

Legislative Council—No 105A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 17 June 2008

South Australia

Controlled Substances (Drug Detection Powers) Amendment Bill 2008

A BILL FOR

An Act to amend the *Controlled Substances Act 1984*; and to make a related amendment to the *Summary Offences Act 1953*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Controlled Substances Act 1984*

- 4 Amendment of section 4—Interpretation
- 5 Amendment of section 52—Power to search, seize etc
- 6 Insertion of sections 52A, 52B, 52C and 52D
 - 52A General drug detection powers
 - 52B Special powers relating to drug transit routes
 - 52C Report to Minister on issue of authorisations
 - 52D General provisions relating to exercise of powers
- 7 Redesignation of section 52A
- 8 Amendment of section 63—Regulations

Schedule 1—Related amendment to *Summary Offences Act 1953*

- 1 Insertion of section 74BAAB
 - 74BAAB Use of drug detection dogs
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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Controlled Substances (Drug Detection Powers) Amendment Act 2008*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 Part 2—Amendment of *Controlled Substances Act 1984*

4—Amendment of section 4—Interpretation

- (1) Section 4(1)—before the definition of *drug of dependence* insert:

drug detection dog means a dog that has completed training of a kind approved by the Commissioner of Police for the purpose of detecting the presence of a controlled drug, controlled precursor or controlled plant;

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- (2) Section 4(1)—after the definition of *drug of dependence* insert:

electronic drug detection system means—

(a) an electronic device of a kind approved by the Commissioner of Police; or

(b) a system, of a kind approved by the Commissioner of Police, that involves the use of an electronic device,

for the purpose of detecting the presence of a controlled drug, controlled precursor or controlled plant;

general drug detection means—

(a) walking or otherwise placing a drug detection dog in the vicinity of a person or property; or

(b) using an electronic drug detection system in relation to a person or property in a manner prescribed by regulation,

for the purpose of determining whether the dog or system (as the case may be) detects the presence of a controlled drug, controlled precursor or controlled plant (but does not include any other conduct by a person that would constitute a search);

- (3) Section 4(1)—after the definition of *sell* insert:

senior police officer means a member of the police force of or above the rank of Inspector;

5—Amendment of section 52—Power to search, seize etc

- (1) Section 52(6)—delete "Subject to subsection (7), an" and substitute:

An

- (2) Section 52(6)—delete "believes on reasonable grounds" and substitute:

reasonably suspects

- (3) Section 52(7) and (8)—delete subsections (7) and (8)

- (4) Section 52(9)—delete "suspects on reasonable grounds that a substance" and substitute:

reasonably suspects that any substance or equipment

- (5) Section 52(9)(c)—delete "has reasonable cause to suspect affords" and substitute:

reasonably suspects would afford

- (6) Section 52(10)—delete "pursuant to a general search warrant issued under the *Summary Offences Act 1953*" and substitute:

authorised under section 52A or 52B

- (7) Section 52—delete subsections (11) and (12) and substitute:

(11) A member of the police force may, in exercising powers pursuant to a warrant issued under subsection (4) or any other powers under this section, use a drug detection dog or an electronic drug detection system.

6—Insertion of sections 52A, 52B, 52C and 52D

After section 52 insert:

52A—General drug detection powers

- 5
- (1) A member of the police force may carry out general drug detection in relation to—
- (a) any property in an area to which this section applies; and
 - (b) any person who is in, or is apparently attempting to enter or to leave, an area to which this section applies; and
 - (c) any property in the possession of such a person.
- 10
- (2) This section applies to the following areas:
- (a) licensed premises or a carparking area specifically provided for the use of patrons of any licensed premises;
 - (b) a public venue or a carparking area specifically provided for the use of patrons of any public venue;
 - 15 (c) a public passenger carrier or any place at which public passenger carriers may take up, or set down, passengers;
 - (d) a public place in relation to which the exercise of powers under this section is authorised in accordance with subsection (3).
- 20
- (3) A senior police officer may authorise the exercise of powers under this section in relation to a public place.
- (4) An authorisation granted by a senior police officer under subsection (3)—
- 25 (a) must be granted in accordance with any guidelines issued by the Commissioner in relation to such authorisations; and
 - (b) must define the public place to which the authorisation relates; and
 - (c) may be subject to conditions specified by the officer granting the authorisation; and
 - 30 (d) operates for an initial period (not exceeding 14 days) specified by the officer granting the authorisation; and
 - (e) may be renewed from time to time by a senior police officer for a further period (not exceeding 14 days).
- 35
- (5) An authorisation granted under subsection (3) may be varied or revoked by a senior police officer at any time.
- (6) A member of the police force exercising powers under this section may—
- (a) enter and remain in any premises or place necessary for the purpose of exercising those powers; and

(b) give such directions as are reasonably necessary for, or incidental to, the effective exercise of those powers.

(7) A member of the police force may only detain a person, by directions given under this section, for so long as is reasonably necessary to carry out general drug detection in relation to the person and any property in the possession of the person.

(8) In this section—

licensed premises means—

- (a) licensed premises within the meaning of the *Liquor Licensing Act 1997*, other than premises in respect of which only a restaurant licence or residential licence is in force; and
- (b) the premises defined in the casino licence, within the meaning of the *Casino Act 1997*, as the premises to which the licence relates;

public passenger carrier means a bus, tram, train, vessel or aircraft used for the purpose of carrying passengers for hire or reward;

public place includes—

- (a) a place to which free access is permitted to the public, with the express or tacit consent of the owner or occupier of that place; and
- (b) a place to which the public are admitted on payment of money, the test of admittance being the payment of money only; and
- (c) a road, street, footway, court, alley or thoroughfare which the public are allowed to use, notwithstanding that that road, street, footway, court, alley or thoroughfare is on private property;

public venue means a place where members of the public are gathered for an entertainment or an event or activity of any kind, whether admission is open, procured by the payment of money or restricted to members of a club or a class of persons with some other qualification or characteristic, but does not include a church or place of public worship.

52B—Special powers relating to drug transit routes

- (1) A senior police officer may, if he or she reasonably suspects that an area is being, or is likely to be, used for the transport of controlled drugs, controlled precursors or controlled plants in contravention of this Act, authorise the exercise of powers under this section in relation to the area.

- (2) An authorisation granted by a senior police officer under subsection (1)—
- (a) must be granted in accordance with any guidelines issued by the Commissioner in relation to such authorisations; and
 - (b) must define the area to which the authorisation relates; and
 - (c) may be subject to conditions specified by the officer granting the authorisation; and
 - (d) operates for an initial period (not exceeding 14 days) specified by the officer granting the authorisation; and
 - (e) may be renewed from time to time by a senior police officer for a further period (not exceeding 14 days).
- (3) An authorisation granted under subsection (1) may be varied or revoked by a senior police officer at any time.
- (4) An area may only be subject to an authorisation under this section if—
- (a) the whole of the area is situated more than 30 km from the General Post Office at Adelaide; and
 - (b) the total size of the area is not more than 5 square kilometres.
- (5) Where the exercise of powers under this section in relation to an area is authorised, a member of the police force may—
- (a) require the driver of a vehicle within the area to stop the vehicle (whether at a drug detection point established in accordance with subsection (7) or at any other location); and
 - (b) detain the vehicle and carry out general drug detection in relation to the vehicle and any persons or property in or on the vehicle; and
 - (c) allow a drug detection dog to enter any part of the vehicle not designed for the purpose of carrying passengers while the vehicle is moving; and
 - (d) direct a person to open any part of the vehicle and give such other directions as are reasonably necessary for, or incidental to, the effective exercise of powers under this section.
- (6) A member of the police force may only detain a person who is in a vehicle, by directions given under this section, for so long as is reasonably necessary to carry out general drug detection in relation to the vehicle and any persons or property in the vehicle.
- (7) A drug detection point may be established by members of the police force at any time on or in the vicinity of any road within an area in relation to which the exercise of powers under this section is authorised for the purpose of exercising those powers in relation to persons driving motor vehicles on the road.

(8) A drug detection point must be established in such a way, and consist of such facilities and warning and other devices, as the Commissioner of Police considers necessary in order to enable vehicles to be stopped in a safe and orderly manner.

5 (9) The Commissioner of Police must—

(a) establish procedures to be followed by members of the police force in the exercise of powers under this section, being procedures designed to prevent as far as reasonably practicable any undue delay or inconvenience to persons being subjected to the powers; and

10 (b) establish procedures to ensure that the exercise of powers under this section is not authorised in relation to more than 3 areas at any one time.

52C—Report to Minister on issue of authorisations

15 (1) The Commissioner of Police must, on or before 30 September in each year (other than the calendar year in which this section comes into operation), provide a report to the Attorney-General specifying the following information in relation to the financial year ending on the preceding 30 June:

20 (a) the number of authorisations granted by senior police officers under sections 52A and 52B during that financial year;

(b) the public places or areas in relation to which those authorisations were granted;

25 (c) the periods during which the authorisations applied;

(d) the number of occasions on which a drug detection dog or electronic drug detection system indicated detection of the presence of a controlled drug, controlled precursor or controlled plant in the course of the exercise of powers under sections 52A and 52B.

30 (2) The Attorney-General must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

52D—General provisions relating to exercise of powers

35 (1) Nothing in this Part derogates from the power of a member of the police force to do anything pursuant to a general search warrant issued under the *Summary Offences Act 1953*.

40 (2) An authorised officer may, in exercising powers under this Part, be assisted by such persons as the authorised officer considers necessary or desirable in the circumstances.

- (3) A person must not—
- (a) hinder or obstruct an authorised officer, or a person accompanying an authorised officer, in the exercise of the powers conferred by this Part; or
 - (b) refuse or fail to comply with a requirement made of the person, or a direction given to the person, pursuant to section 52, 52A or 52B.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (4) In any proceedings, an apparently genuine document purporting to be a certificate signed by the Commissioner of Police (or a delegate of the Commissioner of Police), and certifying that—
- (a) a particular public place was subject to an authorisation properly granted by a senior police officer in accordance with section 52A(3) during a period specified in the certificate; or
 - (b) a particular area was subject to an authorisation properly granted by a senior police officer in accordance with section 52B(1) during a period specified in the certificate; or
 - (c) a dog used during a specified period to carry out general drug detection within a specified area, or at a specified place, was a drug detection dog; or
 - (d) a device or system used during a specified period to carry out general drug detection within a specified area, or at a specified place, was an electronic drug detection system,
- constitutes proof, in the absence of proof to the contrary, of the matters so certified.

- (5) For the avoidance of doubt, an indication—
- (a) by a drug detection dog that the dog has detected the presence of a controlled drug, controlled precursor or controlled plant; or
 - (b) by an electronic drug detection system that the system has detected the presence of a controlled drug, controlled precursor or controlled plant,
- constitutes reasonable grounds to suspect that a controlled drug, controlled precursor or controlled plant is present.

7—Redesignation of section 52A

Section 52A—re designate the section as section 52E

8—Amendment of section 63—Regulations

Section 63(6)(a)—delete paragraph (a) and substitute:

- (a) the classes of persons or things; or

Schedule 1—Related amendment to *Summary Offences Act 1953*

1—Insertion of section 74BAAB

After section 74BAA insert:

74BAAB—Use of drug detection dogs

5 (1) A police officer may, in exercising powers under this Part, use a drug detection dog or an electronic drug detection system.

(2) In this section—

drug detection dog has the same meaning as in the *Controlled Substances Act 1984*;

10 *electronic drug detection system* has the same meaning as in the *Controlled Substances Act 1984*.