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# 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.<sup>74</sup>

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.'<sup>75</sup>

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

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.<sup>78</sup>

'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.<sup>79</sup>

An 'unlawful dangerous drug' includes: amphetamine; cocaine; heroin; lysergide; methylamphetamine; and phencyclidine.<sup>80</sup> It also includes: Gamma hydroxy butyric acid, commonly known as GBH; and 3,4-Methylenedioxyamphetamine (MDMA), commonly known as ecstasy.<sup>81</sup> 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.<sup>82</sup>

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

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.<sup>84</sup> 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.<sup>85</sup>

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

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.<sup>87</sup>

#### 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.<sup>88</sup>

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.'<sup>89</sup>

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.<sup>90</sup>

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.<sup>91</sup>

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

### 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.<sup>93</sup>

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

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.<sup>95</sup>

### 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.<sup>96</sup> The dogs are also utilised for street operations<sup>97</sup> and at dance party events.<sup>98</sup>

The use of drug detection dogs in Victoria is not regulated by legislation based on legal advice suggesting that legislative regulation is not necessary.<sup>99</sup> 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.<sup>100</sup>

### 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.<sup>101</sup>

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.<sup>102</sup> 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*.<sup>103</sup> 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.<sup>104</sup>

## 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.<sup>105</sup>

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

## 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.<sup>107</sup>

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.<sup>108</sup>

## 4.8. Northern Territory

In 2004 the Northern Territory Government announced the establishment of their own Drug Dog Detection Unit.<sup>109</sup> 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.<sup>110</sup> The drug detection dogs are also utilised to detect drugs destined for remote communities.<sup>111</sup>

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

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## Endnotes

<sup>74</sup> '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.

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

<sup>76</sup> 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.

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

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

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

<sup>80</sup> *Drugs Misuse Regulation 1987* (Qld), Schedule 1.

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

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

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

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

<sup>85</sup> 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'.

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

- <sup>87</sup> *Police Powers and Responsibilities Act 2000* (Qld), s.31F.
- <sup>88</sup> For further discussion on the rationale for not including cannabis, see paragraph 8.2.8.
- <sup>89</sup> Australia Customs Service, 'Detector Dog Program', Fact Sheet, Australian Government, August 2004.
- <sup>90</sup> Australia Customs Service, 'Detector Dog Program', Fact Sheet, Australian Government, August 2004.
- <sup>91</sup> Australia Customs Service, 'Detector Dog Program', Fact Sheet, Australian Government, August 2004.
- <sup>92</sup> *Customs Act 1901*, s.186(3)(f).
- <sup>93</sup> Australian Federal Police, 'Canine (K9) operations', Fact Sheet, 2 November 2004.
- <sup>94</sup> Telephone conversation with Team Leader of the Dog Unit, 27 September 2005.
- <sup>95</sup> *Australian Federal Police Act 1979* (Cth), s.12A.
- <sup>96</sup> Berry J, 'Sniffer dogs to patrol clubs', *The Age*, 12 May 2004.
- <sup>97</sup> Hodgson S, 'Dogs sniff out street drugs', *Herald Sun*, 1 July 2004.
- <sup>98</sup> 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.
- <sup>99</sup> Telephone conversation with head of the Victorian Police Dog Unit, 26 June 2003 & 12 September 2005.
- <sup>100</sup> *Drugs, Poisons and Controlled Substances Act 1981* (Vic), s.82.
- <sup>101</sup> Telephone conversation with head of the Dog Operations Unit, 9 September 2005.
- <sup>102</sup> *Questions of Law Reserved (No. 3 of 1998)* (1998) 71 SASR 223; 101 A Crim R 395.
- <sup>103</sup> *Controlled Substances Act 1984* (SA), s.52(6).
- <sup>104</sup> *Controlled Substances Act 1984* (SA), s.52(7).
- <sup>105</sup> Telephone conversation with a senior officer attached to Western Australia Police Canine Section, 12 September 2005.
- <sup>106</sup> Telephone conversation with a senior officer attached to Western Australia Police Canine Section, 12 September 2005.
- <sup>107</sup> 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).
- <sup>108</sup> *Police Service Act 2003* (Tas), s.85.
- <sup>109</sup> 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](http://www.nt.gov.au/ocm/media_releases/2004/20040809_building_our_police_force.shtml), (Accessed 11 May 2005).
- <sup>110</sup> McLean G, 'Scent shows he nose what he's doing', *Northern Territory News*, 20 September 2005, p.6.
- <sup>111</sup> McLean G, 'Sniffer dogs on nose for drug traffickers', *Northern Territory News*, 9 February 2005, p.3.
- <sup>112</sup> Telephone conversation with a senior officer of the Territory Support Division, 12 September 2005.

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# 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.<sup>113</sup> 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.<sup>114</sup>

### 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.<sup>115</sup> 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.

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### 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.*<sup>116</sup>

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.<sup>117</sup> 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.<sup>118</sup> 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.<sup>119</sup>

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.<sup>120</sup> 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".<sup>121</sup>*

*\* 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.<sup>122</sup>*

#### **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.<sup>123</sup> 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."<sup>124</sup>*

#### **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.<sup>125</sup>*

#### 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.<sup>126</sup>*

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?<sup>127</sup>*

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".<sup>128</sup>*

*Southern NSW, July 2003, 2.08am*

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*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.<sup>129</sup>*

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

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## Endnotes

<sup>113</sup> Correspondence from NSW Police, 1 April 2005.

<sup>114</sup> 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.

<sup>115</sup> In emergency situations requests may be made verbally.

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

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

<sup>118</sup> *Police Powers (Drug Detection Dogs) Regulation 2002*, cl.8.

<sup>119</sup> *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.

<sup>120</sup> *Police Powers (Drug Detection Dogs) Regulation 2002*, cl.11.

<sup>121</sup> Ombudsman observer notes, July 2002.

<sup>122</sup> Ombudsman observer notes, December 2002.

<sup>123</sup> A check that the establishment is meeting the requirements of liquor licensing laws.

<sup>124</sup> Ombudsman observer notes, August 2003.

<sup>125</sup> Information Report 5.1.

<sup>126</sup> [2002] NSWSC 1157 at [8].

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

<sup>128</sup> Ombudsman observer notes, August 2003.

<sup>129</sup> 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.<sup>130</sup> 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 4,084<sup>131</sup> 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.<sup>132</sup>

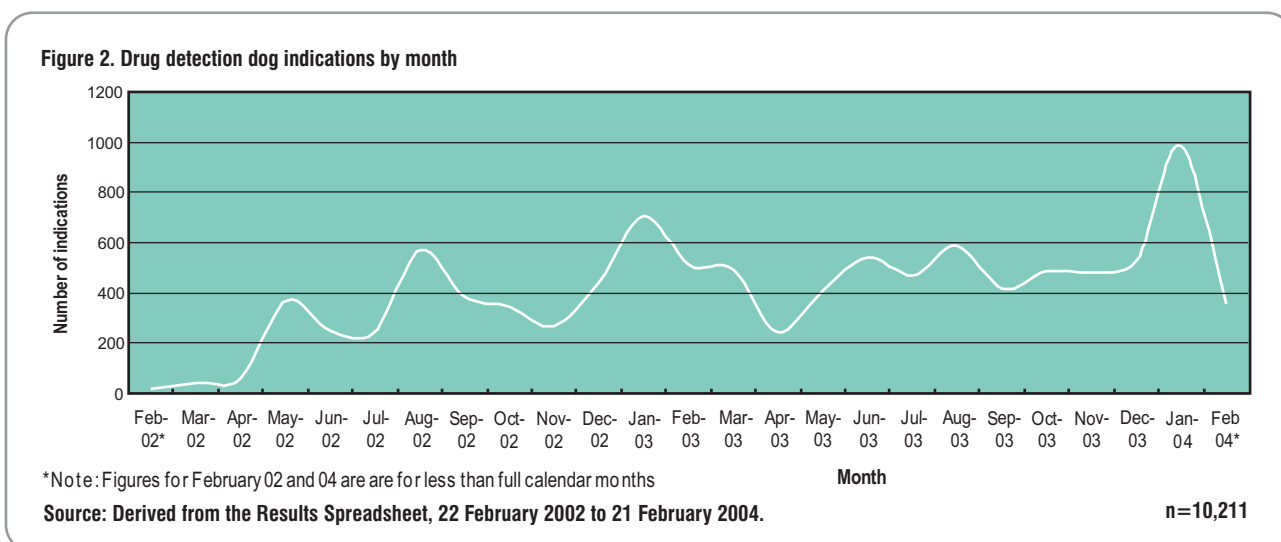
In addition, on a small number of occasions a single record on the spreadsheet includes the details of more than one person indicated by the dog and searched by police. Eleven records show more than one person was indicated and searched by police.

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.<sup>133</sup>

## 6.4. Where were drug detection dogs deployed?

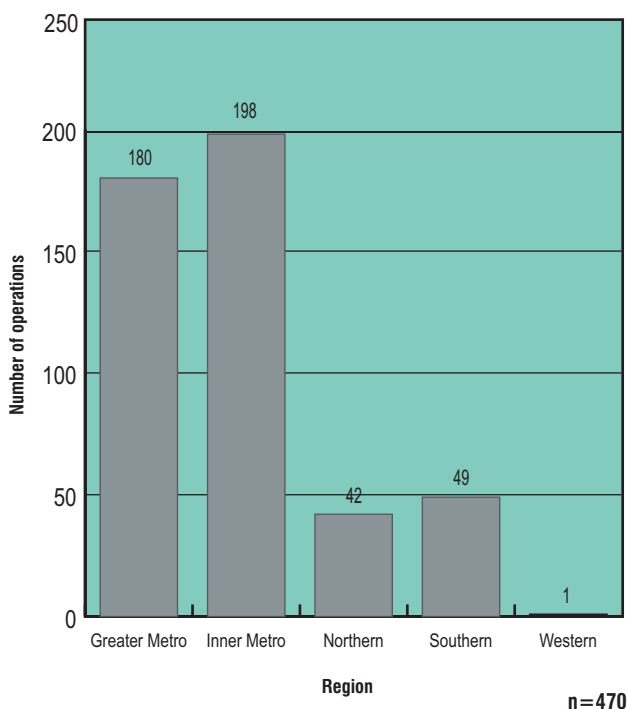
### 6.4.1. Regions, Local Area Commands and suburbs

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

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 Commands<sup>135</sup>**

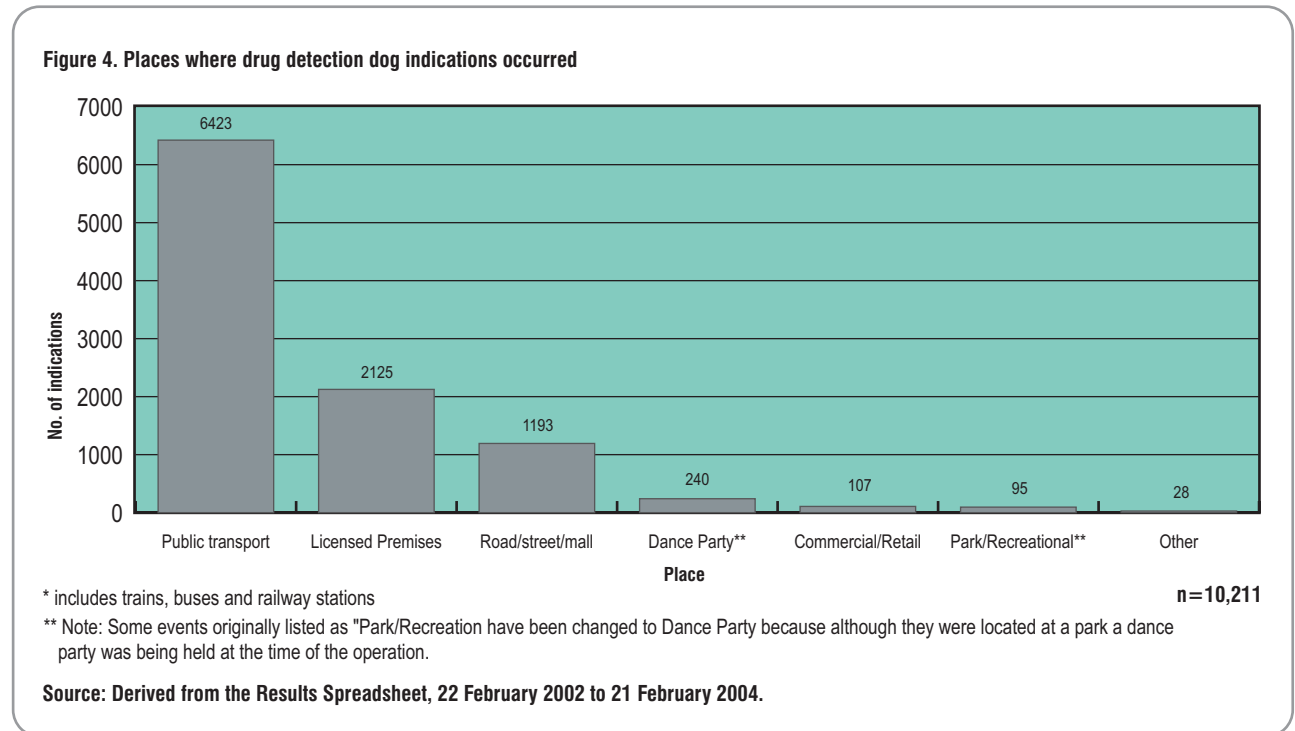
Local Area Command	Number of operations	Number of indications (rank)
Kings Cross	53	1009 (2)
Kuring Gai	40	1216 (1)
Burwood	33	584 (5)
Flemington	26	841 (3)
Wollongong	25	596 (4)
Rosehill	23	395 (7)
Bankstown	21	230 (15)
Blacktown	19	496 (6)
Ashfield	18	324 (12)
Marrickville	18	216 (16)
Redfern	18	298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

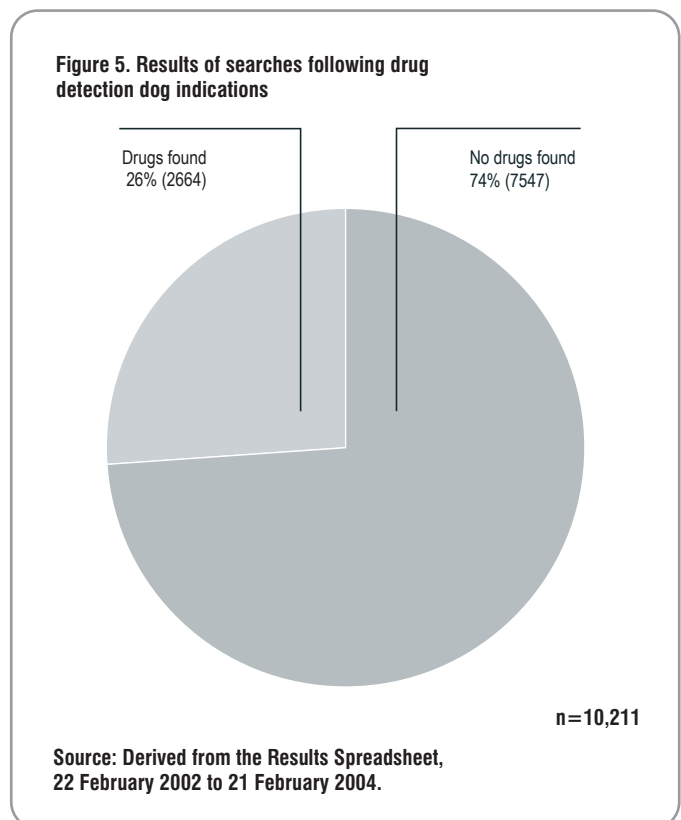
Figure 4 shows the types of locations where drug detection dogs most commonly indicated people suspected of carrying drugs.



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.<sup>136</sup> 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

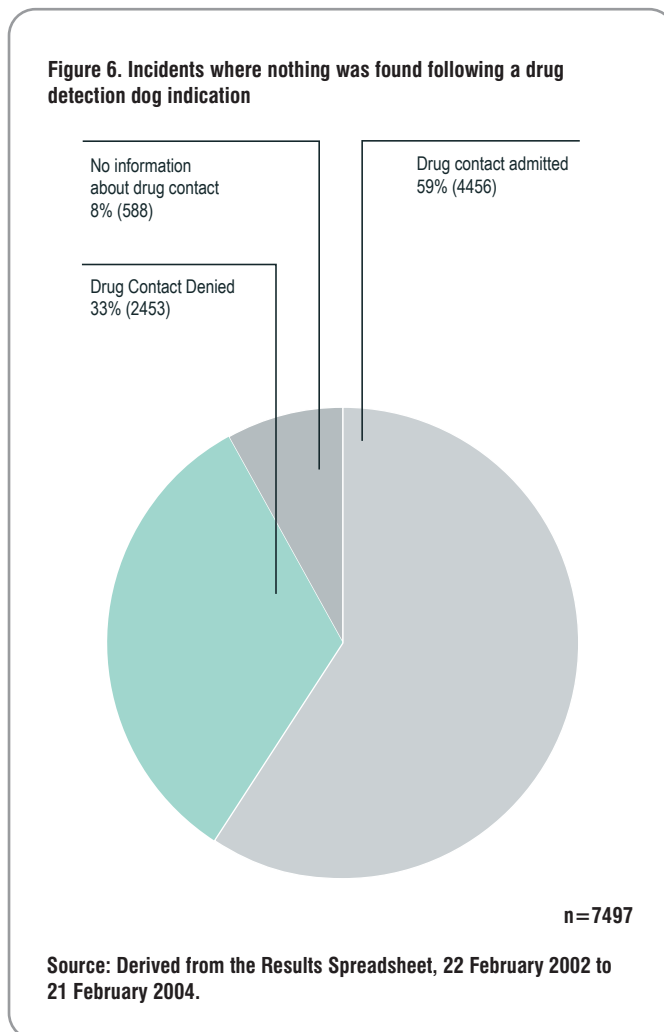
Figure 5 shows that during the two-year review period police located drugs following an indication by a drug detection dog on 2,664 occasions. This amounts to approximately 26% of all indications.



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)

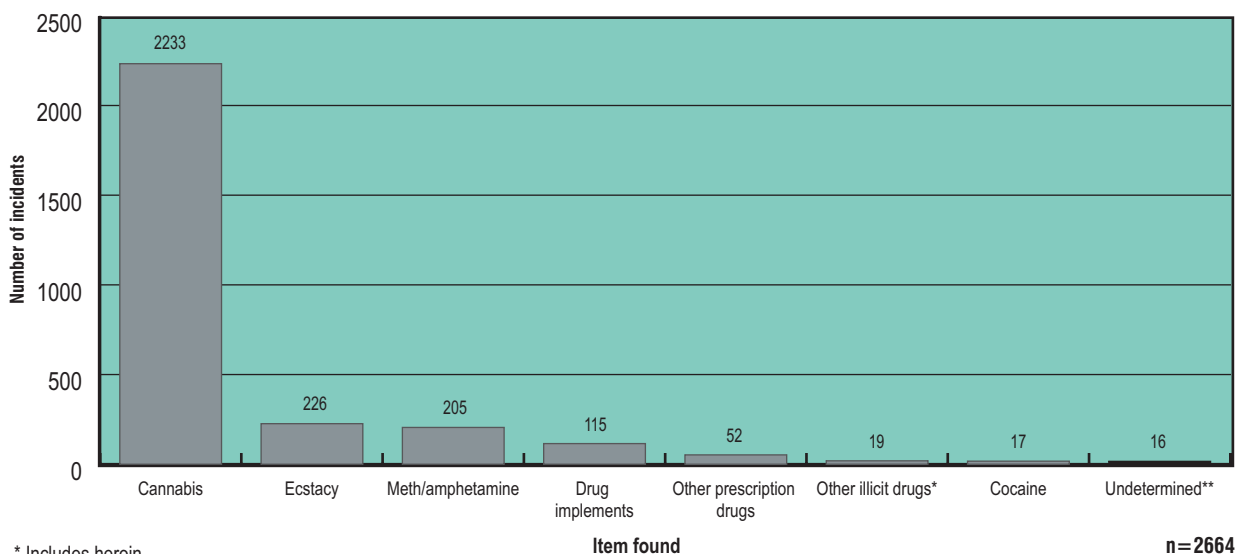
Source: Derived from the Results Spreadsheet, 22 February 2002 to 21 February 2004.

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.<sup>137</sup>

### 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.<sup>138</sup>

### 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.<sup>139</sup>

### 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.<sup>140</sup>

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.<sup>141</sup>

### 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.

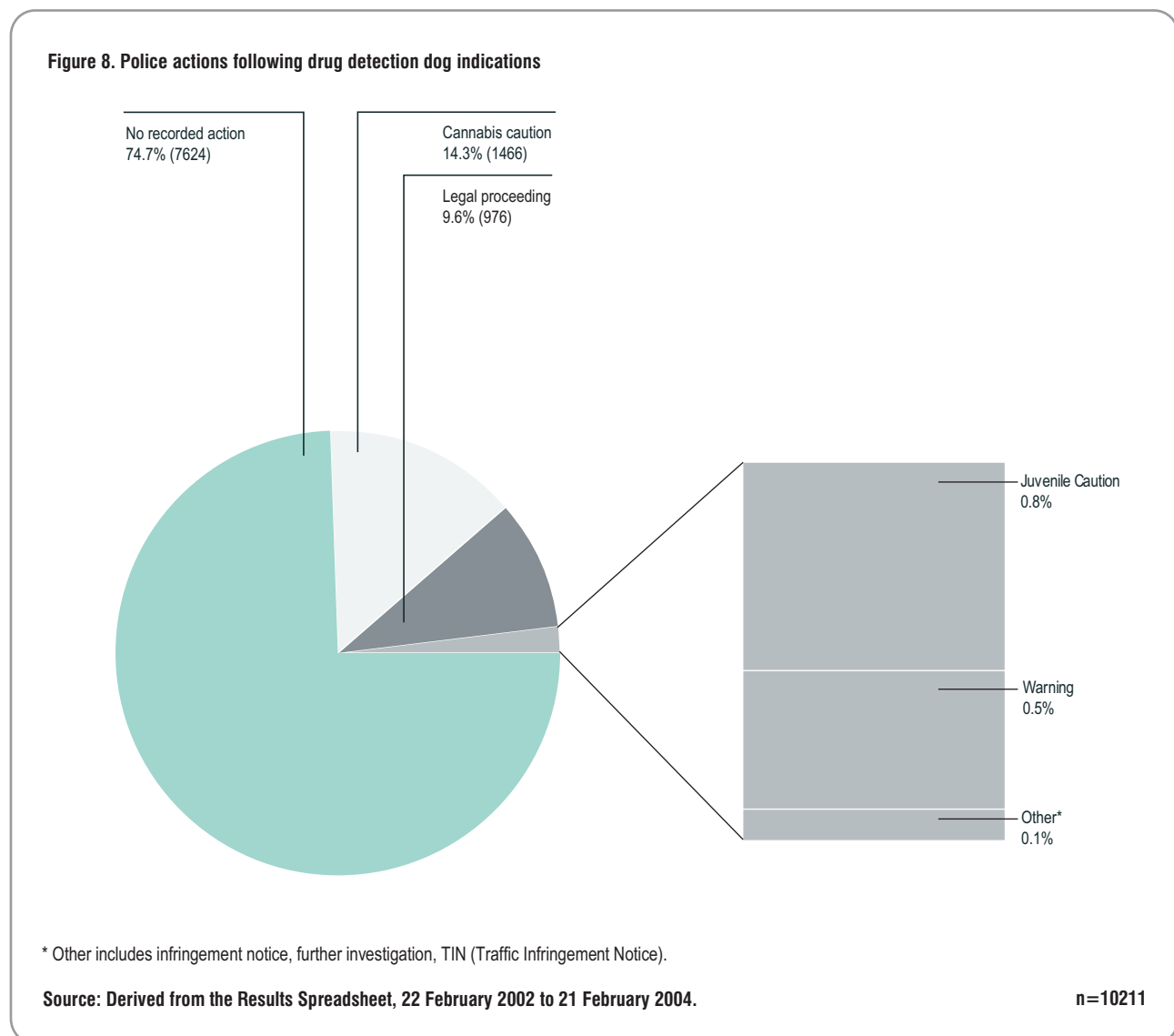
The offender was found not guilty of supply. He was convicted of three counts of possession.

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.<sup>142</sup>

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.<sup>143</sup>

## 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.



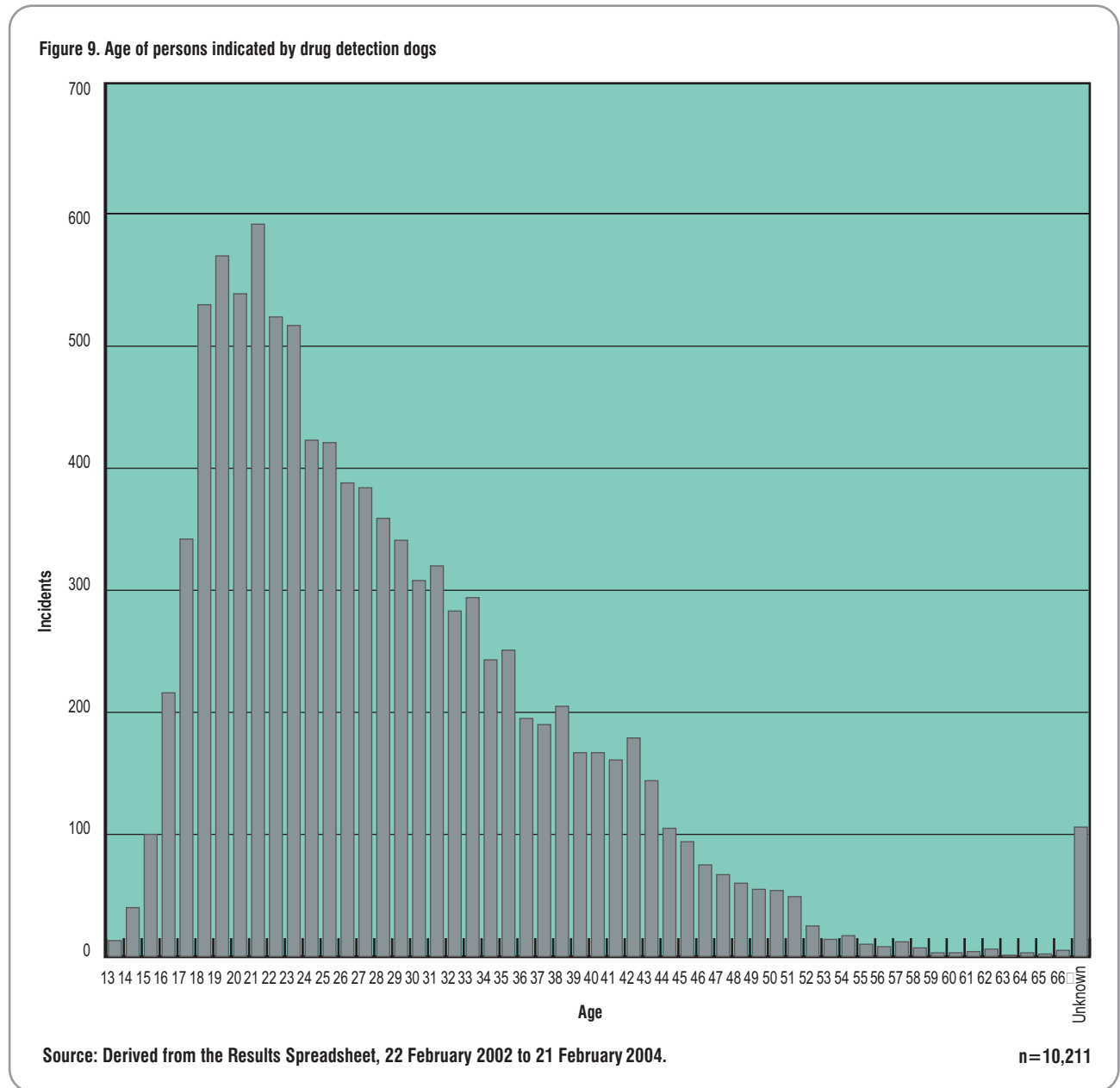
When police did take formal action (roughly a quarter of the time) this often resulted in the issue of a cannabis caution. Cannabis cautions accounted for 57% (1466 of 2587) of incidents in which police took formal action.

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.



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.<sup>144</sup> 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.<sup>145</sup>

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 <sup>st</sup> year of review	2 <sup>nd</sup> 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	
<b>18</b>	<b>18</b>	<b>8</b>	<b>7</b>	<b>51</b>

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 article<sup>146</sup> 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.<sup>147</sup>

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

- <sup>130</sup> 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.
- <sup>131</sup> 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.
- <sup>132</sup> 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.
- <sup>133</sup> For a more detailed discussion of the operation see: Chapter 7 'Operation Guardian – A case study in drug detection dog deployment'.
- <sup>134</sup> See Chapter 2 'Background' for maps showing the geographical areas covered by these regions.
- <sup>135</sup> Local area commands do not correspond exactly with suburbs of the same or similar name.
- <sup>136</sup> NSW Ombudsman, *Review of the Police Powers (Drug Detection Dogs) Act*, June 2004.
- <sup>137</sup> COPS Event 6.1; *Police v Jason Peters* (Morahan LCM, Unreported, Gosford Local Court, 5 May 2003).
- <sup>138</sup> COPS Event 6.2; *R v Kelly James Stratton* (Bellar DCJ, Unreported, Sentence judgment, Sydney District Court, 19 March 2004).
- <sup>139</sup> COPS Event 6.3; *DPP v [Offender 11]* (Cloran LCM, Unreported, Burwood Local Court, 21 July 2004).
- <sup>140</sup> COPS Event 6.4; *DPP v Dean Robert Rees* (Cloran LCM, Unreported, Burwood Local Court, 3 June 2004).
- <sup>141</sup> 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.
- <sup>142</sup> COPS Event 6.6; *Police v Shane Marcus King* (Ellis LCM, Unreported, Central Local Court, 21 April 2004).
- <sup>143</sup> COPS Event 6.7.
- <sup>144</sup> 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.
- <sup>145</sup> Admission types include: Drug contact admitted, Drug contact denied and No information about drug contact.
- <sup>146</sup> *Daily Telegraph*, 14 August 2001.
- <sup>147</sup> Offences mentioned included goods in custody, assault police, hinder police, resist arrest, offensive language and fail to quit licensed premises.

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# 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.*<sup>148</sup>

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.*<sup>149</sup>

The warrant was granted. A total of 323 police were involved in the operation over the two days.<sup>150</sup> 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.<sup>151</sup> 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),<sup>152</sup> 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.<sup>153</sup>

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

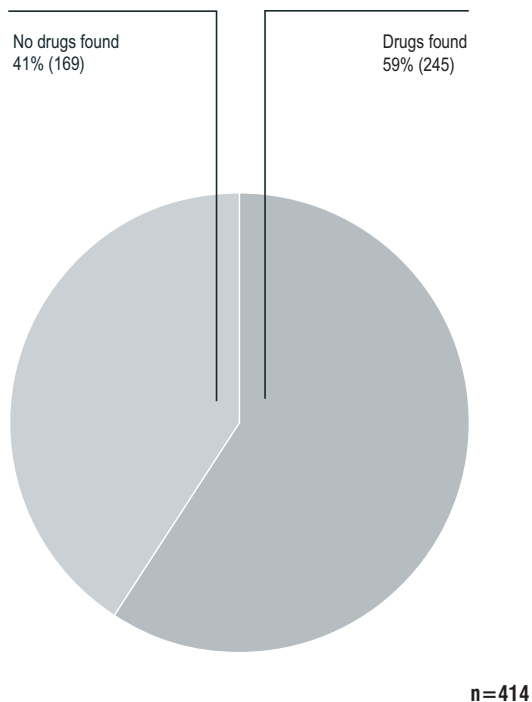
Of the 414 persons indicated by the drug detection dogs and searched during the operation:

- 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 cautions<sup>154</sup> – 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.<sup>155</sup> A review of these 18 drug supply charges showed that:

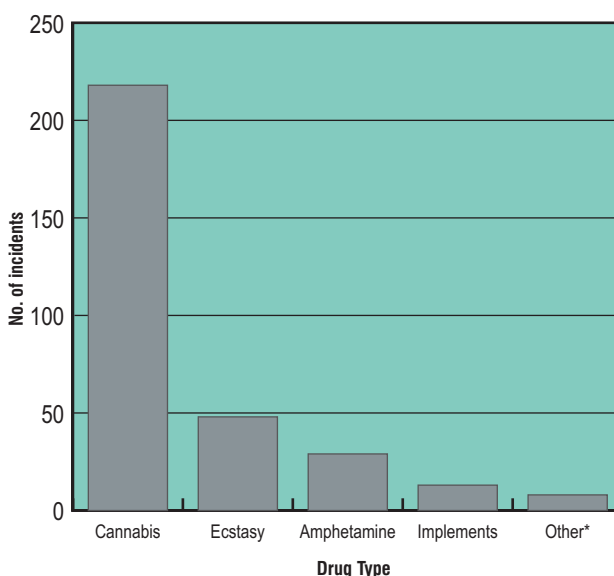
- 12 were withdrawn
- 1 person failed to appear in court (an arrest warrant has been issued), and
- 5 accused pleaded guilty.

**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,<sup>156</sup> one received a bond (with conviction recorded)<sup>157</sup> and one received a 16-month suspended sentence.<sup>158</sup>

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.*<sup>159</sup>

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.

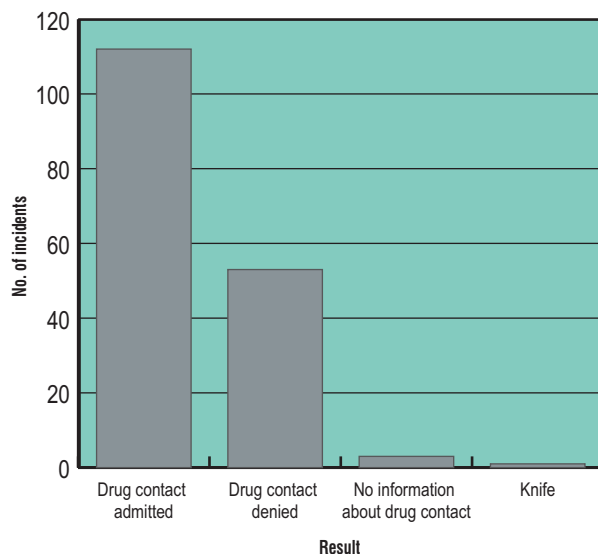
NSW Police considers Operation Guardian 2004 to have been a particularly successful operation. The drug detection dogs' rate of locating drugs was certainly higher than the overall rate during the review period. Although the issue of cannabis cautions was the primary form of action taken by police where 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.

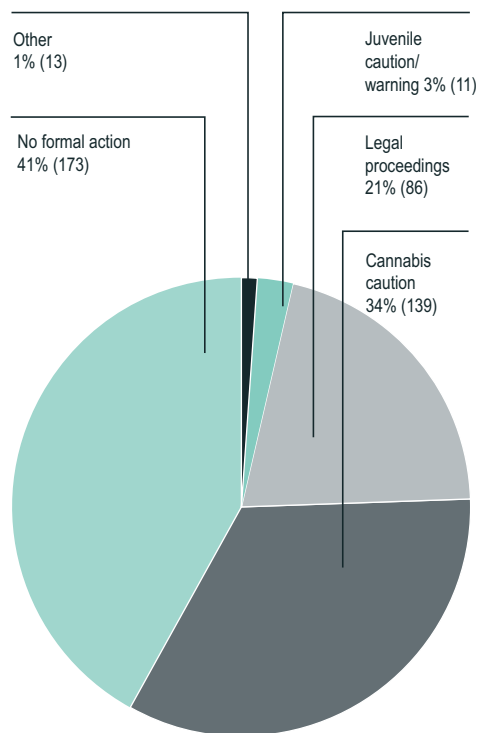
Figure 12. Indications where no drugs found, by information provided



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.

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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...<sup>160</sup>*

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:<sup>161</sup>

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:<sup>162</sup>

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.<sup>163</sup>*

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 ...*<sup>164</sup>

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'.<sup>165</sup>

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## Endnotes

<sup>148</sup> NSW Police, Operational Orders – Operation Guardian.

<sup>149</sup> Form 1, Application for Warrant, 22 January 2004.

<sup>150</sup> Post Operation Assessment, Operation Guardian, Flemington Local Area Command, 29 January 2004.

<sup>151</sup> Post Operation Assessment, Operation Guardian, Flemington Local Area Command, 29 January 2004.

<sup>152</sup> Correspondence from NSW Police, 1 April 2005.

<sup>153</sup> COPS Event 7.1.

<sup>154</sup> 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.

<sup>155</sup> This was also reported in the Form 3 execution report to the authorised officer.

<sup>156</sup> 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.

<sup>157</sup> 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).

<sup>158</sup> 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).

<sup>159</sup> Walton M, *Unsolicited*, Issue 1, (2004), p.20.

<sup>160</sup> [www.bluelight.nu](http://www.bluelight.nu) (Accessed 5 August 2004). Postings made on 14 & 15 February 2004 and 6 June 2004.

<sup>161</sup> [www.bluelight.nu](http://www.bluelight.nu) (Accessed 9 August 2004). Postings made on 1 & 6 June 2004.

<sup>162</sup> [www.bluelight.nu](http://www.bluelight.nu) (Accessed 9 August 2004). Postings made on 31 May 2004 and 1 June 2004.

<sup>163</sup> NSW Council for Civil Liberties submission, 19 August 2004.

<sup>164</sup> The Youth Justice Coalition submission, 20 August 2004.

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

