
Executive summary

Background to this report

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

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

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

During our review we conducted various research activities including:

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

Key provisions of the Drug Dogs Act

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

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

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

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

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

Use of drug detection dogs

How often and where were drug detection dogs deployed?

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

Indications

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

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

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

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

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

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

Rate of finding drugs

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

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

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

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

Types of drugs found

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

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

Quantities of drugs found

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

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

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

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

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

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

Accuracy of drug detection dogs

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

Accuracy rate

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

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

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

The formation of reasonable suspicion to lawfully search a person

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

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

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

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

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

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

Effectiveness of drug detection dogs

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

Do drug detection dogs effectively target drug supply?

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

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

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

Other measures of effectiveness

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

Cost effectiveness

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

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

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

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

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

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

Impact of drug detection dogs

Complaints

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

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

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

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

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

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

Recording of personal details and information about admitted drug contact

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

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

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

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

Creation of police intelligence reports

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

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

Fearful or anxious reactions to the drug detection dog

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

Intelligence information used to support drug detection dog operations

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

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

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

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

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

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

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

Harm minimisation

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

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

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

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

We have recommended that NSW Police:

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

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

Diversionsary schemes

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

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

Improvements for police

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

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

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

Conclusion

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

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

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

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

List of recommendations

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

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

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

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

Glossary and abbreviations

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

