

# **Police Powers and Responsibilities (Drug Detection Dogs) Amendment Bill 2005**

## **Explanatory Notes**

### **General Outline**

#### **Objective of the Legislation**

The objective of the *Police Powers and Responsibilities (Drug Detection Dogs) Amendment Bill 2005* ('the Bill') is to provide authority to the Queensland Police Service to use drug detection dogs, without warrant, to detect unlawful dangerous drugs in or on places, persons or things in circumstances outlined in the Bill. Specifically, the Bill relates to:

- licensed premises;
- special events;
- sporting events;
- entertainment events; and
- public places.

The Bill does not prevent a drug detection dog being used for the detection of dangerous drugs in any place not mentioned in the Bill. Nor does the Bill restrict a drug detection dog or any other detection dog being used for a purpose not mentioned in the Bill.

*Examples:*

1. The detection of *cannabis sativa* during the execution of a search warrant in any place.
2. The use of a non-passive detection dog to detect a dangerous drug on a person in a public place.

#### **Means of Achieving Policy Objectives**

The Bill achieves the objectives of the legislation by amending the *Police Powers and Responsibilities Act 2000*.

### **Alternative Means of Achieving Policy Objectives**

There are no viable alternative means of achieving the policy objectives.

### **Estimated Cost of Implementation for Government**

The financial impact of the Bill will be minimal. It will principally involve the acquisition and training of additional dogs for drug detection purposes. Those costs will be absorbed within the current and subsequent budgets of the Queensland Police Service.

### **Consistency with Fundamental Legislative Principles**

The Bill allows for the entry to, and use of drug detection dogs in those premises mentioned under the *Objective of the Legislation* heading. The Bill does not require a search warrant first be obtained to exercise the powers under the Bill. However, in all instances, the places nominated in the Bill are those to which the public has access, whether on payment of an entry fee or not. Those places may currently be entered by a police officer, either as of right, eg., a mall, or because of the definition given to ‘public place’ within the meaning of the *Police Powers and Responsibilities Act 2000*, or without warrant by virtue of provisions of the *Police Powers and Responsibilities Act 2000*, eg., section 17 (*General power to enter to make inquiries, investigations or serve documents*) or by entry powers provided by other Acts.

Additionally, the use of a drug detection dog will minimise the need for what might otherwise amount to a lawful but fruitless search in that a drug detection dog has the ability to positively indicate the presence of unlawful dangerous drugs on a person, in a place, or on or in a thing, by scent.

Consequently, it is considered that the Bill balances the rights of an individual against the need to ensure that the provisions of the *Drugs Misuse Act 1986* are properly enforced and public safety is maintained.

### **Consultation conducted in Development of the Bill**

On 25 February 2005 a Premier’s Summit addressing violence in the Brisbane CBD was held at the Executive Building. The Summit, hosted by the Premier, was attended by Ministers and government, industry and community representatives as follows:

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Ministers

Honourable Judy Spence MP, Minister for Police and Corrective Services  
Honourable Paul Lucas MP, Minister for Transport and Main Roads  
Honourable Margaret Keech MP, Minister for Tourism, Fair Trading and  
Wine Industry Development

Queensland Government Departments

Department of the Premier and Cabinet  
Department of Communities  
Queensland Police Service  
Department of Corrective Services  
Liquor Licensing Division

Local Government

Brisbane City Council  
Gold Coast City Council

Hotel and Club Industry

Jimmy's On The Mall/Pig 'n Whistle  
Empire Hotel & Family Nightclub  
Elephant & Wheelbarrow  
Sunbar Restaurant and Lounge  
Paddington Tavern  
Stock Exchange/ GPO Hotels  
Dooleys Hotel  
Queensland Hotels Association  
Clubs Queensland  
Restaurant & Catering Queensland  
Carlton and United Breweries  
RSL & Services Clubs Association  
Victory Hotel  
139 Club Inc

Community Groups

Drug Arm  
Caxton Street Development Association  
Youth Advocacy Centre  
Rosies – Friends On The Street  
Indigenous Youth Health Service  
Brisbane Youth Service  
Dundalli Aboriginal & Torres Strait Islander Youth Service  
Micah Projects Inc  
Teen Challenge

### Other Parties

Valley Alcohol Management Plan

Nu Force Security

Consultation was also undertaken with a number of industry and community groups from the above list on 5 and 6 September 2005.

## **Notes on Provisions**

### **Short title**

Clause 1 states the Act may be cited as the *Police Powers and Responsibilities (Drug Detection Dogs) Amendment Act 2005*.

### **Commencement**

Clause 2 provides that the Act will commence by proclamation.

### **Act amended**

Clause 3 provides that the Bill amends the *Police Powers and Responsibilities Act 2000*.

### **Insertion of new ch 2, pt 2A**

Clause 4 of the Bill inserts a new Chapter 2, Part 2A of the *Police Powers and Responsibilities Act 2000*.

## **Part 2A Use of drug detection dogs without warrant**

### **31A Definitions for Part 2A**

The section provides definitions that are exclusive to the Bill.

‘drug detection’ is an inclusive definition that describes how a drug detection dog would normally be used to detect the scent of an unlawful

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dangerous drug on a person, or on or in a vehicle, place or thing. A thing, for example, may be a bag held by a person or left in a place.

‘drug detection dog’ provides a definition for a dog that is trained to detect unlawful dangerous drugs.

‘event’ means –

- (a) a special event within the meaning of ‘*special event*’ in Schedule 4 (Dictionary) and Chapter 9, Part 2 (Preserving safety for special events) of the *Police Powers and Responsibilities Act 2000*. A special event may, for example, be the holding of an international sporting event such as the Commonwealth Games;
- (b) a sports, recreational or entertainment event held at a major sports facility within the meaning of the *Major Sports Facilities Act 2001*. This may include a football game held at Suncorp Stadium or a rock concert held at the Queen Elizabeth II Complex;
- (c) a sports, recreational or entertainment event not mentioned in paragraph (b), that is open to the public, whether by payment of a fee or not.

An example of a sports event in paragraph (c) is a football game held at the home ground of a football club. An example of a recreational event in paragraph (c) is a home, boat or motor show held at a convention centre or the exhibition held at the RNA showgrounds. An example of an entertainment event in paragraph (c) is a jazz musical concert held at Toowoomba showgrounds.

‘handler’ has the meaning given to it in section 1.4 (Definitions) of the *Police Service Administration Act 1990*.

‘licensed premises’ has the meaning given to it under the *Liquor Act 1992*, for example a hotel or a nightclub, and includes premises or places to which a permit under the Act has been given, for example, a permit to sell alcohol in an enclosure at a one-off event such as a country race day.

‘unlawful dangerous drug’ means a dangerous drug mentioned in the *Drugs Misuse Regulation 1987*, schedule 1, and includes the schedule 2 dangerous drugs, Ecstasy, and Gamma hydroxybutyric acid, GBH.

### **31B Use of drug detection dogs in particular places**

Subsection (1) provides authority for a handler, without warrant, to use a drug detection dog to carry out drug detection in relation to any of the following persons or things –

- (a) a person who is about to enter, is in, or is leaving, licensed premises;
- (b) a person who is in the immediate vicinity of, is about to enter, is in, or is leaving, a place at which an event is being held. The term ‘in the immediate vicinity of’ would apply, for example, to persons not intending to enter an event but who mill around outside the event or on land adjacent to the event;
- (c) a person who is in a public place. The term ‘*public place*’ is defined in schedule 4 (Dictionary) of the *Police Powers and Responsibilities Act 2000*;
- (d) a thing in a place mentioned in paragraph (a), (b) or (c), whether it is in the physical possession of a person or not. A thing, for example, could be a carry bag left on a seat in a mall or a purse being carried by a nightclub patron.

For the purposes of paragraphs (a) and (b), the term ‘is leaving’ is to be taken to include a person who has shortly before walked out of the doorway of licensed premises and in so doing is no longer on those premises. This will mean that a drug detection dog may be used outside the doorway of licensed premises, for example a nightclub, to detect drugs on persons who have walked out of those premises. It is to be noted that in most instances when a person leaves licensed premises the person will enter a public place and thus can be subject to drug detection in terms of paragraph (c) of this section.

Subsection (2) provides that section 31B applies despite the provisions of any other Act. This will allow for drug detection in a place to which another Act prohibits the entry of a dog.

### **31C Police officers and drug detection dogs may enter and remain on particular premises**

Subsection (1) allows, for the purpose of drug detection, a drug detection dog, the dog’s handler and any other police officer to enter and remain on the following places –

- (a) licensed premises;

- (b) a place at which an event is being held; and
- (c) a public place.

Therefore, a drug detection dog, its handler and any other police officer will not require a warrant to enter or remain on a place specified and will not be subject to the payment of any fee to enter a place that the owner or occupier of that place normally charges the public to enter.

It is to be noted that the definition of ‘enter’ in schedule 4 (Dictionary) of the *Police Powers and Responsibilities Act 2000* includes re-enter.

There is no need for a police officer to be in the company of a drug detection dog and its handler in order to enter a place mentioned in paragraphs (a), (b) or (c). It may be the case that a police officer enters licensed premises or a place prior to the entry of the drug detection dog so that the officer can observe the conduct of persons as the drug detection dog enters. For example, patrons in possession of dangerous drugs in a nightclub may attempt to dispose of the drugs should they notice a drug detection dog enter the place. Therefore, a police officer who previously entered the nightclub can take action under the *Police Powers and Responsibilities Act 2000* to seize the dangerous drugs and arrest the person attempting to dispose of the drugs. Additionally, a police officer may enter a place after the drug detection dog and its handler have entered for the purposes of detaining and searching those persons a drug detection dog indicates are in possession of an unlawful dangerous drug or for providing assistance to any police officer who might be in the place for a purpose of the Bill.

Subsection (2) allows entry onto land associated with licensed premises or another place. For example, a drug detection dog, its handler and any other police officer may enter a carpark provided for patrons of a licensed premises even though the carpark is under a different title to the licensed premises.

Subsection (3) provides that section 31C applies despite the provisions of any other Act. This will allow for drug detection in a place to which another Act may prohibit the entry of a dog, for example, onto licensed premises or into a national park or council park.

### **31D Reasonable suspicion may be based on indication of drug detection dog**

Section 31D provides that an indication from a drug detection dog that it has detected an unlawful dangerous drug on a person, in a vehicle, or in or

on a thing shall be sufficient grounds for a police officer to form and hold a reasonable suspicion about the presence of an unlawful dangerous drug on the person, in the vehicle, or in or on the thing. Therefore, a police officer may conduct a search of the person, vehicle or thing in accordance with relevant provisions of the *Police Powers and Responsibilities Act 2000*. For example, a search of a person may be conducted under section 27, or a search of a vehicle under section 29 of that Act.

### **31E Protection from liability for acts done by drug detection dogs**

Subsection (1) provides circumstances in which a handler will be protected from civil or criminal liability while using a drug detection dog. Subsection (1) is an application provision relating to subsections (2), (3), (4) and (5). Section 31E applies if a handler of a drug detection dog is using the drug detection dog to carry out drug detection under section 31B and the drug detection dog (i) physically intrudes onto a person or the clothing of a person or otherwise comes into contact with a person, while the drug detection dog is carrying out the drug detection; or (ii) causes damage to a thing that has in or on it an unlawful dangerous drug.

Subsection (2) provides that the handler does not incur civil liability for an act done, or omission made, honestly and without negligence in the circumstances to which this section applies. The circumstances to which the section applies are set out in subsection (1).

Subsection (3) is a general provision which provides that the State does not incur civil liability in the circumstances to which section 31E applies for (a) an act done by the drug detection dog; or (b) an act or omission of the handler. The circumstances to which the section applies are set out in subsection (1). Physical intrusion onto a person or the clothing of a person or other contact with a person by a dog may give rise to an argument that a civil tort, trespass or nuisance has been committed. Subsection (3) generally provides a bar to such action.

Subsection (4) provides a specific exception to subsection (3) for civil liability in the case of bodily harm. If the act of the drug detection dog or the act or omission of the handler causes bodily harm to a person and subsection (2) prevents civil liability attaching to the handler, the civil liability attaches instead to the State.

Subsection (5) relates to the criminal liability of a handler. The handler is not criminally responsible for an act done by the drug detection dog in the circumstances to which section 31E applies. These circumstances are set



out in subsection (1). Physical intrusion onto a person or the clothing of a person or other contact with a person by a dog may give rise to an argument that a minor assault has been committed. Subsection (5) provides general exemption to the handler from criminal liability.

Subsection (5) also provides specific exceptions to the general exemption of the handler from criminal liability. If there is an attack by the drug detection dog on a person intentionally caused by the handler or for which the handler is criminally responsible under the Criminal Code, section 289, the general exemption from criminal liability for the handler will not apply. This section is not to be interpreted as limiting other exculpatory provisions contained in the Criminal Code or any other Act such as, for example, provisions relating to extraordinary emergency or self defence.

Subsection (6) provides that this section does not prevent the State or the handler from relying on another provision of an Act to limit civil liability or criminal responsibility. The subsection provides examples of Acts that may limit civil liability or criminal responsibility.

Subsection (7) provides inclusive definitions for the purposes of section 31E. 'Bodily harm' includes physical injury, grievous bodily harm and death but does not include mental, psychological or emotional harm. 'Handler' of a drug detection dog, includes a police officer helping the handler of the drug detection dog.

### **31F Effect of part on use of drug detection dogs under search warrants**

The section declares that the Bill does not restrict the powers of a police officer to use a drug detection dog for drug detection in conducting a search of a place whether under a search warrant or not. Therefore, this Bill has no effect in terms of a search undertaken under any other law.

### **Amendment of sch 4 (Dictionary)**

Clause 5 amends the Dictionary to the *Police Powers and Responsibilities Act 2000*. In particular the definition of 'search' is amended to exclude the use of a drug detection dog from the meaning of search. Additionally, the term, 'enforcement act' is amended to exclude the use of drug detection dogs from the meaning of an 'enforcement act'.