One owner of licensed premises also wrote to us stating his 'complete support of the continued use of the dogs' and his view that most patrons saw the police patrols with the dogs as 'a bit of fun'.⁷⁷⁶

12.6.4. Summary of findings

While most licensees agreed that drug detection dogs on their premises were generally well behaved and controlled by their handlers, many felt that the impact of operations on their business and patrons could be reduced by the use of smaller groups of police and better communication between police and management. Many operators also felt that the operations were unlikely to target drug suppliers and were concerned about effectiveness of operations particularly on their own premises.

Police may be able to ameliorate some of the negativity among licensees and managers by better communicating to them both the aims of their operations and, where appropriate, the results of their activities. This could be achieved through regular meetings with relevant business people in the local area or, to address more specific concerns, by individually contacting operators after operations. Most operators we spoke with indicated that they had a good relationship with local police indicating that they would be amenable to this kind of contact.

Recommendations

31. Operational police should regularly consult with operators of licensed premises about the manner, frequency and results of drug detection dog operations conducted on licensed premises.
32. Upon arrival at licensed premises, one police officer be required to seek out the manager or other person in charge, to advise of their presence and answer any questions about the operation.

NSW Police indicated in principle support for recommendation 31 and advised that:

Discretion about the nature of consultation with operators of licensed premises about drug dog operations should remain with the Local Area Commander.⁷⁷⁷

NSW Police supports recommendation 32.

12.7. Reducing fear of crime in the community

The NSW Police Commissioner, Ken Moroney, has emphasised in the media his concern that NSW Police tackle both actual crime rates and fear of crime in the community:

I truly believe that the fear of crime can be as debilitating as the crime itself, particularly amongst the elderly and migrant groups ...⁷⁷⁸

The 2005 Report on Government Services shows that nationally 40.4% of people felt safe or very safe when walking or jogging locally after dark and 24.3% felt safe or very safe when travelling on public transport after dark. Much higher proportions of people, 87.9% and 66.1% respectively, felt safe or very safe in the same locations during the day.⁷⁷⁹

However, the level of fear of crime expressed by the community is by no means indicative of actual crime rates.⁷⁸⁰ A recent joint research project by the NSW Bureau of Crime Statistics and Research, the WA Office of Crime Prevention and the WA Crime Research Centre, found that members of the public in NSW and WA believed that crime is becoming more common, regardless of the true state of affairs. The report on the project warned:

Government spending priorities are often strongly influenced by what the public sees, or the media says, is an emerging local, state, or national priority. This would be a good thing were public opinion always well informed but often it is not. The more money governments spend on police and penalties and other instruments of crime control, the less they have to spend on other valuable public services such as hospitals, schools and roads. When governments increase their investment in law and order to deal with a non-existent problem (or one whose dimensions have been exaggerated), they inevitably have less to spend addressing genuine problems in other domains of policy.⁷⁸¹

12.7.1. The debate about fear of crime

It has been consistently argued by senior police and the Police Commissioner, that high visibility police operations, many of which utilise a drug detection dog, reduce the fear of crime in the community. The Commissioner was quoted as saying:

The best way for the police [to combat fear of crime] is get out and do their jobs. High-visibility policing puts out a strong message of deterrence, and also generates a message of reassurance.⁷⁸²

High visibility policing ('HVP'), sometimes known as saturation policing, is a term used to describe high profile police operations in which uniformed police conduct highly visible patrols in public places. The number of police employed in operations varies from around ten to more than 600. Operation Vikings is perhaps the best-known HVP operation in NSW. According to NSW Police:

Operation Vikings is about reducing the perception and fear of crime through high visibility policing.⁷⁸³

However, the impact of high visibility policing on levels of crime and fear in the community has never been demonstrated. The Director of the NSW Bureau of Crime Statistics and Research, Don Weatherburn, has commented:

To some extent the whole Neighbourhood Watch program was designed to allay public perception of crime. Since then we've had other attempts like visible policing on trains and police patrols of George Street outside the cinema complex. More recently the Vikings operations have been about visible policing.

But how effective these things are in reducing the fear of crime we don't know. To my knowledge there has been no attempt to measure, statistically, the effectiveness of these programs.⁷⁸⁴

Nor is the notion that increasing police numbers will necessarily result in a reduction in fear of crime universally accepted in the criminological field:

The conventional response to the problem of fear of crime is to increase the presence of police. Aside from being very costly, this approach may overlook the fact that fear of crime is not distributed evenly across people and places. Furthermore, the mere presence of additional police is by no means certain to reduce crime or fear although it may increase public confidence in the police.⁷⁸⁵

Increased police presence as part of overt street operations may reduce levels of fear, increase community use of public amenities and instil greater confidence in the safety of public places.⁷⁸⁶ Senior police and former police ministers have publicly asserted that high visibility policing plays a role in reducing the fear of crime in the community.⁷⁸⁷ Senior dog unit officers have also expressed the view that participation in high visibility operations by drug detection dogs and handlers contributes to reduced fear of crime in the community.⁷⁸⁸ However, some NSW police have also expressed their doubts about HVP as a fear reduction strategy arguing that increased police presence simply 'anaesthetises the public' and that the 'best way to reduce the fear of crime is to reduce the actuality of crime'.⁷⁸⁹

A recent study commissioned by the H.M. Inspectorate of Constabulary in Scotland goes some way to reinforcing the view that visible policing reduces fear.⁷⁹⁰ The study found that police and police visibility were 'frequently the first factors mentioned as important' in terms of public reassurance, and 89% of people interviewed stated that they thought a visible police presence would make people feel safer.⁷⁹¹ The study also found that for young people, greater police visibility was not important and a concern was expressed that greater police visibility 'may lead to more harassment for young people'.⁷⁹² Positive interactions with police were found to be more important to young people than police visibility in general.

Other studies in the United States of America have also found that increased foot patrols reduced citizens' fears of crime, especially when the patrolling 'officer was well known and highly visible'.⁷⁹³ Importantly, these studies emphasised not just an increase in the quantity of police but also improvements in the *quality* of contact between citizens and police.

The NSW Police Commissioner has also emphasised in the context of HVP, that what the public wants is 'the ability to communicate with police'.⁷⁹⁴

Public perceptions of HVP may differ according to the experience people have with patrolling police. Those who are searched may respond differently to those who simply observe police on the street. For example, one UK research program investigating the police practice of stop and search concluded 'that the experience of being searched is associated with reduced confidence in the police'.⁷⁹⁵ A lack of confidence that police are effective has also been associated with perceptions of high crime rates. A recent British Crime Survey has found that:

*After taking the influence of other factors into account, the strongest predictor of perceiving an increase in the national crime rate was believing the criminal justice system was not effective at reducing crime.*⁷⁹⁶

One person who wrote to the NSW Council for Civil Liberties to complain about his search (no drugs were found) by police following an indication by a drug detection dog stated:

*Once they finished they just walked off without saying anything. No apology or thanks for my time. All my belongings were left on the pool table for everyone to see. I really feel 6 police could be used more effectively catching people breaking the law rather than harassing people like myself, minding their own business. As far as I'm concerned, the police will get no help from me in future.*⁷⁹⁷

Possible erosion of public confidence in police was also a theme in some complaints about the drug detection dogs. One complainant expressed this in terms of a perceived loss of personal safety:

*I do not consider the random use of sniffer dogs in my community to be a positive move by police. Instead, I believe it only contributes to a feeling of intimidation which has no place in a free society ... Ironically, the number and behaviour of police involved in this operation has eroded my feelings of safety.*⁷⁹⁸

In another complaint, a mother described her daughter's loss of confidence in police following her experience of a drug detection dog operation. The girl felt intimidated by police and had allegedly been issued a direction to 'move on' in an aggressive tone by an officer. Her mother stated:

*I remain concerned by the incident and my daughter has been profoundly affected by her experience ... She now has a totally different perception of the police, the law, and the State we live in. As members of a democratic society, we would both prefer to believe that the police force exists to protect us and maintain order ... Neither her actions, those of her friends, (or the intended targets of the dog strategy) were disturbing the peacefulness of society. The actions of the police, however, were ... I do not believe these operations are contributing in a positive way towards society, or even minimising crime. I find these operations at the least rude and unnecessary and on a deeper level, offensive, disturbing, and menacing, if not illegal.*⁷⁹⁹

Another complainant stated:

*I also believe these operations cause great distress to individuals harassed by young policemen and cause a rift between the police and such individuals. In the interests of good police-public relations I ask that you cease drug sniffer dog operations on the general public.*⁸⁰⁰

The nature of interactions with small numbers of police on foot patrols may differ significantly to the interactions which take place when large numbers of police patrol an area on mass. For example, one HVP operation in Dubbo was reported in the media as follows:

A recent HVP operation in Dubbo reportedly evoked condemnations from many in that community, with one Sydney newspaper reporting that Dubbo residents felt 'pillaged' after the operation and that police were 'left reeling from the negative response'.⁸⁰¹

One local council member put a motion objecting to the police use of heavy-handed tactics during the operation.⁸⁰²

Nor do those who support the HVP strategy necessarily agree that the addition of drug detection dogs to the patrols contributes to any increased feelings of safety which may result from the operations. For example, one editorial in a local northern-NSW newspaper commented that the idea of 'Viking squads to cater for peak periods' was 'a comfort' but also expressed concern at the 'millions of police hours' lost processing 'some poor mug with a marijuana joint in his pocket'.⁸⁰³

On occasion during our observational research we found that members of the public made comments indicating that the presence of police caused them some concern. These ranged from passers-by questioning police about why there were so many police on the street through to direct questions about whether there had been a murder, a bomb threat or some other incident to warrant such a strong police response.⁸⁰⁴

12.7.2. Our inquiries

We raised the issue of the involvement of drug detection dogs in high visibility policing in our discussion paper. The NSW Police response emphasised increased use of public amenities as a result of a greater police presence:

Deployment of police to address fear of crime can also be described as 'response to community concern'. Police are not necessarily deployed to simply "reduce fear" as such, but to address specific community concerns.

There are areas which have been identified, such as railway stations, where criminal activity, such as illegal drug supply, deters members of the public from using those facilities. It is relevant to note that drug activity is inextricably linked to other forms of crime, including violent crime.⁸⁰⁵

Many individual police officers we spoke to supported the notion that high visibility policing reduced fear of crime in the community. For some this was based on their impressions of public responses they received during operations of this nature.

For example, one senior transit police officer rang us with his views about the drug detection dogs and commented that the dogs had a very positive impact on public perceptions of police and fear of crime. He stated that often people say to police that it's 'fantastic' to see them on the trains and that they feel much better seeing the police around.⁸⁰⁶ The Police Association of NSW expressed similar views:

The high visibility nature of these operations greatly reduces the fear of crime in the community. People who see large numbers of police often remark on their happiness in seeing police out on the streets. Furthermore, having police patrol on foot through licensed premises, railway stations and streets is effective in deterring offenders away from that area. People feel safer commuting in locations where police are actively patrolling.⁸⁰⁷

Other officers felt that overseas experience had demonstrated the success of the HVP strategy:

I believe implementation of the 'broken windows theory' in New York proves beyond a doubt that high visibility policing not only engenders public confidence but also effectively reduces criminal behaviour.⁸⁰⁸

Officers at one focus group mentioned the many positive comments they received from members of the public but also recognised that people could become fearful or just curious when they see large groups of police on the street.⁸⁰⁹

Some senior police officers we spoke to were of the view that the manner in which operations were conducted was crucial to whether reassurance and positive responses resulted. One senior officer commented that as a result of public feedback he no longer allowed big groups of officers to walk alongside the dog.⁸¹⁰

Another senior officer stated:

I have had a few people come up and say, 'Well look, there is a lot of police around, what is going on?' Because a lot of initial thoughts are on 'Look, there must be something wrong because you don't see this many police unless there is a problem.' But once you spend five minutes explaining what is going on, then the same people

*then turn around and say, 'It is great. Can you come back?' So, in five minutes they have gone from being 'Why are you here?' to 'Can you come back?'*⁸¹¹

Members of the community who responded to our discussion paper often expressed qualified support for high visibility policing:

*Police visibility is generally appreciated and found positive by the community. This is one area where there may be a perceived positive. However it may also have a counter effect of increasing fear in a community that is relatively safe – especially for people in possession of small amounts of substances.*⁸¹²

*My personal opinion is that I like to see Police on the street and find it re-assuring. However I do not like to see Police with dogs on the street, I believe that that combination causes more fear than reassurance.*⁸¹³

We acknowledge that the use of drug detection dogs (like any high visibility policing strategy) may help reduce the fear of crime among some sections of the community.

*However, we believe that fear of crime is often misplaced, and is perpetuated by irresponsible media reporting and political campaigning. In our view, fear of crime would be better addressed by adopting genuine crime prevention measures and by educating the public about the myths and realities of crime.*⁸¹⁴

Ms Clover Moore MP commented that although she supported the HVP strategy, she was concerned 'that the community wants small local police foot patrols that assure residents that police are on duty, and can respond quickly' rather than regular patrols by large groups of police. Ms Moore went on to state:

*At the same time, I am concerned that many people searched by sniffer dogs, now have greater fear of police and police powers.*⁸¹⁵

Others were of the view that the HVP style, together with the use of drug detection dogs, was more likely to increase community fears. The NSW Council for Civil Liberties questioned the ability of drug detection dog operations to reduce fear of crime asking: 'How does removing these small amounts of cannabis from the streets reduce crime or the FEAR of crime?' The Council further submitted:

*It is commonly claimed by supporters of sniffer dogs that the presence of the dogs in public makes people feel safer. Complaints to the [Council] suggest exactly the opposite: that Sydneysiders feel LESS safe on the streets because of a fear of being intimidated and harassed by police and dogs for no reason at all.*⁸¹⁶

Another submission from a resident of Kings Cross made the point that non-drug users do not fear cannabis users but that these are the people being apprehended during drug detection dog operations. The submission went on to comment that although residents may be concerned about the link between crime and heroin 'the minute quantity of heroin found by the dogs make even this justification [for their use] an expensive joke.'⁸¹⁷

A number of licensees we interviewed expressed concern that their patrons felt intimidated or fearful when large numbers of police entered venues. For example, one manager told us:

*And as I've mentioned to you originally, we regard ourselves as a social venue, so we have a wide cross section of the community, but we have, like elderly couples and stuff who are having dinner. And they think, their conclusion is something is going on here that's dangerous and they get frightened. And I found myself telling my staff to make sure these people know there's no bomb here or, this isn't a raid or like ... It was, in my opinion, very, very heavy handed and overdone. I mean if you camped physically 17 police in a small pub like this, it's overkill and it frightened people.*⁸¹⁸

12.7.3. Survey of community perceptions about police patrols using drug detection dogs

To test public perceptions of police patrols using drug detection dogs we surveyed members of the public during several police drug detection dog operations. The aim was to canvas people's attitudes to the use of dogs and the conduct of high visibility policing.

12.7.3.1. Survey method and respondent demographics

Two Ombudsman interviewers and a supervisor were posted at specified locations in the vicinity of high visibility policing operations where drug detection dogs were being used. Potential respondents would be approached during the operations and invited to respond to survey questions. The operations involved numbers of police ranging from eight to ten police and one drug detection dog and handler, to larger scale operations of two teams with up to 20 police each and the use of two drug detection dogs.

A total of 230 surveys were completed across six local area commands. These took place on seven different occasions. Almost half of the surveys (112 of 230) were conducted during operations in the Greater Metro Region, 31% (72 of 230) in the Inner Metro Region, and the remaining 20% (46 of 230) in the Southern Region.

Figure 15 shows the type of locations where respondents were surveyed.

The surveys took place between November 2003 and February 2004. Most surveys were conducted at night with 47% (107 of 230) of surveys conducted in the late evening and early morning between 10pm and 2am.

There were more male respondents (60%) than female (40%).⁸¹⁹ Almost half of respondents were aged between 19 and 29 and 13% were aged between 14 and 18 years.

12.7.3.2. Summary of survey results

Most people (93.5%) we surveyed had seen police in the area at the time of the survey. The majority of these (70%) reported seeing between four and 12 police officers. Almost 90% of those who saw police also saw a dog accompanying police and the vast majority of those seeing the dog (92%) understood that the dog's role was related to drugs.

In response to questions on how safe respondents felt in the area overall, almost 80% said they felt 'safe' or 'very safe'.⁸²⁰

The survey also asked respondents who had noticed police in the area to indicate how this affected their feelings of safety. Figure 16 shows the proportion of respondents who said that seeing the police made them feel safer or less safe.

For most respondents, seeing police in the area either had no impact on their feelings of safety (46%) or made them feel safer (45%). The remaining 9% indicated they felt less safe after seeing the police.

We also asked people open questions about how they felt when they saw police. We grouped these into four categories of comments, as set out in Figure 17.

In keeping with findings in other parts of the survey, the largest group of these comments were neither positive nor negative (46%). The remaining comments were evenly split between positive (25%) and negative (27%). A handful of respondents either did not know or their answers could not be easily classified.

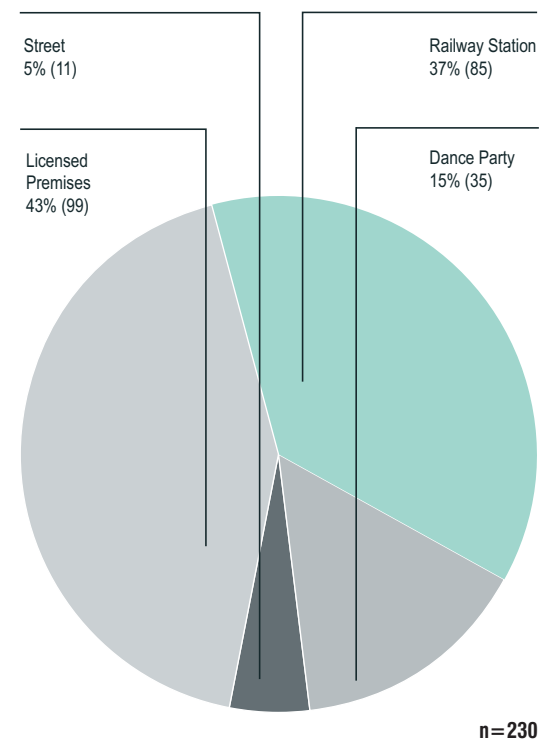
Responses that were neither positive nor negative were those indicating they felt nothing, comments expressing neutral emotions (surprise or curiosity) or observatory comments, for example:

Nothing.

Not a problem.

Nothing, they're only human the same as us.

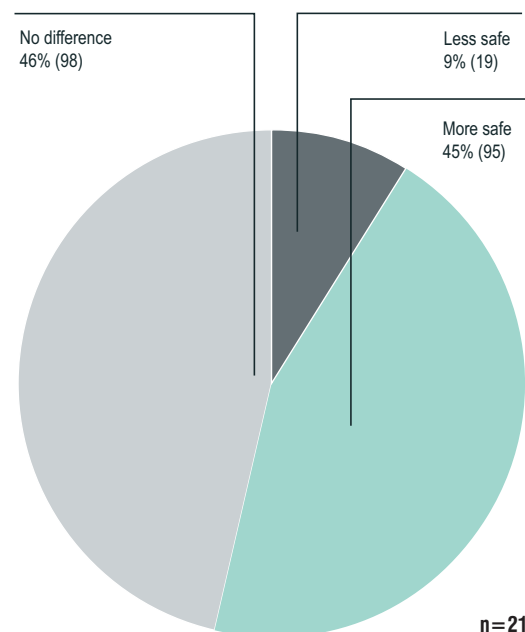
Figure 15. Locations where people were surveyed



Source: NSW Ombudsman survey of perceptions of patrols using drug detection dogs 2004.

Figure 16. Reported impact of seeing police on perceptions of safety

Seeing the police made me feel ...



Source: NSW Ombudsman survey of perceptions of patrols using drug detection dogs 2004.

I didn't have a problem because I didn't think I'd be implicated in it. I have no problem with them coming in tonight, as long as it doesn't interrupt my night. It didn't implicate me other than to see them go past.

I didn't think anything.

Interesting – it was unusual.

Doing their job.

The positive comments were generally those that indicated that the person felt safer because of police, or were comments in support of the police, for example:

I don't mind police – I'm glad they're here and make me feel safe.

Pretty safe. I like the police here. If a fight or something does happen I know where to go.

Much better, its good to have police especially because of the train problems at the moment.

Happy and safe.

Safe – they're doing their job.

Thought it was good and a bit safer.

Felt secure – they are doing the right thing – better police presence.

Good idea, presence is needed in this day and age, happy for them to be around.

The comments classified as 'negative' were those indicating fear that a dangerous situation was unfolding, fear of attracting the attention of police and expressions of a general aversion to police or their presence at the particular location:

Nothing – they're idiots. They made me feel scared.

Intimidated and disgusted.

Too many police – it was a ridiculous number for a pub like this.

Not fair, no problems, no fights, why come here. Plenty of people harassing people outside pubs, hardly anyone is in here.

Might be some trouble going on or why would they be here.

They are the boys in blue – I better pop my pill before they get me!

I don't want the dog to sniff me because I'm scared of dogs.

Take me drugs real quick.

Kids are being harassed for a couple of joints, won't pick up a dealer.

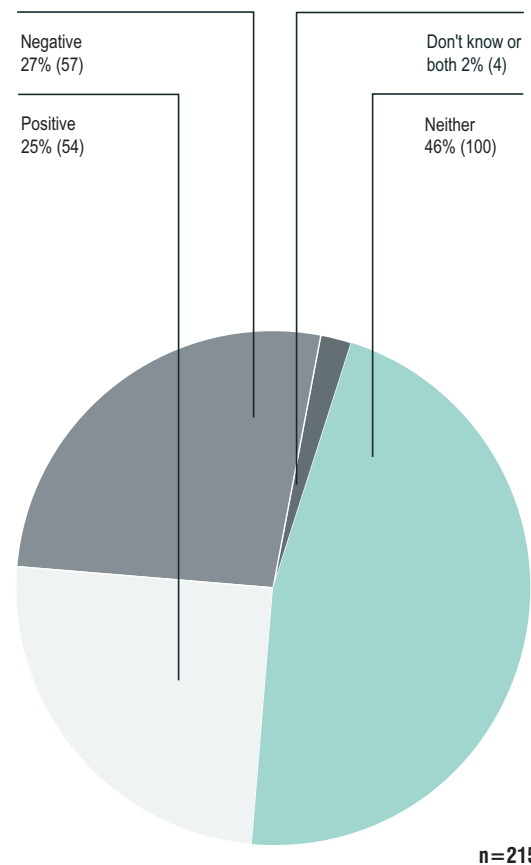
Uncomfortable, because I had a joint in my bag.

Weird – any danger?

Most people surveyed told us that the police did not make any contact with them. Fifteen people indicated that the police spoke to them – five of these were spoken to in the context of being searched by police. Thirteen additional people said that police made some other type of non-verbal contact (smiling, eye contact etc).

We also asked people whether their experience with police was positive, negative or neutral. Approximately 42% of people said their experience was positive, while 39% said that it was neither positive nor negative. Approximately 17% said their experience with police was negative.

Figure 17. Coded responses to open question about impact of seeing police



Source: NSW Ombudsman survey of perceptions of patrols using drug detection dogs 2004.

We found that respondents' answers did not vary significantly according to their location, gender or age. However, it appears that just over half of the people surveyed at railway stations said seeing police made them feel safer, which is a far greater proportion of people than at any other location at which we conducted surveys. In addition, people aged between 40 and 49 reported that their experience was positive more often than other age groups, and people aged 50+ responded more frequently than other age groups that they felt more safe by the presence of police.

12.7.3.3. Conclusions

The survey results should be treated with caution. Over the two-year review period more than 10,000 people were indicated by drug detection dogs, and many more would have been in the vicinity of these police operations. As such, our survey represents only a very small snapshot of the views of some of those people.

Despite these limitations, some results are worth noting. Although a number of respondents were explicitly negative (27%) or positive (25%) about the police presence, for a substantial group the police presence made no difference. In addition, most of the survey respondents (86%) had had no direct contact with police despite their saturation presence at the time of the interviews. This is not surprising as our observations of police conducting these patrols noted that they tend to be very focused and often move quickly through venues, using the drug detection dog to screen as many people and venues as possible. This leaves little time to talk with the people they pass. The importance for public reassurance purposes, of the quality of the contact between the police and the community during patrols was highlighted in the above discussion (at paragraph 12.7.1).

In assessing the impact that police visibility had on perceptions of safety, seeing police in the area was much more likely to make respondents feel safer (45%) than less safe (9%). This would appear to support police comments about the generally favourable public response to their operations.

Yet the presence of drug detection dogs was more problematic. Those who felt safer tended not to mention the dogs, whereas many of the negative comments about police could be directly attributed to the presence of the drug detection dogs or the drug focus of the operations. This suggests the presence of drug detection dogs during high visibility patrols is much more likely to expose police to criticism than praise.

Endnotes

- ⁵⁸¹ For example, reported comments of Acting Inspector Mahon, in Ellard G, 'Sniffing out the bad guys', *South Coast Register*, 20 October 2003.
- ⁵⁸² David Perkins, Ashfield, *The Glebe*, 19 March 2003.
- ⁵⁸³ G Newall, Lewisham, *Liverpool City Champion*, 18 August 2004.
- ⁵⁸⁴ Colin Hillery, Boambee, *Coffs Harbour Advocate*, 18 September 2002.
- ⁵⁸⁵ Peter Cain, Greystanes, *Sydney Morning Herald*, 6 September 2003.
- ⁵⁸⁶ Michael D. Robinson, Executive Director, Drug Free Australia Ltd, *The Sunday Telegraph*, 11 July 2004.
- ⁵⁸⁷ Byron Bay 21 June 2002; Byron Bay, 23 October 2003; and Newtown, 10 June 2004.
- ⁵⁸⁸ www.snifferdogalert.com (This website is no longer in existence.)
- ⁵⁸⁹ *Police Powers (Drug Detection Dogs) Act 2001*, ss.9(1) and (2).
- ⁵⁹⁰ NSW Police, *Drug Detection Dogs Management Operational Guidelines*, March 2002, p.9.
- ⁵⁹¹ Ombudsman observer notes, August 2003.
- ⁵⁹² NSW Police, *Drug Detection Dogs Management Operational Guidelines*, March 2002, p.10.
- ⁵⁹³ NSWPD, Legislative Council, 6 December 2001, p.19875.
- ⁵⁹⁴ Ombudsman observer notes, August 2003.
- ⁵⁹⁵ Ombudsman observer notes, May 2002.
- ⁵⁹⁶ Complaint 11.
- ⁵⁹⁷ Complaint 10.
- ⁵⁹⁸ Licensee interview, Western Sydney, November 2002.
- ⁵⁹⁹ Licensee interview, Inner Sydney, March 2004.
- ⁶⁰⁰ Licensee interview, Inner-western Sydney, April 2004.
- ⁶⁰¹ Licensee interview, Western Sydney, November 2002.
- ⁶⁰² Licensee interview, Inner Sydney, October 2002.
- ⁶⁰³ J. Ready submission, 22 July 2004.
- ⁶⁰⁴ NSW Council for Civil Liberties submission, 19 August 2004.
- ⁶⁰⁵ J. Aitkin submission, 29 July 2004.
- ⁶⁰⁶ Interview with junior police officer, August 2002.
- ⁶⁰⁷ Ombudsman observer notes, June 2003.
- ⁶⁰⁸ Ombudsman observer notes, November 2002.
- ⁶⁰⁹ Ombudsman observer notes, February 2003.
- ⁶¹⁰ Ombudsman observer notes, February 2003.

- 611 Ombudsman observer notes, September 2003.
- 612 Ombudsman observer notes, April 2003.
- 613 Meeting with Keysar Trad, 2003, information confirmed by email August 2003.
- 614 Ministry for Police submission, 30 August 2004.
- 615 Crime Manager (endorsed by Commander), Western Sydney Command submission, 31 July 2004.
- 616 Police Association of New South Wales submission, 19 August 2004.
- 617 Community Relations Commission submission, 5 August 2004.
- 618 Muzzling may restrict the drug detection dog's ability to detect scents.
- 619 Redfern Legal Centre submission, 20 August 2002.
- 620 AIDS Council of NSW submission, 30 August 2004.
- 621 NSW Police response to draft final report, 10 March 2006.
- 622 NSW Police, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, 5 August 2002, p.4.
- 623 NSW Police, *Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME)*, 5 August 2002, p.73.
- 624 NSW Police, *Drug Detection Dogs Management Operational Guidelines*, March 2002, p.6.
- 625 See for example, the Hon. Helen Sham-Ho MLC, Legislative Council, 13 December 2001, p. 20203; Ms Clover Moore MP, Legislative Assembly, 6 December 2001, p.19875.
- 626 NSW Users and AIDS Association submission, 17 August 2004.
- 627 Legal Aid NSW submission, 23 August 2004.
- 628 Candy Nay, General Manager, Marrickville Council submission, 28 July 2004.
- 629 T. Benzie submission, 2 July 2004.
- 630 The Hon. Amanda Fazio MLC submission, 9 August 2004.
- 631 Bradfield College students submission, 5 July 2004.
- 632 B. Perry, Managing Director, Perry Hotels submission, 21 July 2004.
- 633 Crime Manager (endorsed by Commander), Western Sydney Command submission, 31 July 2004.
- 634 RailCorp submission, 17 September 2004.
- 635 Police Association of New South Wales submission, 19 August 2004.
- 636 Ministry for Police submission, 30 August 2004.
- 637 Extract from NSW Council for Civil Liberties submission, 19 August 2004.
- 638 COPS Event 12.2 and confidential interview 26 March 2004.
- 639 Interview with licensee, Western Sydney, November 2002.
- 640 Comment from young woman searched in hotel toilets. Noted by Ombudsman observer, Western Sydney, June 2003.
- 641 Ombudsman observer notes, October 2003.
- 642 Ombudsman observer notes, August 2003.
- 643 Ombudsman observer notes, November 2002.
- 644 Ombudsman observer notes, August 2003.
- 645 Ombudsman observer notes, April 2003.
- 646 Ombudsman observer notes, August 2002.
- 647 Ombudsman observer notes, April 2003.
- 648 Interview with senior police officer, March 2004.
- 649 Interview with senior police officer, February 2003.
- 650 Complaint 5.
- 651 Complaint 6.
- 652 Complaint 26.
- 653 Complaint 8.
- 654 Complaint 10.
- 655 Complaint 27.
- 656 Complaint 11.
- 657 Correspondence from NSW Police Superintendent, 17 February 2003.
- 658 Correspondence from Local Area Commander to complainant, 31 October 2002.
- 659 Complaint 31.
- 660 Complaint 15.
- 661 Complaint 16.
- 662 Complaint 17.
- 663 Complaint 18.
- 664 Complaint 19.
- 665 Complaint 15.
- 666 Complaint 20.
- 667 Complaint 14.
- 668 Complaint 15.
- 669 Complaint 16.
- 670 Complaint 21.
- 671 Complaint 22.
- 672 Complaint 23.
- 673 Complaint 19.
- 674 Complaint 20.
- 675 Complaint 14.

- ⁶⁷⁶ Section 3 of the *Law Enforcement (Police Powers and Responsibilities) Act 2002*, which commenced on 1 December 2005, defines a strip search as a search of a person or articles in the possession of the person that may include: (a) requiring the person to remove all of his or her clothes, and (b) an examination of a person's body (but not of the person's body cavities) and of those clothes.
- ⁶⁷⁷ Ombudsman observer notes, July 2003.
- ⁶⁷⁸ Ombudsman observer notes, December 2002.
- ⁶⁷⁹ COPS Event 12.1 and Information Report 12.1.
- ⁶⁸⁰ Complaint 10.
- ⁶⁸¹ Complaint 28.
- ⁶⁸² Complaint 29.
- ⁶⁸³ Complaint 30.
- ⁶⁸⁴ NSW Attorney General's Department submission, 17 May 2005.
- ⁶⁸⁵ Interview with senior police officer, May 2004.
- ⁶⁸⁶ Licensee interview, Inner Sydney, October 2002.
- ⁶⁸⁷ Redfern Legal Centre submission, 20 August 2004.
- ⁶⁸⁸ One document did refer to specific arrangements in relation to strip searches.
- ⁶⁸⁹ We note that section 13 of the now expired *Police Powers (Drug Detection in Border Areas Trial) Act 2003* also required police officers exercising functions under warrants issued according to act to 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 reasonable practicable.
- ⁶⁹⁰ *Law Enforcement (Powers and Responsibilities) Act 2002*, s.32(4).
- ⁶⁹¹ *Law Enforcement (Powers and Responsibilities) Act 2002*, s.242.
- ⁶⁹² NSW Police response to draft final report, 10 March 2006.
- ⁶⁹³ Charge 12.1
- ⁶⁹⁴ Redfern Legal Centre submission, 20 August 2004.
- ⁶⁹⁵ Complaint 32.
- ⁶⁹⁶ Complaint 9.
- ⁶⁹⁷ Complaint 33.
- ⁶⁹⁸ Complaint 34.
- ⁶⁹⁹ *Police v [Name of complainant's partner]* (Corbett LCM, Unreported, Downing Centre Local Court, 1 July 2005).
- ⁷⁰⁰ *Police v [Name of complainant's partner]* (Corbett LCM, Unreported, Downing Centre Local Court, 1 July 2005).
- ⁷⁰¹ Complaint 27.
- ⁷⁰² Community consultation, 4 June 2002.
- ⁷⁰³ Community consultation, 4 June 2002.
- ⁷⁰⁴ Ms Lee Rhiannon MLC and the Hon. Richard Jones MLC, NSWPD, Legislative Council, 13 December 2001, pp.20205 - 20209.
- ⁷⁰⁵ Ministry for Police submission, 30 August 2004.
- ⁷⁰⁶ Police Association of New South Wales submission, 19 August 2004.
- ⁷⁰⁷ Crime Manager (endorsed by Commander), Western Sydney Command submission, 31 July 2004.
- ⁷⁰⁸ Police Focus Group 3, August 2004.
- ⁷⁰⁹ Police Focus Group 3, August 2004.
- ⁷¹⁰ Police Focus Group 3, August 2004.
- ⁷¹¹ Police Focus Group 3, August 2004.
- ⁷¹² Police Focus Group 3, August 2004.
- ⁷¹³ Police Focus Group 3, August 2004.
- ⁷¹⁴ Interview with senior police officer, May 2003.
- ⁷¹⁵ Drug detection dog handlers' focus group, May 2003.
- ⁷¹⁶ NSW Council for Civil Liberties submission, 19 August 2004.
- ⁷¹⁷ Youth Justice Coalition submission, 20 August 2004.
- ⁷¹⁸ The Shopfront Youth Legal Centre submission, 9 August 2004.
- ⁷¹⁹ The Hon. Amanda Fazio MLC submission, 9 August 2004.
- ⁷²⁰ Ms Clover Moore MP submission, 9 August 2004.
- ⁷²¹ Licensee interview, Inner Sydney, November 2002.
- ⁷²² Phone interview, 16 May 2002.
- ⁷²³ M. Gormly submission, 8 August 2004.
- ⁷²⁴ UTS Community Law Centre submission, 23 August 2004.
- ⁷²⁵ NSW Commission for Children and Young People submission, 12 July 2004.
- ⁷²⁶ NSW Users and AIDS Association submission, 17 August 2004.
- ⁷²⁷ Hepatitis C Council of NSW submission, 12 August 2004.
- ⁷²⁸ Ombudsman observer notes, December 2002.
- ⁷²⁹ Complaint 8.
- ⁷³⁰ Complaint 30.
- ⁷³¹ Complaint 38.
- ⁷³² Complaint 4.
- ⁷³³ Complaint 39.
- ⁷³⁴ Australian Bureau of Statistics, Basic Community Profiles, 2001 Census Population and Housing.
- ⁷³⁵ Australian Bureau of Statistics, Basic Community Profiles, 2001 Census Population and Housing.
- ⁷³⁶ Australian Institute of Health and Welfare, *2004 National Drug Strategy Household Survey: First Results*, Canberra, April 2005.
- ⁷³⁷ Miller J, Quinton P & Bland N, 'Police Stops and Searches: Lessons from a Programme of Research', Police Research Series Papers 127 – 132, Home Office, London, 2000, p.1.
- ⁷³⁸ Licensee interview, Inner Sydney, October 2002.

- 739 Licensee interview, Inner Sydney, November 2002.
- 740 Manager interview, Inner Sydney, March 2004.
- 741 Licensee interview, Southern NSW, February 2004.
- 742 Licensee interview, Inner Sydney, November 2002.
- 743 Licensee interview, Inner Sydney, November 2002.
- 744 Licensee interview, Inner-western Sydney, March 2004.
- 745 Licensee interview, Inner Sydney, October 2002.
- 746 Licensee Interview, Inner-western Sydney, April 2004.
- 747 Licensee and owner interview, Inner Sydney, March 2004.
- 748 From the first indication to the last indication. Police are likely to have been on the premises for a longer period.
- 749 Transmission Promotions Pty Ltd. submission, 4 August 2004.
- 750 Licensee interview, Inner Sydney, November 2002.
- 751 ClubsNSW submission, 8 October 2004.
- 752 See paragraph 6.5 for further details of the results by main location type.
- 753 Manager interview, Inner-western Sydney, March 2004.
- 754 Manager interview, Inner-western Sydney, April 2004.
- 755 Manager interview, Inner-western Sydney, April 2004.
- 756 Licensee interview, Southern NSW, February 2004.
- 757 Licensee interview, Southern NSW, February 2004.
- 758 Transmission Promotions Pty Ltd. submission, 4 August 2004.
- 759 Licensee interview, Inner Sydney, March 2004.
- 760 Manager interview, Inner Sydney, March 2004.
- 761 Licensee interview, Inner-western Sydney, April 2004.
- 762 Manager Interview, Inner Sydney, March 2004.
- 763 Licensee interview, Inner Sydney, November 2002.
- 764 Manager interview, Inner-western Sydney, March 2004.
- 765 Licensee interview, Inner Sydney, March 2004.
- 766 Manager interview, Inner-western Sydney, March 2004.
- 767 Licensee interview, Inner Sydney, November 2002.
- 768 Manager interview, Inner Sydney, March 2004.
- 769 Manager interview, Inner-western Sydney, April 2004.
- 770 ClubsNSW submission, 8 October 2004.
- 771 Transmission Promotions Pty Ltd. submission, 4 August 2004.
- 772 Licensee interview, Southern NSW, February 2004.
- 773 Licensee interview, Southern NSW, February 2004.
- 774 Licensee interview, Western Sydney, November 2002.
- 775 Licensee interview, Western Sydney, November 2002.
- 776 B. Perry, Managing Director, Perry Hotels submission, 21 July 2004.
- 777 NSW Police response to draft final report, 10 March 2006.
- 778 Quoted by Robert Wainwright, in *Sydney Morning Herald*, News, 23-24 August 2003, p.3.
- 779 SCRGSP (Steering Committee for the Review of Government Service Provision) 2005, *Report on Government Services 2005*, Productivity Commission, Canberra, 5.32 – 5.34.
- 780 See for example, Cook B, David F, & Grant A, *Victims' Needs, Victims' Rights: Policies and Programs for Victims of Crime in Australia*, Research and Public Policy Series No. 19, Australian Institute of Criminology, (1999), p.3; Weatherburn D, Matka E, & Lind B, *Crime Perception and Reality: Public Perceptions of the Risk of Criminal Victimization in Australia*, Crime and Justice Bulletin No. 28, May 1996, p.6.
- 781 Weatherburn D & Indermaur D, 'Public Perceptions of Crime Trends in New South Wales and Western Australia', *Crime and Justice Bulletin*, No. 80, March 2004, p.2.
- 782 Quoted by Robert Wainwright, in *Sydney Morning Herald*, News Review, 23-24 August 2003, p.29.
- 783 Correspondence from NSW Police, 23 January 2003.
- 784 Quoted by Robert Wainwright, in *Sydney Morning Herald*, News Review, 23-24 August 2003, p.29.
- 785 Grabosky P, 'Fear of Crime and Fear Reduction Strategies', (1995) 44 *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology, p.4.
- 786 Graycar A, Nelson D & Palmer M, 'Law Enforcement and Illicit Drug Control', (1999) 110 *Trends and Issues In Crime and Criminal Justice*, Australian Institute of Criminology, p.3.
- 787 See for example, Maher S, 'Spectacular failure: 600 police – 25 Drug Arrests', *Sydney Star Observer*, 26 September 2002; and Kennedy L, 'Police beat their own drum in street sweep', *Sydney Morning Herald*, 25 May 2002.
- 788 Interviews with senior officers from the NSW Police Dog Unit, May 2003.
- 789 Ritchie J A, *Crime in the Community: A submission for the House of Representatives Standing Committee on Legal and Constitutional Affairs*, 21 November 2002. See also unnamed police officers quoted by Neil Mercer in *Sydney Morning Herald*, 28 January 2003.
- 790 Market Research UK, *Narrowing The Gap, Police visibility and public reassurance – Managing public expectation and demand*, Edinburgh, February - April 2002.
- 791 Market Research UK, *Narrowing The Gap, Police visibility and public reassurance – Managing public expectation and demand*, Edinburgh, February - April 2002, p.16.
- 792 Market Research UK, *Narrowing The Gap, Police visibility and public reassurance – Managing public expectation and demand*, Edinburgh, February - April 2002, p.12.
- 793 Moore M & Trojanowicz R, *Policing and the Fear of Crime*, in Perspectives on Policing, No. 3, National Institute of Justice, U.S. Department of Justice, & Program in Criminal Justice Policy and Management, June 1988, p.5.
- 794 Quoted by Robert Wainwright, *Sydney Morning Herald*, News, 23-24 August 2003, p.3.
- 795 Miller J, Quinton P & Bland N, *Police Stops and Searches: Lessons from a programme of research*, Home Office Briefing Note, Home Office Research, Development and Statistics Directorate, September 2000, p.3.

-
- ⁷⁹⁶ Nicholas S & Walker A (Eds), 'Crime, disorder and the Criminal Justice System – public attitudes and perceptions', *Crime in England and Wales 2002/2003*, Supplementary Volume 2, January 2004.
- ⁷⁹⁷ NSW Council for Civil Liberties submission, 19 August 2004.
- ⁷⁹⁸ Complaint 20.
- ⁷⁹⁹ Complaint 24.
- ⁸⁰⁰ Complaint 22.
- ⁸⁰¹ Sofios S, 'Viking raid leaves people of Dubbo feeling pillaged', *Daily Telegraph*, 8 February 2003.
- ⁸⁰² Editorial, 'Proposal to condemn police operation fails', *Daily Liberal*, 26 February 2003.
- ⁸⁰³ 'Getting police on the beat', *Northern Star*, 1 March 2003, p.20.
- ⁸⁰⁴ Ombudsman observer notes, December 2002; August 2003; October 2003; and November 2003.
- ⁸⁰⁵ Ministry for Police submission, 30 August 2004.
- ⁸⁰⁶ Transit Police Commander telephone submission, 7 July 2004.
- ⁸⁰⁷ Police Association of New South Wales submission, 19 August 2004.
- ⁸⁰⁸ Crime Manager (endorsed by Commander), Western Sydney Command submission, 31 July 2004.
- ⁸⁰⁹ Police Focus Group 4, May 2004.
- ⁸¹⁰ Interview with senior police officer, July 2004.
- ⁸¹¹ Interview with senior police officer attached to the Vikings Unit, May 2004.
- ⁸¹² Tony Trimmingham, Family Drug Support submission, 6 August 2004.
- ⁸¹³ Associate Professor Michael Dawson (Head, Department of Chemistry, Materials and Forensic Science, University of Technology, Sydney) submission, 2 August 2004.
- ⁸¹⁴ The Shopfront Youth Legal Centre submission, 9 August 2004.
- ⁸¹⁵ Ms Clover Moore MP submission, 9 August 2004.
- ⁸¹⁶ NSW Council for Civil Liberties submission, 19 August 2004.
- ⁸¹⁷ M. Gormly submission, 8 August 2004.
- ⁸¹⁸ Manager interview, Inner-western Sydney, April 2004.
- ⁸¹⁹ Gender was not recorded in two surveys.
- ⁸²⁰ As almost all respondents had seen police in the area, there were too few in the group who had not seen police to provide comparative data on what impact this variable had on respondents' perceptions of safety.

