



**NSW Police Force**

**New South Wales  
Police Force**

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# **Drug Detection Dog Deployment Standard Operational Procedure**

**SENSITIVE LAW ENFORCEMENT**

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# Document Control Sheet

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# 1. Purpose & Scope

With the introduction of Drug Detection Dogs within the State Protection Group Dog Unit, came the necessity to develop standard operating procedures for deployment in line with Legislative requirements.

As such the version document has been updated as required on four previous occasions. This current version provides relevant updates to Law Enforcement (Powers and Responsibilities) Act 2002 and information to provide assistance to requesting police for planned drug detection dog operations.

These Standard Operating Procedures provide guidance and set out clear procedures that Drug Detection Dog Handlers must adhere to.

## 2. Key Elements

### 2.1 Procedures

Drug Detection Dogs can be deployed proactively or via request from Local Area Commands (LAC).

All Drug Detection Dog Handlers are conversant with Law Enforcement (Powers and Responsibilities) Act 2002

Part 11 Division 2 – Sections 145-150

### 2.2 Job Process – Handler Actions

1. Handler assigned deployment via Dog Deployment System (DDS)
2. Handler attends job which could be either of the following:
  - People Screening Deployment
  - Licensed premises
  - Dance parties (sporting events, artistic performance, parade or other entertainment), Prescribed routes railway and bus (as per regulations)
  - Kings Cross Precinct
  - Tattoo Parlours
  - People Screening -- by warrant – public place
  - Vehicle Search(s)
  - Building search – search warrants

Handler(s) then will brief support police – as per Dog Unit Drug Detection Dog Handler Briefing –

*(this relates to people screening deployments – see page 9)*

Handlers must adhere to Legislative requirements whilst deploying Drug Detection Dog at all deployments. At the completion of the operation the Handler acquits operational deployment via DDS

### 2.3 Utilising a Drug Detection Dog – information for support police

#### Problem Identification

This is often the catalyst for contemplating the planning and execution of a drug detection dog operation. Problem identification incorporates drug supply, distribution, possession or administration, and relates to areas such as a single street, a length of roadway between towns or a geographical area (such as CBD or mall) defined by specific streets and/or landmarks.

The aim of the Drug Detection Dog Legislation gives a “General Authority to use a Drug Detection Dog”. This authority is recorded in LEPPRA (Law Enforcement Powers and Responsibilities Act).

*(See appendix 1)*

### Completion of dog Unit Request on the DDS (Dog Deployment System)

Upon approval being attained from your Local Area Commander, a 'Request For Assistance' (RFA) should be submitted electronically via the intranet based DDS and submitted to the State Protection Group (SPG) Dog Unit as soon as possible and at least ten (10) days prior to the proposed operation date. You can access the DDS by selecting the relevant icon on the Intranet System – Operational page. The request should include as much information as possible, include your Commanders details and upon completion MUST be authorised on line by a Commissioned Officer. (The request will automatically notify the authorising officer of your request requiring their authorisation via email once you enter their details) For urgent request, the SPG Dog Unit should be contacted immediately by telephone. If you do not complete and submit the request, you have the option to save the request as a 'Draft' and it will remain in this status until you submit it. Once your request is either submitted or saved as a draft, it is allocated a number which you should make note of and use as your reference. You can monitor the progress of your request as it workflows through the system by clicking on the "View Status History" button.

After you submit the request and it is approved by the authorising officer, it is then "Received" at the Dog Unit. Once the Coordination staff have assessed your request ensuring all the relevant information is contained, the status of the request will become "Accepted". Alternatively, if there is significant information missing from your request, it will be resubmitted by the Dog Unit with a "Resubmit" status requesting amendments. Alternatively, if there are insufficient Dog Unit resources available to service the request, it will be "Declined". Should your request be accepted and handler allocated, it will have a status of "Assigned" and you can view the handler details which may be useful for the preparation of operational orders.

*The onus for the approval of drug dog operations and assessment of intelligence material has been placed on the Local Area Commands. The SPG Dog Unit no longer assesses or approves proposed operations in respect of their intelligence value. It should be noted that there must be recent relevant and location specific drug intelligence should a Local Area Command request the use of a Drug Detection Dog.*

Additional information on how to complete each section of the request can be obtained by hovering the mouse over each request title which offers tips on what information is required. Alternatively, user manual for the DDS are contained in the Help Section at the top of the DDS screens.

### Completion of Operational Orders

Preparation of operational orders is completed by officers from the LAC where the Drug Detection operation is being conducted. A copy of the operational orders is to be given to the dog handler attending the operation prior to the Operational Briefing.

### Completion of Risk Assessment

Preparation of a risk assessment for the operation is to be undertaken by officers from the LAC where the Drug Detection operation is being conducted. A copy of the risk assessment is to be given to the dog handler attending the operation prior to the Operational Briefing.

### Warrant application

As there are regulatory limitations regarding the use of drug detection dogs, police will often require a warrant obtained under section 149 of LEPR to authorise their use. This generally relates to operations within 'open' public areas. To acquire such a warrant, police must apply to an 'authorised officer' (pursuant to Division 2 of Part 11 of LEPR), this is usually the registrar at your Local Court. Application is achieved via completion of 'Form 5 – Application for Warrant to Use Dog to Carry out General Drug Detection.

If the warrant will relate to the 'covert' use of a drug detection dog, meaning that the dog handler will operate in plain clothes, then this detail must be included in the warrant application.

It must be remembered that any warrant obtained pursuant to section 149 of LEPR will only remain in force for a 72 hour period. For drug detection dog operations occurring over a weekend period, it is recommended the warrant be obtained on the Friday afternoon prior. Larger drug detection dog operations can use multiple warrants to cover longer time periods (i.e., one warrant for Thursday and Friday, and another warrant for Saturday and Sunday)

Also note that in accordance with section 72 of LEPR, a warrant must not be executed by night unless the authorised officer specifically authorised the warrant for execution by night. The authorised officer needs to be satisfied that there are reasonable grounds from doing so. Those grounds include (but are not limited to) the following:

- (a) The execution of the warrant by day is unlikely to be successful because, for example, it is issued to search for a thing that is likely to be on the premises only at night or other relevant circumstances will only exist at night,
- (b) There is likely to be less risk to the safety of any person if it is executed by night,
- (c) An occupier is likely to be on the premises only at night to allow entry without the use of force.

### Clause 10 Certificate

Clause 10 (subclause 6) of Part 2 of the *Law Enforcement (Powers and Responsibilities) Regulation 2005* (LEPR Regulation) relates to a 'Public Inspection Provision' for the inspection of Drug Detection warrant documents. Such provision enables ANY member of the public to view and inspect an application for a drug detection dog warrant. The person does not need to have any direct or indirect involvement in any aspect of the drug detection dog warrant or operation.

### Clause 11 Certificate

Due to warrant application often containing information about specific suspects, police operations, investigations and other sensitive information, it is recommended that a 'Clause 11' Certificate (pursuant to clause 11 of LEPR Regulation) be considered. (See Law Notes 03 of 2007)

It is recommended that any application pursuant to 'clause 11' be made at the time of the warrant application, such an application can refer to any or all of the documents related to the warrant (i.e. warrant application, report to authorised officer, etc). The application should be specifically relevant to information that could disclose a person's identity, and that, if disclosed, is likely to jeopardise that or any other person's safety, OR, contain matter that, if disclosed, may seriously compromise the investigation of any matter. This application may be made written or verbally to the 'authorised officer'. Despite this, it is recommended that police should make this application in writing, within the original warrant application.

## Warrant Inspection

Clause 10 of the LEPRA Regulation provides that any written application, related record made by or on behalf of the authorised officer, or any report on the execution of a Drug Dog Warrant is to be held at the Local Court where the warrant was issued or a place nearest to where it was issued. Furthermore, any member of the public can request to view or inspect these documents during the hours that the Local Court is open to the public.

## 2.4 Briefings

Immediately prior the execution of the drug detection dog operation, a briefing is to be conducted. It is preferable that this briefing is conducted by the Operation Commander and should cover all aspects in relation to the execution phase. Larger drug detection dog operations can use multiple briefings to cover different operation phases i.e.: one for covert phase and another for overt phase. Operation briefings should follow and review all parts of the operational orders so all aspects are clear to all involved officers, whether they have read the operational orders or not. Electronic methods such as power point presentations may assist with the delivery of the briefing.

At the conclusion of the briefing, an opportunity should be allowed for questions to be asked so as to allow any unclear matters to be clarified.

At the conclusion of the operation briefing the detection dog handler will conduct a Drug Detection Dog Handler briefing.

### *Handler Briefing*

The SPG Dog Unit has developed a pre-operation briefing checklist (*see below*). A Police Dog Handler will provide a briefing at the commencement of the drug detection dog operation. This briefing includes information relating to the detection dog's capabilities in regarding the types of prohibited drugs detected; the possibilities of indications upon persons who have recently been in possession of, or had contact with prohibited drugs; the dogs behaviour which is deemed a prohibited drug 'indication'; general methods and procedures used by the dog handler; the registration number of the handler and the name of the detection dog.

### Drug Detection Dog Handler Briefing

#### **DIRECTION FROM DOG UNIT COMMANDER**

**THIS BRIEFING CHECKLIST CONTAINS IMPORTANT INFORMATION WHICH MUST BE FULLY READ TO ALL POLICE OFFICERS SUPPORTING DRUG DOG OPERATIONS.**

#### **1. INTRODUCTION**

I am SCst / Cst \_\_\_\_\_ from the State Protection Group Dog Unit. My call sign is \_\_\_\_\_. I am here today with Drug Detection Dog \_\_\_\_\_, who is trained to detect the odour of all prohibited drugs. Today's Operational Assignment Number is \_\_\_\_\_.

#### **2. OPERATIONAL REQUIREMENTS**

Please be advised that the safety of the DDD is paramount. We take a zero tolerance approach to anybody inappropriately interfering with or touching the DDD and will expect appropriate action taken as a result. I have legislative requirements to have control of the DDD at all times and therefore require

an appropriate number of you to be in my immediate vicinity at any time during the operation. This is also required to assist me in the interests of officer safety.

Prior to entering any establishment, such as a licensed premises, I will consult with the officer in charge of the operation if it appears unsafe to enter, for either myself or the DDD. Issues such as overcrowding may affect the operation. When entering or approaching a location, remain conscious of individuals attempting to avoid the DDD as well as those attempting to discard or ingest items.

### 3. REQUIREMENTS UPON INDICATION OF DDD

I will determine whether or not the DDD has indicated upon an individual. Following an indication I will speak with the individual and caution them if necessary. Following this I will provide the individual and yourself with appropriate instruction.

**You must understand that the indication of the DDD alone does not constitute 'reasonable grounds' to conduct a search upon an individual. You must conduct further investigations, such as asking questions as well as observing their appearance and demeanour prior to determining that 'reasonable grounds' exists to conduct a search.**

If 'reasonable grounds' have been established for a search to be conducted you need to be mindful of a number of issues. These include preserving a person's privacy by removing them from areas which are in public view as well as the need to conduct a thorough search. If a search result is negative the individual is not compelled to supply their details, however may choose to do so.

It is very important for all indications and searches to be appropriately recorded upon COPS. Individuals who do not supply their details are to be recorded under the generic CNI numbers. (Female – 752932812, Male – 752888632.) The weights and types of drugs located must be included. All details must also be linked to the DDD. Accurate recording of these details is imperative for determining the allocation of future Dog Unit resources to your Command.

Please advise me of any drugs located during the operation. Always ask if you are ever unsure of anything.

### 4. Legal Requirements

I am required to bring the following sections of LEPPRA along with specific legal requirements to your attention which includes –

- Section's 21A and 23A (Ancillary Power to Search Persons), particularly Subsection 2 within each section which does not authorise a police officer to forcibly open a person's mouth
- Section 31 (Strip Searches), particularly the necessity and justification of carrying out a strip search
- Section 32 (Preservation of Privacy and Dignity during search), particularly Subsection 3 where police must ask for a person's co-operation prior to a search (Section 230 becomes applicable if co operation is not forthcoming) and Subsection 5 which necessitates the least invasive kind of search practicable in the circumstances.

- Division 2 (Use of Drug Detection Dogs) Section 145 – 150 which outlines the use of NSWPF Drug Detection Dogs within the state of NSW.

I am in possession of a hardcopy of each of these legislative sections and requirements which I will make available to you if needed. The information is otherwise available on the NSWPF Intranet Site under the 'Law' on the Home Page and within the SPG Dog Unit intranet site.

## 2.5 Drug Health Service Areas

If the area of a drug detection dog operation encompasses any health service facilities relevant to drug users, such as a Methadone Clinic, Needle Exchange, Injecting Rooms, etc, the operation briefing should include this information. Any drug detection dog operation near to such areas should be executed in a manner that does not impede or prevent any person from attending such facilities. Police are reminded that the use of drug detection dogs near a Drug Health Facility may adversely affect harm minimisation strategies. This issue should also be addressed in operational orders.

## 2.6 Cultural Diversity

Briefings should also include, where relevant, reference to population profiles and the impact that cultural diversity may have on the operation (eg: the need to carry mobile phones in the likelihood that an interpreter is required, or the need to address undue anxiety caused by the presence of a detection dog). The briefing should highlight the necessity for handlers to use interpersonal and communication skills to explain procedures to those with who they interact with, especially where there is a need to reassure people that the detection dog will not touch or harm them.

## 2.7 Execution Phase

During the Execution Phase of the drug detection dog operation, Police are reminded that the safety of the dog handler and detection dog is paramount. It is for this reason that the operation Commander should allocate an officer or officers to accompany and assist the dog handler and detection dog. At no time during the operation (unless by prior arrangement) are the dog handler and detection dog to be left alone. For operational reasons, it is the recommendation of the Dog Unit that whilst performing drug detection dog duties, each drug detection handler and dog be accompanied by a minimum of six (6) Police Officers. This is the recommended MINIMUM number of Police Officers, and depending upon the area and size of the operation, may be increased accordingly. (i.e, for Transit / Railway Operations, Licensing and General Warrant Operations, a minimum of eight [8] Police Officers is recommended; for Dance Party Operations a minimum of ten [10] Police Officers should be provided.

Whilst conducting drug detection dog duties, the dog handler must abide by certain guidelines relating to the conduct and control of the drug detection dog. Section 150 of LEPR sets out these guidelines which are as follows:

The handler must:

1. Take all reasonable precautions to prevent the detection dog touching a person;
2. Keep the detection dog under control; and

3. Only utilise detection dogs for general drug detection as part of a Covert Operation, if it is authorised by a warrant

When deployed to overt operations, police dogs will wear a reflective harness to ensure the dogs are visible to both police and to members of the public. The harness will ensure that WH&S is complied with and make it obvious to observers that the dog is an operational police dog.

Where possible, Police Officers should assess any apparent fear of dogs exhibited by those exposed to detection searches. Where fear is evident or suspected, officers should clearly explain the detection protocol in an attempt to allay the fear.

## 2.8 Drug Dog Indication

Whilst performing drug detection duties, the drug detection dog will generally indicate the presence of the scent of a prohibited drug in the air-space surrounding a person by sitting down next to that person. Following this, the dog handler will introduce himself/herself and comply with the safeguard pursuant to section 201 of LEPR.

The handler would say words to the effect of, "Hello my name is Constable ..... This is a drug detection dog. He/She has detected the scent of a prohibited drug in the free air space around you".

"You do not have to say or do anything if you do not want to. Do you understand that?"

"However anything you do say or do, will be recorded and can be used as evidence. Do you understand that?"

## 2.9 Drug Dogs & Motor Vehicles

Police are to be aware that a warrant for the use of a drug detection dog obtained via section 149 of LEPR, DOES not give police the power to place a drug detection dog inside a private motor vehicle in a public place. The warrant itself enables the drug detection dog to be utilised for general drug detection at a public place specified within the warrant. The area within a motor vehicle is NOT deemed a public place. If a drug detection dog does indicate the scent of a prohibited drug from the outside of a vehicle. The dog handler would inform the support police who will make further enquires. The decision to search inside that vehicle rests with the support police (depending on information/Intel obtained)

Should police, through their own assessment and investigations form a reasonable suspicion that the vehicle contains or a person in the vehicle has in his or her possession or under his or her control, a prohibited plant or a prohibited drug, they may exercise their powers under section 36 of LEPR to search the vehicle. A drug detection dog then can be used to assist with the search inside that motor vehicle as per section 146(2) LEPR.

*See appendix 2 – Search of Motor Vehicles, Legal advice from NSWPF Legal Services*

## 2.10 Discarded Drugs

Support police should be aware that during detection dog operations, it is common for POI's to attempt to avoid detection by discarding/throwing drugs. If this does occur the discarded drugs are to be managed as per all other exhibits. Police are still required to record this information on COPS as a Drug Detection.

## 2.11 Cautioning

Upon initial interaction with persons following a drug detection dog indication, and following any necessary compliance with section 201 of LEPR, police are to formally caution the person prior to **ANY QUESTIONS BEING ASKED**. Following the administration of the caution, any answers provided to police by the person are admissible as evidence in court.

It is important to ensure that the person being cautioned is able to understand their rights and responsibilities. Where the person does not appear to understand the caution due to a language barrier, it may be necessary to use a telephone interpreter (in the first instance) to facilitate communication (see the NSWPF 'Code of Practice for Crime for the NSWPF policy for using interpreters).

## 2.12 Searching of Suspects

Police are reminded that an indication given by a drug detection dog **DOES NOT** on its own provide police with the power to search, nor does it suffice for an officer to 'suspect' on reasonable grounds' possession of a prohibited drug.

When a police officer has formed reasonable suspicion following a drug detection dog indication and decides to search a person pursuant under section 21 of LEPR, police are to make all reasonable attempts to utilise appropriate locations for the conduct of the search. Such locations should be where possible out of public view. Where available, Operation Commanders are to ensure that private rooms or other private facilities are set aside for such searches. When searching, police are reminded to make all attempts to ensure the person's privacy is maintained and any possible embarrassment to a person being searched is limited.

## 2.13 COPS Records

COPS events should be created as per current guidelines outlined in the **Crime Recording Standard 2014**.

The Sections that specifically relate to Drug Dog Deployments are as follows:

Section 9.3b Powers – Person Search

Section 9.3c Drug Detection

Section 9.3e Recording Searches.

Further to this, police must ensure they record in the COPS event ALL relevant information that leads to the establishment of reasonable cause to stop, search and detain any person during the Dug Dog deployment.

This is discussed further in *Web COPS entries* on page 17.

## 2.14 Recording of Personal Details

Where a search has occurred and **no offence has been identified**, if police request personal details, they are to advise the person that they are not obliged to provide their personal details, and inform the person how those details are to be used, i.e., making a record of the incident upon COPS.

Police are not to 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. If a person declines to provide or consent to their personal details being recorded, the search is to be recorded on COPS through using existing generic CNI numbers- **Unknown male CNI 752888532** and **unknown female CNI 752932812**.

Essentially, if no offence has been detected, the person is under no obligation to provide their personal details. Police are also reminded that they have no general power to detain a person for a CNI or other check if they do not suspect the person has committed an offence.

If after a search is completed, no evidence of drugs is found or any other offence is detected, police should immediately inform the person searched that they are free to leave.

Where an offence is detected, normal protocols should be adopted.

## 2.15 Prescription Medication

During drug detection dog deployments and operations, police often locate various forms of prescription medication upon searched person. Whilst it is known some drug users may possess and administer prescription medication that has been illegally obtained, police are to be reminded that some persons may carry such medication out of its usual packaging and have legitimate reasons for doing so.

Police are reminded that there is no legal requirement for a person to carry evidence that a prescription drug in their possession was lawfully obtained or supplied. As such, thorough and appropriate investigative techniques need to be utilised prior to the confiscation of any prescription medication.

Please consider the potential adverse consequences to a person's health should legitimate prescription medication be seized.

## 2.16 Public Place

Whilst conducting drug detection dog operations or deployments within public places, police are reminded of the likelihood of such activity attracting much attention from passers-by. Police are reminded to always act professionally and be aware of the possible impacts of searching members of the public within view of other members. Due to this, negative comments from certain person's often flow. In the past, these have sometimes escalated and resulted in semi-organised protests against the police use of drug detection dogs. Police are reminded that due to such exposure and sometimes 'taunting' in a public area, officers are to remain professional at all times. Police are also to be aware of the likelihood of their actions being electronically recorded during such incidences, without their knowledge or consent.

Should persons attempt to interrupt police performing their duties within the execution of the drug detection dog operation, police are reminded of appropriate powers and offences, which depending on the circumstances, may include but are not limited to the power to give reasonable directions in accordance with section 197 of LEPR, and the offences of hinder police, offensive language, not comply with police direction, etc.

## 2.17 Licensed Premises

Due to often crowded nature of many licensed premises, and the possible intoxication levels of some patrons, it remains the decision of the dog handler as to whether the drug detection dog will enter such venues and area for the purpose of drug detection duties. If planning drug detection operations with a view to including licensed premises, it is recommended that prior consultation occurs between the Dog Unit and the Operation Commander to ensure the location and time suitability. The time an operation is conducted can limit the effectiveness of a drug dog as venues may be overly crowded, patrons may be highly affected by drugs/alcohol or drugs may have already been consumed leading to minimal indications. Discretion about the nature of consultation with operators of licensed premises about drug dog operations should remain with the Local Area Commander.

### Responsibilities

*Operation organisers should regularly consult with operators of licensed premises about the manner, frequency and results of drug detection dog operations conducted on licensed premises.*

*Upon arrival at a licensed premises, one police officer should have the role of seeking out the manager or other person in charge, to advise of their presence and answer questions about the operation.*

## 2.18 Exhibits

Normal exhibit procedures must be followed and adequate resources available to support the conduct of the operation. All necessary equipment should be on hand at the site.

## 2.19 Completion of the operation

It is strongly recommended that at the conclusion of any drug detection dog operation or deployment, a debriefing should occur. The debriefing should be conducted by the Operation Commander at a time and place of his/her determination. The purpose of the de brief is to:

1. Identify any major defects in the planning and implementation of the operation;
2. Identify those areas that had a critical role in the success of the operation;
3. Discuss proposals for improvement

Any proceedings stemming from the debriefing should be recorded and retained for future reference, with any serious issues brought to the attention of the Local Area Commander and/or Dog Unit Commander.

## 2.20 Web COPS entries

When creating an event – person search, vehicle search or search warrant where drug dog utilised please make note:

For supervisors and support police – It is imperative that event created for drug dog operations are correct prior to being verified. Please ensure that the following is checked when verifying events:

Person Search event:

When no drugs located the incident must be person search (no item/object found).

When drugs located there must be a Drug Detection incident in addition to the person search incident.

For person search event in person searched details section – you must check that correct assignment number must also be created for any drugs that are being recorded.

In the primary reason for search it must be selected:

'Suspected possession of Illegal drug'

You will then be prompted:

'Was a detector dog the main reason for detection' ( ) Y / N

You will then be prompted:

'Did the POI have any \*recent contact with drugs and/or drug users?'

*\*recent contact with drugs and or drug users – police to ask questions of the person to establish such information*

A list will then pop up of assignment numbers and handlers – please choose correct handler

## 2.21 Search Warrant event

When utilising a drug dog and drugs are located, a Drug Detection Incident must be created in addition to the Execution of search warrant.

When entering the Drug seized information – there is a section

'Detector Dog Used' ( ) Y/N – you must select Yes to obtain the dog team particulars

## 2.22 Search warrant or general warrant drug detection

### Report to Authorised Officer

Following the completion of the operation, and within ten (10) days after the execution of a drug detection dog warrant, police must complete the 'report to Authorised Officer' (Form 20). Police must include all details of warrant execution timings, items seized and the location (including offender custody details) of the seized items. This report, and the original warrant issued, must be forwarded to the Local Court from where it originated. It is suggested the Operation Commander retains a copy of this report and the original warrant for future reference.

This report can be located on the NSW Police Intranet via the 'Forms' fast path.(Forms- Investigation- Warrants- P737 Form 20 Reports to Authorised Officer About Execution of Warrant).

*Note: See attached Appendix 1 and 2 - relevant legislation and legal advice for deployment of Drug Detection Dogs- pages 18 to37*

## 3. Definitions

### Drug Detection Dog

A Drug Detection Dog is a Detection Dog that has successfully achieved competency (with handler) to perform duties to locate prohibited drugs for the New South Wales Police Force. The Drug Detection Dog teams undergo yearly accreditations to assess competency.

## 4. Compliance Requirements and Internal Controls

Training of Drug Detection Dog Teams is the responsibility of the Dog Unit Training Office with Leading Senior Constables conducting operational training and annual accreditations of all Drug Detection Dog Teams.

All Drug Detection Teams must meet operational standards in order to be accredited and Operational.

## Appendix 1 – Relevant Legislation

### Drug Detection Dog Legislation

All deployments of Drug Detection Dogs must abide by Law enforcement (powers and responsibilities) Act 2002 – Part 11, Division 2 – Sections 145-150

#### **Division 2 Use of drug detection dogs**

##### **145 Meaning of “general drug detection”**

(cf *Police Powers (Drug Detection Dogs) Act 2001*, s 5)

For the purposes of this Division:

**general drug detection** is the detection of prohibited drugs or plants in the possession or control of a person, except during a search of a person that is carried out after a police officer reasonably suspects that the person is committing a drug offence.

##### **146 General authority to use drug detection dogs**

(cf *Police Powers (Drug Detection Dogs) Act 2001*, s 4)

- (1) If a police officer is authorised to search a person for the purpose of detecting a drug offence, the officer is entitled to use a dog for that purpose.
- (2) A police officer is, for the purpose of detecting a drug offence, entitled to be accompanied by a dog under the officer's control if the officer is entitled to enter, or be in or on, particular premises in the exercise of the officer's functions.
- (3) 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 as provided by this section.

##### **147 Use of dogs for general drug detection authorised**

(cf *Police Powers (Drug Detection Dogs) Act 2001*, s 6)

A police officer is authorised to use a dog to carry out general drug detection, but only as provided by this Division.

##### **148 General drug detection with dogs in authorised places**

(cf *Police Powers (Drug Detection Dogs) Act 2001*, s 7)

- (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,
  - (d) persons at, or seeking to enter or leave, any part of premises that the officer is authorised to enter under the *Tattoo Parlours Act 2012* to carry out general drug detection using a dog,
  - (e) persons at any public place in the Kings Cross precinct (being the area including and bounded by the parts of streets specified in Schedule 2 to the *Liquor Act 2007*).
- (2) In this section:

*public passenger vehicle* means a train, light rail vehicle or bus that is used to provide a public passenger service.

- (3) A reference in this section to Schedule 2 to the *Liquor Act 2007* is a reference to that Schedule as in force on the commencement of this subsection.

## 149 General drug detection with dogs by warrant

(cf *Police Powers (Drug Detection Dogs) Act 2001*, s 8)

- (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 officer for a warrant under this section.
- (3) An authorised officer 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 general drug detection to be carried out under the warrant will be part of a covert police operation.

## 150 Provisions relating to general drug detection

(cf *Police Powers (Drug Detection Dogs) Act 2001*, s 9)

- (1) A police officer carrying out general drug detection under this Division 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 Division.
- (3) General drug detection under this Division may be carried out as part of a covert police operation, but only if it is authorised by a warrant under this Division.
- (4) The provisions of this Division do not affect:
  - (a) the search of a person whom a police officer reasonably suspects is committing a drug offence, or
  - (b) any search of premises that does not involve a search of persons in or on the premises.
- (5) Nothing in this Division confers on a police officer a power:
  - (a) to enter any premises that the officer is not otherwise authorised to enter, or
  - (b) to detain a person who the officer is not otherwise authorised to detain.

## Law Enforcement (Powers and Responsibilities) Regulation 2005

### Part 4 Miscellaneous

#### 37 (Repealed)

#### 38 Use of drug detection dogs in authorised places—prescribed train routes

(cf *Police Powers (Drug Detection Dogs) Regulation 2002*, cl 3)

- (1) For the purposes of section 148 (1) (c) of the Act, the following public passenger vehicle routes are prescribed:
- (a) the Bankstown route, being the train line that is:
    - (i) between Liverpool station and Sydney Central station, and
    - (ii) via Bankstown station,
  - (b) the Inner West route, being the train line that is:
    - (i) between Liverpool station and Sydney Central station, and
    - (ii) via Regents Park station,
  - (c) the Eastern Suburbs route, being the train line that is between Bondi Junction station and Sydney Central station,
  - (d) the Illawarra route, being the train line that is between Bomaderry station and Sydney Central station, and including the train line between Sutherland station and Cronulla station via Kirrawee station, and including the train line between Wollongong station and Port Kembla station,
  - (e) the Northern route, being the train line that is:
    - (i) between Newcastle station and Sydney Central station, and
    - (ii) via Strathfield station,
 and including the train line between Chatswood station and Epping station,
  - (f) the South route, being the train line that is:
    - (i) between Campbelltown station and Sydney Central station, and
    - (ii) via Circular Quay station, and
    - (iii) via Granville station,
  - (g) the Western route, being the train line that is:
    - (i) between Penrith station and Sydney Central station, and
    - (ii) via Strathfield station,
 and including the train line between Blacktown station and Richmond station and the Olympic Park loop,
  - (h) the North Shore route, being the train line that is:
    - (i) between Berowra station and Sydney Central station, and
    - (ii) via Chatswood station,
  - (i) the Southern Highlands route, being the train line that is between Campbelltown station and Goulburn station,
  - (j) the Blue Mountains route, being the train line that is between Lithgow station and Sydney Central station,
  - (k) the Hunter route, being the train line that is between Newcastle station and Dungog station, and including the train line between Maitland station and Scone station,
  - (l) the Airport and East Hills route, being the train line that is:

- (i) between Sydney Central station and Macarthur station, and
  - (ii) via Wollli Creek station or via Sydenham station,
  - (m) the Carlingford route, being the train line that is between Clyde station and Carlingford station,
  - (n) the Cumberland route, being the train line that is between Campbelltown station and Schofields station.
- (2) A route prescribed by this clause includes a train travelling on any part of the train line described in respect of the route, irrespective of whether:
- (a) the train stops at a station on the train line, or
  - (b) the train has travelled or will travel on any other train line.
- (3) A route prescribed by this clause includes the route of any bus being used to convey persons between train stations on the prescribed route because trains are not running between those stations, and any stopping place of such a bus.

### 39 Use of drug detection dogs in authorised places—prescribed bus routes

(cf *Police Powers (Drug Detection Dogs) Regulation 2002*, cl 4)

For the purposes of section 148 (1) (c) of the Act, the following public passenger vehicle routes are prescribed:

- (a) the Albury route, being the bus route that is:
  - (i) between Albury and Sydney, and
  - (ii) via Goulburn and the Hume Highway,
- (b) the Grafton route, being the bus route that is:
  - (i) between Grafton and Sydney, and
  - (ii) via Kempsey and the Pacific Highway.

## Tattoo Parlours Act 2012 No 32

### Division 2 Powers of entry

#### 30A Powers of authorised officers to enter premises without warrant

- (1) An authorised officer may at any reasonable time enter any licensed premises, or any other premises that the authorised officer reasonably suspects are being used to perform body art tattooing procedures for fee or reward, for the following purposes:
- (a) for determining whether there has been compliance with, or a contravention of, this Act or the regulations,
  - (b) generally for administering this Act.
- (2) This section does not confer a power to enter any premises or part of premises that are used only for residential purposes without the permission of the occupier or the authority of a search warrant.

#### 30B Powers of authorised officers to enter premises with warrant

- (1) An authorised officer may apply to an authorised warrants officer for the issue of a search warrant if the authorised officer believes on reasonable grounds that any provision of this Act or the regulations is being or has been contravened on any premises.

- (2) An authorised warrants officer to whom any such application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any authorised officer to enter and search the premises.
- (3) An authorised officer executing a search warrant issued under this section may:
  - (a) enter the premises specified in the warrant, and
  - (b) search the premises for evidence of a contravention of this Act or the regulations, and
  - (c) exercise any other function of an authorised officer under this Part.
- (4) Division 4 of Part 5 of the Law Enforcement (Powers and Responsibilities) Act 2002 applies to a search warrant issued under this section.
- (5) In this section:

**authorised warrants officer** means an authorised officer within the meaning of the Law Enforcement (Powers and Responsibilities) Act 2002.

### 30C Powers that can be exercised by authorised officers on entry

- (1) Without limiting section 32, an authorised officer may, at any premises lawfully entered under this Act for a purpose referred to in section 30A (1), do any or all of the following:
  - (a) examine any licence, registers, books, records or other documents on the premises,
  - (b) make a copy on the premises of any licence, registers, books, records or other documents and retain that copy,
  - (c) require any person to make a copy on the premises of any licence, registers, books, records or other documents and give that copy to the authorised officer to retain,
  - (d) take such photographs, films, audio, video or other recordings as the authorised officer considers necessary,
  - (e) require any person to produce any licence, registers, books, records or other documents on the premises,
  - (f) require any person to answer any question relating to any licence, registers, books, records or other documents or any other relevant matter,
  - (g) take any licence, registers, books, records or other documents from the premises for the purposes of copying them,
  - (h) seize any licence, registers, books, records or other documents, or any other thing that the authorised officer believes on reasonable grounds is connected with an offence against this Act or the regulations.
- (2) The power to seize anything connected with an offence includes a power to seize anything that will provide evidence of the commission of an offence.
- (3) Any registers, books, records or other documents taken only for the purpose of copying them must be returned when that copying is completed.

### 31 Police powers of entry with dog

A police officer may at any reasonable time enter any licensed premises, or any other premises that the police officer reasonably suspects are being used to perform body art tattooing procedures for fee or reward, for the purpose of:

- (a) carrying out general drug detection (within the meaning of Division 2 of Part 11 of the Law Enforcement (Powers and Responsibilities) Act 2002) using a dog, or
- (b) carrying out general firearms or explosives detection (within the meaning of Part 13 of that Act) using a dog.

Other relevant Legislation and Legal Advice for deployment of Drug Detection Dogs**Law Enforcement (Powers and Responsibilities) Act 2002 No 103****Part 4 Search and seizure powers without warrant**

**Note.** Safeguards relating to the exercise of powers under this Part are set out in Part 15.

**Division 1 General personal search and seizure powers****20 Relevant offences**

The following offences are **relevant offences** for the purposes of this Division:

- (a) indictable offences,
- (b) an offence against section 93FB of the Crimes Act 1900,
- (c) an offence against the Weapons Prohibition Act 1998, the Firearms Act 1996, or a regulation made under either of those Acts,
- (d) an offence against a provision of Part 2 of the Explosives Act 2003.

**21 Power to search persons and seize and detain things without warrant**

(cf Crimes Act 1900, ss 357, 357E, Drug Misuse and Trafficking Act 1985, s 37)

- (1) A police officer may, without a warrant, stop, search and detain a person, and anything in the possession of or under the control of the person, if the police officer suspects on reasonable grounds that any of the following circumstances exists:
  - (a) the person has in his or her possession or under his or her control anything stolen or otherwise unlawfully obtained,
  - (b) the person has in his or her possession or under his or her control anything used or intended to be used in or in connection with the commission of a relevant offence,
  - (c) the person has in his or her possession or under his or her control in a public place a dangerous article that is being or was used in or in connection with the commission of a relevant offence,
  - (d) the person has in his or her possession or under his or her control, in contravention of the Drug Misuse and Trafficking Act 1985, a prohibited plant or a prohibited drug.
- (2) A police officer may seize and detain:
  - (a) all or part of a thing that the police officer suspects on reasonable grounds is stolen or otherwise unlawfully obtained, and
  - (b) all or part of a thing that the police officer suspects on reasonable grounds may provide evidence of the commission of a relevant offence, and
  - (c) any dangerous article, and
  - (d) any prohibited plant or prohibited drug in the possession or under the control of a person in contravention of the Drug Misuse and Trafficking Act 1985, found as a result of a search under this section.

## 21A Ancillary power to search persons

- (1) In conducting a search of a person under section 21, a police officer may, if the police officer suspects on reasonable grounds that a thing referred to in section 21 (1) (a), (b), (c) or (d) is concealed in the person's mouth or hair, request the person:
  - (a) to open his or her mouth, or
  - (b) to shake, or otherwise move, his or her hair.
- (2) Subsection (1) does not authorise a police officer to forcibly open a person's mouth.
- (3) A person must not, without reasonable excuse, fail or refuse to comply with a request made by a police officer in accordance with this section.

Maximum penalty: 5 penalty units.

## 22 Power to seize and detain dangerous articles on premises

~~(cf *Crimes Act 1900*, s 357)~~

A police officer who is lawfully on any premises may seize and detain any dangerous article that the police officer finds on the premises, if the police officer suspects on reasonable grounds that the dangerous article is being or was used in or in connection with the commission of a relevant offence.

**Note.** Premises include vessels, vehicles, aircraft and other places.

## Division 2 Searches of persons on arrest or while in custody

### 23 Power to carry out search on arrest

~~(cf Cth Act, s 3ZE, common law)~~

- (1) A police officer who arrests a person for an offence or under a warrant, or who is present at the arrest, may search the person at or after the time of arrest, if the officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying anything:
  - (a) that would present a danger to a person, or
  - (b) that could be used to assist a person to escape from lawful custody, or
  - (c) that is a thing with respect to which an offence has been committed, or
  - (d) that is a thing that will provide evidence of the commission of an offence, or
  - (e) that was used, or is intended to be used, in or in connection with the commission of an offence.
- (2) A police officer who arrests a person for the purpose of taking the person into lawful custody, or who is present at the arrest, may search the person at or after the time of arrest, if the officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying anything:
  - (a) that would present a danger to a person, or
  - (b) that could be used to assist a person to escape from lawful custody.
- (3) A police officer may seize and detain a thing found in a search if it is a thing of a kind referred to in subsection (1) or (2).
- (4) Nothing in this section limits section 24.

### 23A Ancillary power to search persons

- (1) In conducting a search of a person under section 23, a police officer may, if the police officer suspects on reasonable grounds that a thing of a kind referred to in section 23 (1) or (2) is concealed in the person's mouth or hair, request the person:
- (a) to open his or her mouth, or
  - (b) to shake, or otherwise move, his or her hair.
- (2) Subsection (1) does not authorise a police officer to forcibly open a person's mouth.
- (3) A person must not, without reasonable excuse, fail or refuse to comply with a request made by a police officer in accordance with this section.

Maximum penalty: 5 penalty units.

### 24 Power to carry out search of person in custody

(cf Cth Act, s 3ZH, common law)

A police officer may search a person who is in lawful custody (whether at a police station or at any other place) and seize and detain anything found on that search.

## Division 3 Additional personal search and seizure powers in public places and schools

### 25 Definitions

In this Division:

*knife* includes:

- (a) a knife blade, and
  - (b) a razor blade, and
  - (c) any other blade,
- but does not include anything that is of a class or description declared by the regulations to be excluded from this definition.

*locker* includes any facility for the storage of a student's personal effects at a school.

### 26 Power to search for knives and other dangerous implements

(cf *Summary Offences Act 1988*, s 28A)

- (1) A police officer may request a person who is in a public place or a school to submit to a frisk search if the police officer suspects on reasonable grounds that the person has a dangerous implement (other than a laser pointer) in his or her custody.
- (1A) A police officer may request a person who is in a public place to submit to a frisk search if the police officer suspects on reasonable grounds that the person has a laser pointer in his or her custody.
- (2) If the person is in a school and is a student at the school, the police officer may also request the person to do either or both of the following:

- (a) to submit to a search of any bag or other personal effect that is on or with the person,
- (b) to submit to a search of the person's locker at the school and an examination of any bag or other personal effect that is inside the locker.
- (3) For the purposes of this section, the fact that a person is present in a location with a high incidence of violent crime may be taken into account in determining whether there are reasonable grounds to suspect that the person has a dangerous implement (other than a laser pointer) in his or her custody.
- (4) In conducting a search of a person under this section, a police officer must, in the case of a search of a student in a school and if reasonably possible to do so, allow the student to nominate an adult who is on the school premises to be present during the search.
- (5) In conducting a search of a person under this section, a police officer may request the person to produce either or both of the following:
  - (a) anything that the police officer has detected or seen on or with the person during the search and has reasonable grounds to suspect is a dangerous implement,
  - (b) anything detected during the search by an electronic metal detection device that the device indicates is of a metallic nature.
- (6) (Repealed)

## 27 Failure to comply with requirements relating to search and dangerous implements

A person must not, without reasonable excuse:

- (a) fail or refuse to produce anything detected or seen on or with the person in such a search when requested to do so by a police officer in accordance with section 26, or
- (b) fail or refuse to comply with a request made by a police officer in accordance with section 26 for the person to submit to a search.

Maximum penalty: 50 penalty units.

## 28 Power to confiscate knives or other dangerous implements

(cf Summary Offences Act 1988, s 28B)

- (1) A police officer may, in a public place or school:
  - (a) take possession of anything that the police officer has reasonable grounds to suspect is a dangerous implement that is unlawfully in a person's custody, and
  - (b) confiscate the thing.
- (2) Any such confiscated thing is to be dealt with in accordance with Division 1 of Part 17.
- (3) The power conferred by subsection (1) may be exercised whether or not the police officer requests the person to produce the thing under section 26.

## Division 4 Provisions relating generally to personal searches

### 29 Application of Division

This Division applies to any search of a person carried out, or authorised to be carried out, by a police officer or other person under this Act (other than an internal search under Division 3 of Part 11), except as otherwise provided by this Act or the regulations.

## Sensitive Law Enforcement



## NSWPF Drug Detection Dog Handler Briefing

### DIRECTION FROM DOG UNIT COMMANDER

THIS BRIEFING CHECKLIST CONTAINS IMPORTANT INFORMATION WHICH MUST BE FULLY READ TO ALL POLICE OFFICERS SUPPORTING DRUG DOG OPERATIONS.

#### 1. INTRODUCTION

I am SCst / Cst \_\_\_\_\_ from the Dog Unit. My call sign is \_\_\_\_\_. I am here today with Drug Detection Dog \_\_\_\_\_, who is trained to detect the odour of all prohibited drugs. Today's Operational Assignment Number is \_\_\_\_\_.

#### 2. OPERATIONAL REQUIREMENTS

Please be advised that the safety of the DDD is paramount. We take a zero tolerance approach to anybody inappropriately interfering with or touching the DDD and will expect appropriate action taken as a result.

I have legislative requirements to have control of the DDD at all times and therefore require an appropriate number of you to be in my immediate vicinity at any time during the operation. This is also required to assist me in the interests of officer safety.

Prior to entering any establishment, such as licensed premises, I will consult with the officer in charge of the operation if it appears unsafe to enter, for either myself or the DDD. Issues such as overcrowding may affect the operation. When entering or approaching a location, remain conscious of individuals attempting to avoid the DDD as well as those attempting to discard or ingest items.

#### 3. REQUIREMENTS UPON INDICATION OF DDD

I will determine whether or not the DDD has indicated upon an individual.

Due to use of Body Worn Video (BWV) – when an indication has been made I will activate the BWV \*\* (unless not practical, or appropriate to do so)

I will then speak with the individual – introducing myself and advising them about the camera and that it is recording their actions and conversation – I will then caution them (unless not practical).

Following this I will provide the individual and yourself with appropriate instruction.

**You must understand that the indication of the DDD alone does not constitute 'reasonable grounds' to conduct a search upon an individual. You must conduct further investigations, such as asking questions as well as observing their appearance and demeanour prior to determining that 'reasonable grounds' exists to conduct a search.**

If 'reasonable grounds' have been established for a search to be conducted you need to be mindful of a number of issues. These include preserving a person's privacy by removing them from areas which are

## Sensitive Law Enforcement

in public view as well as the need to conduct a thorough search. If a search result is negative the individual is not compelled to supply their details, however may choose to do so.

**It is very important for all indications and searches to be appropriately recorded upon COPS.** Individuals who do not supply their details are to be recorded under the generic CNI numbers.

(Unknown Female – 752932812, Unknown Male – 752888532)

The weights and types of drugs located must be included. All details must also be linked to the DDD. Accurate recording of these details is imperative for determining the allocation of future Dog Unit resources to your Command.

Please advise me of any drugs located during the operation. Always ask if you are ever unsure of anything.

#### 4. Legal Requirements

I am required to bring the following sections of LEPR along with specific legal requirements to your attention which includes –

- **Section's 21A and 28** (Ancillary Power to Search Persons), particularly Subsection 2 within each section which does not authorise a police officer to forcibly open a person's mouth
- **Section 31** (Strip Searches), particularly the necessity and justification of carrying out a strip search
- **Section 32** (Preservation of Privacy and Dignity during search), particularly Subsection 3 where police must ask for a person's co-operation prior to a search (Section 230 becomes applicable if co operation is not forthcoming) and Subsection 5 which necessitates the least invasive kind of search practicable in the circumstances.
- **Part 11, Division 2 (Use of Drug Detection Dogs) Section 145 – 150** which outlines the use of NSWPF Drug Detection Dogs within the state of NSW.

I am in possession of a hardcopy of each of these legislative sections and requirements which I will make available to you if needed. The information is otherwise available on the NSWPF Intranet Site under the 'Law' on the Home Page.

**\*\*Use of BWV – please note:**

The footage from handler BWV can be tagged to an event upon request from case officer

- Forward me (handler) an email to request footage to be tagged
- Ensure the email contains relevant information -- operation, date/time of interaction, description and name of offender....etc and relevant event number
- Please send through request in a timely manner -- ideally at the time you as the case officer create the event

**\*\*For Dance Parties / Major events – ensure the request is forwarded to the correct handler**

## Police Handbook information (Dog Unit)

### Drug Detection Dogs

The primary function of Drug Detection Dogs is to search for prohibited drugs by screening the free air space:

- During the execution of Search Warrants;
- During high profile Street Operations;
- During covert Street Operations;
- During Transit Operations on "prescribed routes";
- Around motor vehicles;
- Around persons of interest; and
- Around nominated property.

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Prior to requesting a drug detection dog officers should ensure the planned deployment complies with the requirements for use set out in Part 4 Division 1 and Part 11 of *Law Enforcement (Powers and Responsibilities) Act 2002*. No 103

Drug Detection Dog SOPS place the onus on requesting police to ensure that the intelligence relied upon for non-warrant-based drug detection dog operations is recent, relevant and specific to drug supply. All relevant intelligence and information that supports the use of a drug detection dog should be listed in the respective DDS entry. Any intelligence or event numbers should also be listed.

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**Note:** The Dog Unit does have limited resources, so requests for a Drug Dog may need to be prioritised by the unit's coordinators. Dog teams may be re-diverted from a pre-planned operational deployment at short notice. As a result, any planned drug dog operations should have some alternate taskings available for those staff rostered.

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If intending to use a Drug Dog for a search warrant, the warrant must stipulate that prohibited drugs are being searched for. If it is intended that the operation will require people screening in a public area that is not an authorised place under Division 2, Part 11 of the *Law Enforcement (Powers and Responsibilities) Act 2002* No 103, then a warrant must be applied for under S149 of that Act.

Whilst there are some occasions where a Drug Detection Dog can be deployed with a minimum of 2 support police, it is expected that minimum ratios of 6 support staff to one dog will apply for transit / licensed premises operations and 10 support staff to one dog team for any dance party/music festival.

