

Submission of the

New South Wales Council for Civil Liberties

to the

NSW Ombudsman's Discussion Paper

**Review of the
*Police Powers (Drug Detection Dogs) Act***

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Appendices

The following appendices are available in a separate document provided to the Ombudsman:

1. text of selected complaints made to CCL
2. warrants issued at Newtown Local Court
3. warrants issued at Downing Centre (Level 4) Local Court
4. warrants issued at Parramatta Local Court

MEDIA RELEASE

NSW OMBUDSMAN FINDS THAT SNIFFER DOGS GET IT WRONG IN THREE OUT OF FIVE SEARCHES

Friday, 2 July 2004

NSWCCL media release: 3/2004

The NSW Council for Civil Liberties welcomes the release by the NSW Ombudsman of a Discussion Paper into the use of Police Sniffer Dogs. The Discussion Paper clearly demonstrates, at this early stage, that the dogs humiliate many innocent people and just don't deliver the detection of drugs that they are supposed to.

NSWCCL President, Mr Cameron Murphy, said: --

"The discussion paper shows that the dogs are getting it wrong in three out of five searches."

"For every five people who are sniffed, and subjected to a humiliating public search by police, only two are found to have any trace of drugs on them."

"If speed cameras were getting it wrong in three out of five cases there would be public outrage and we would stop using them. Given these poor results, the police should immediately stop using sniffer dogs."

"The few people who are found to have drugs in their possession are overwhelmingly drug users, not dealers, and are cautioned by police under the cannabis cautioning program."

"The police are constantly complaining about a shortage of resources. When they do, the public should be asking why they are wasting millions of dollars on useless sniffer dogs, instead of using the money to investigate serious crime."

"The police are wasting valuable resources on humiliating people through sniffer dog searches while murder and rape cases remain unsolved. "

"These dogs are nothing more than a very expensive public relations stunt. One that is at the expense of fighting serious crime and targeting drug dealers."

"The police must immediately phase these dogs out of operation and direct the wasted resources to programs that target drug dealers and serious crime."

Cameron Murphy, NSWCCL President

1. Executive Summary

The New South Wales Council for Civil Liberties ('CCL') has been a strong and consistent critic of the use by police of drug detection dogs in NSW.

Sniffer dogs are intended to help police catch drug suppliers. They are a spectacular failure. Only about 1-2.5% of all people identified by sniffer dogs are drug dealers. In fact, only about 20-30% of all people identified by sniffer dogs are in possession of drugs at all. Of those, the vast majority are in possession of small amounts of cannabis.

Literally thousands of people in NSW are being harassed, treated like criminals and subjected to humiliating searches by police because they have been incorrectly identified by a drug detection dog. This is an outrageous violation of civil liberties that cannot be justified by the paltry results from sniffer dog searches.

Drug detection dogs are being used by police as an excuse to trawl the community. The dogs are being used not so much for drug detection but rather to arbitrarily stop, search and detain citizens police would not otherwise be able to. Under the guise of sniffer dog operations, police are asking thousands of people for their names and addresses and storing this information on police databases – even when the citizen has committed no offence. This is a misuse of state power and must stop immediately.

CCL has reviewed a number of the drug detection dog warrants issued to police in Sydney in 2004. Many disturbing features emerge from these warrants. For example, police are applying for and being granted warrants to use sniffer dogs over vast areas of Sydney. Warrants are being used to trawl whole streets, even whole suburbs. Marrickville police, for example, obtain warrants allowing them to sniff and potentially search everyone in the Marrickville, Dulwich Hill, Enmore, Petersham and Stanmore.

Another disturbing phenomenon is the targeting of methadone clinics. This is contrary to the spirit of the government's drug harm-minimisation policies and could discourage people from their methadone treatment. The use of sniffer dogs presents further serious health issues for the community. People are swallowing all their drugs when they see the dogs approaching, or abandoning their drugs where children or others might find them.

Police and politicians defend the use of sniffer dogs by claiming that people feel safer on the streets and that the dogs reduce crime. Both of these claims are overstated and misleading. Complaints to CCL by members of the general public suggest that the presence of sniffer dogs and large numbers of police on the streets makes people feel *less* safe. As for sniffer dogs reducing crime: such an assertion draws a false connection between the reporting of crime and the number of crimes actually committed.

Ultimately, sniffer dogs are an absolute failure. Their inability to identify drug suppliers demonstrates their minimal benefit and the money spent on sniffer dogs would be better spent on other methods of identifying and catching drug dealers.

The time has come to accept that drug detection dogs are a spectacular failure and should be removed from the streets of New South Wales.

The police must immediately phase these dogs out of operation and direct the wasted resources to programs that target drug dealers and serious crime.

2. drug detection dogs: an absolute failure

2.1 sniffer dogs are neither efficient nor effective

The Discussion Paper notes that drug detection dogs have a 27% ‘success rate’ in identifying people in possession of prohibited drugs.¹ In other words, 73% of people identified by the dogs are not in possession of prohibited drugs at all.

CCL’s research accords with that massive failure rate. CCL has conducted a survey of drug detection dog warrants issued in selected locations throughout Sydney.² Though the execution reports attached to those warrants do not always include statistics detailing the number of searches and positive identifications, of those warrants that do CCL found similar rates of false identifications.

In Newtown the failure rate of drug detection dogs is 80%. In Parramatta the failure rate is 68%. In the Kings Cross area the failure rate is 63%. This is an *average* failure rate. Sometimes the dogs are much worse. For example, in one operation in Kings Cross 15 people were identified by Rocky the sniffer dog,³ but only one person had drugs in their possession.⁴ That is a failure rate of 93%. On that evening, 14 citizens were *needlessly* stopped, searched and detained.

This inability of the dogs to accurately detect people in possession of prohibited drugs demolishes the claims of sniffer dog supporters that the dogs are ‘efficient and effective’.⁵

Many applications for warrants under the Act claim that ‘the use of drug detection dogs is an unobtrusive, non-invasive and a quick method of indicating if persons walking in a public street have possession of illicit drugs’.⁶ Plainly, the statistics show that the dogs cannot do this with any demonstrable accuracy. It is disturbing that warrants are issued by authorised justices on the basis of these unfounded claims.

¹ NSW Ombudsman, *Review of the Police Powers (Drug Detection Dogs) Act*, Discussion Paper (June 2004) 15.

² see “drug detection dog warrants” on page 23.

³ this is the same ‘Rocky’ who was at the centre of court battles in 2002: *DPP v Darby* [2002] NSWSC 1157.

⁴ warrant issued at Downing Centre Local Court on 13/5/2003, requested by and granted to Kings Cross Local Area Command.

⁵ New South Wales, *Parliamentary Debates*, Legislative Council, 13 December 2001, 20202 (Helen Sham-Ho).

⁶ Downing Centre Local Court, warrant 30/2004 (9/1/2004), requested by Kings Cross LAC. Similar phrases are used by City Central Transit Action Group (e.g. Downing Centre Local Court, warrant 164/2004).

2.2 dog handlers' blind faith in their dogs

The appalling inaccuracy of these dogs is compounded by the unwillingness of their handlers to admit this inaccuracy. The handlers offer many excuses for their dogs, for example that people identified had recently used drugs or were in the presence of those who did. Such excuses do not alter the fact that these dogs cannot accurately detect people in *actual possession* of prohibited drugs.

This blind faith is documented in the Discussion Paper. For example, one dog handler claims that his dog 'never lies'.⁷ This leads to the disturbing attitude of dog handlers and police that anyone identified by these dogs is in some way connected to prohibited drugs – and if the citizen denies it, then law enforcement officials assume they are lying.⁸

One complainant to CCL related this experience when he was stopped at Ashfield train station in 2003:⁹

I was stopped by a female police officer, told that the dog had indicated that I was in possession of drugs and that I had the right to remain silent etc etc

I was taken to a small room, forced to produce id, asked stupid questions like "like a smoke do ya?" "got any pot on you?"

I replied "no" and "what is pot? do you mean drugs?"

I was forced to stand facing a wall with my hands above my head, feet apart while a male officer ran his hands all over my body. I was forced to remove my shoes and socks, unroll the cuff of my pants and turn my pockets inside out.

I was searched in front of other people that they had detained and my bag was emptied out onto a table in full view of the other people being searched.

The male police officer that had searched me then asked me to explain why the dog had got it wrong.

It is outrageous that the word of a dog is considered more reliable than that of a citizen who is not in possession of prohibited drugs.

Of course, the blind faith of dog handlers is even more misplaced when it is recalled that the legislative purpose of the dogs is to detect and prosecute drug *suppliers*. The dogs have an atrocious record on this score – at best, somewhere in the vicinity of a 2.5% success rate.¹⁰

⁷ NSW Ombudsman, n 1, 25.

⁸ NSW Ombudsman, n 1, 24.

⁹ CCL complaint #5 (February 2003).

¹⁰ see "sniffer dogs cannot successfully catch suppliers" on page 6.

2.3 sniffer dogs cannot successfully catch suppliers

It appears that drug detection dogs successfully identify drug suppliers less than 2.5% of the time. In other words, the dogs are basically ineffectual in carrying out their stated objective of helping police identify drug dealers.

The Discussion Paper correctly identifies the yardstick against which to measure the police use of drug detection dogs.¹¹ During debate on the *Police Powers (Drug Detection Dogs) Act*, the NSW Police Minister said in Parliament that:

The Bill is aimed primarily at detecting and prosecuting persons committing offences relating to the supply of prohibited drugs or plants.¹²

Measured against that yardstick, drug detection dogs are a miserable failure in identifying suppliers of prohibited drugs.

In NSW a person found to be in possession of 300 grams (or more) of cannabis leaf is *deemed* to be a supplier.¹³ According to the Discussion Paper, the largest amount of cannabis leaf found by a dog in the first year of operation of the Act is 240 grams – well below supply levels.

In fact, the Discussion Paper mentions only 41 charges constituting deemed supply: 9 of amphetamine; and 32 of ecstasy.¹⁴ This amounts to the dogs detecting *supply* of prohibited drugs in 1% of identifications.¹⁵ This is a miserable failure rate.

CCL inspected the ten drug detection dog warrants issued at Newtown Local Court to Newtown and Marrickville police between January and May 2004. Not one charge of supply of prohibited drugs is recorded in the warrant execution reports. Applications for warrants issued at Parramatta Local Court to Castle Hill police in March and April 2004 make reference to one *previous* charge of deemed supply, but the substance is not mentioned.¹⁶ Applications for warrants issued at the Downing Centre Local Court to Manly police mention supply charges, but offer no details.¹⁷

Only warrants issued to Kings Cross police detail supply charges with any 'regularity'. Even then there were only 16 charges of supply for the 14 months from April 2003 to May 2004. To put this in perspective, this is only 16 charges from 636 identifications by dogs over that period.¹⁸ In the Kings Cross area at least, approximately 2.5% of

¹¹ NSW Ombudsman, n 1, 54.

¹² New South Wales, *Parliamentary Debates*, Legislative Council, 6 December 2001, 19745 (Michael Costa, Minister for Police), 2nd reading speech.

¹³ *Drug Misuse and Trafficking Act 1985* (NSW) s 29 & Sch 1.

¹⁴ deemed supply of amphetamine and cocaine is 3g and of ecstasy is 0.75: *Drug Misuse and Trafficking Act 1985* (NSW) s 29 & Sch 1. The largest amount of cocaine found, according to the Discussion Paper was 2.6g, which is also below supply levels. See Discussion Paper, n 1, 18-19, 57.

¹⁵ calculation arrived at by dividing the 41 deemed supply counts by the total number of identifications (4078) over the same period. See Discussion Paper, n 1, 15, 57.

¹⁶ see Parramatta Local Court, warrant 70/2004 (18/3/2004) requested by and granted to Castle Hill Local Area Command.

¹⁷ see Downing Centre Local Court, warrant 292/2004 (4/3/2004) requested by and granted to Manly Local Area Command.

¹⁸ these 16 charges are probably for fewer than 16 individuals. Unfortunately the statistics do not detail how many *people* were charged with supply, only the number of *charges* laid. It is likely that some people were charged with multiple counts of supply.

people identified by drug detection dogs are actually in possession of enough of a prohibited substance to be deemed suppliers.

Sniffer dogs are successful at detecting suppliers of prohibited drugs between 1% to 2.5% of the time. Given that the statutory purpose of these dogs is to identify suppliers, the only rational conclusion is that the drug detection dogs program is a colossal failure.

The general public are under no illusion that the dogs can catch drug dealers. As one complainant commented to CCL.¹⁹

I resent the fact that the police hide behind the argument that they are trying to catch drug dealers. This is clearly not true. We all know that a drug dealer is unlikely to walk in public with drugs on him/her. It is only going to catch a few drug users who are not hurting anyone. What problem is this going to solve?

Ultimately the dogs are being used in all the wrong places. Dealers will not be found on CityRail trains or walking down Oxford, Victoria or King Streets. As the statistics show, in the vast majority of cases only users are being identified by the dogs in these areas.

Catching drug suppliers requires different policing and investigative techniques. For example, when Manly police applied for a drug detection dog warrant in March 2004 they detailed extensive undercover surveillance of drug dealers.²⁰ Similarly, Surry Hills police have undertaken controlled operations to identify heroin suppliers in the area.²¹ Old fashioned on-the-ground undercover policing successfully identified the dealers of prohibited drugs in these areas. True to form, when the drug detection dog warrant was executed by Surry Hills police, the sniffer dogs failed to identify any drug dealers.²²

Given their inability to identify drug suppliers, the drug detection dogs are a complete waste of money. It would be better to spend those scarce resources on other more effective policing methods for identifying and pursuing suppliers, like traditional undercover controlled surveillance operations.

¹⁹ CCL complaint #4 (14 May 2004).

²⁰ Downing Centre Local Court, warrant 292/2004 (4/3/2004) requested by and granted to Manly Local Area Command.

²¹ Parramatta Local Court, warrant 294/2004 (17/4/2004) requested by and granted to Surry Hills Local Area Command.

²² Parramatta Local Court, warrant 294/2004 (17/4/2004), results: 25 indications, 8 of which were in possession of prohibited drugs. Unfortunately, as is all too common, the Manly warrant did not have an execution report attached to it, so it is not possible to determine whether any suppliers were caught during the execution of that warrant.

2.4 sniffer dogs are policing small amounts of cannabis

Sniffer dogs have an extremely poor track record when it come to detecting the supply of major harmful drugs like heroin and cocaine. The statistics show that the dogs cannot accurately detect people in possession of drugs, but even when the dogs do successfully detect prohibited drugs on an individual they are really only policing the possession of small amounts of cannabis.

Cannabis is a prohibited drug.²³ However, Parliament recognises that the impact on the community of that drug is less than that of other prohibited substances. This is evidenced in the introduction of the cannabis cautioning system: a recommendation of the 1999 Drug Summit.

As the Discussion Paper shows, the vast majority of people found to be in possession of drugs are in possession of small amounts of cannabis.²⁴

The warrant execution reports reviewed by CCL at Local Courts throughout Sydney confirm this finding. For example, in warrants issued to Newtown police, it is clear that cannabis is the prohibited drug most commonly detected by the sniffer dogs in public places.²⁵ Only small amounts of the drug are detected.²⁶ Indeed, the small amounts detected are most likely to be for personal use only.

Given the small risk that cannabis presents to the community²⁷ and the small amounts detected by the dogs, it is surprising that so much effort and resources are spent on detecting this drug in comparison to more harmful substances.

²³ *Drug Misuse and Trafficking Act 1985* (NSW).

²⁴ NSW Ombudsman, n 1, 18.

²⁵ Newtown Local Court, warrants 34/2004 (4 of 4 were cannabis); 44/2004 (5 of 5 were cannabis); 66/2004 (10 of 14 were cannabis – substance of other 4 detections not recorded); and 71/2004 (1 of 3 was cannabis – substance of other 2 detections not recorded).

²⁶ the largest recorded individual amount was 3g: Newtown Local Court, warrant 44/2004 (18/3/2004). A total of 20g of cannabis from 4 people was detected in February 2004: Newtown Local Court, warrant 34/2004 (24/2/2004), but this (in total) is still a 'small amount' of cannabis – any amount of cannabis leaf less than 30.0g is a 'small amount': *Drug Misuse and Trafficking Act 1985* (NSW) Sch 1.

²⁷ see David Brown, David Farrier, Sandra Egger & Luke McNamara, *Criminal Laws: Materials and Commentary on Criminal Law and Process in New South Wales* (2001, 3rd edition) 1092-1095.

2.5 sniffer dogs make people feel less not more safe

“...under no circumstances will the state government be taking drug sniffer dogs off the streets of Sydney. ...They prevent crime and they make the community feel safer.”

*NSW Police Minister John Watkins*²⁸

It is commonly claimed by supporters of sniffer dogs that the presence of the dogs in public makes people feel safer. Complaints to CCL suggest exactly the opposite: that Sydneysiders feel *less* safe on the streets because of a fear of being intimidated and harassed by police and dogs for no reason at all.

One complaint to CCL involved a disturbing incident in which a drug detection dog jumped on to a pregnant woman who was sitting down in an Oxford Street nightclub enjoying her husband's birthday party. The dog did not identify the mother-to-be as being in possession of prohibited drugs.²⁹

I cannot believe the police are allowed to intimidate people like this. I feel like I cannot go out at night now for the duration of my pregnancy as I am too scared to have something like this happen again. Why should I feel like this? I did nothing wrong! I am entitled to feel safe in my own city when I am out at night - aren't I? Should pregnant women feel unsafe in Sydney at night? Should I be advising pregnant friends to stay home for 9 months in case this kind of incident happens to them? I think what happened was a total violation of my civil liberties. The major memory of my husband's birthday for our guests will be being intimidated by the NSW police force.

People identified by sniffer dogs are routinely searched. Complaints to CCL by people who are *not* in possession of prohibited drugs about these searches show that they feel harassed by such policing. For some people it makes them feel ashamed to appear in public again:

I have never felt so ashamed, embarrassed and harassed in my life.³⁰

I found the entire incident embarrassing, upsetting and stressful. I buy my juice at this shop several times a week, now I will be very embarrassed showing my face there again.³¹

Even people who are not identified by the dogs are outraged by the excessiveness of high visibility policing with the drug detection dogs:

I was not searched myself, merely intimidated by the overbearing presence of the police, but witnessed several people being searched on the street.³²

²⁸ AAP, 'Sydney sniffer dog ban call rejected', *Sydney Morning Herald* (Sydney), 9 July 2004, website edition <<http://www.smh.com.au/articles/2004/07/09/1089000328462.html>>.

²⁹ CCL complaint #1 (15 May 2004).

³⁰ CCL complaint #3 (15 May 2004) on Oxford Street.

³¹ CCL complaint #13 (14 May 2004) identified by dog in a fruit juice shop on King Street, Newtown.

³² CCL complaint #2 (14 May 2004) along King Street.

It is not very nice to have my privacy invaded and be treated as a criminal in my home suburb.³³

The officers were targeting middle-aged and elderly people going about their business, as young people were back at school. I am in my mid 40s and find it ridiculous that this is occurring in this free society of ours.³⁴

When I went outside the bar it was terrifying. The police had people spread-eagled against the wall frisking them, with their jackets on the footpath, with dogs jumping on them while people looked on in fear and horror.³⁵

The Discussion Paper canvasses issues of the effectiveness of high visibility policing.³⁶ Complaints to CCL suggest that the drug detection dogs are engendering a climate of fear and resentment on the streets, not a climate of community safety.

CCL's assessment of the situation is that this high visibility policing is destroying community confidence in the police, especially among young people who are more likely to be identified and searched than other citizens.³⁷ The following comments from one complainant, who was searched and found to have no drugs on him, is typical of the lingering resentment felt by law-abiding citizens:

I feel really upset by the whole ordeal as I was treated as if I was a criminal. I am an honest, law abiding citizen of NSW. I have a perfect driving record and have never been in trouble with the police before. ...Once they had finished they just walked off without saying anything. No apology or thanks for my time. All my belongings were left on the pool table for everyone to see. I really feel 6 police could be used more effectively catching people breaking the law rather than harassing people like myself, minding their own business. As far as I'm concerned, the police will get no help from me in the future.³⁸

High visibility policing might make some people feel safer, but it is also undermining the ability of police to rely on the public to report crime and to cooperate with them. This in turn undermines the effectiveness of police in preventing and investigating crime.

The resentment towards, and distrust of, police is also reflected in follow-up comments from complainants to CCL. CCL encourages people who make complaints about sniffer dogs to contact the Ombudsman. Unfortunately, few complainants do. They are incredulous that the police themselves will investigate any complaints they make against police to the Ombudsman. This is why few complainants follow up with complaints to the Ombudsman.

CCL recommends that complaints about drug detection dog operations should be investigated by an independent body, not by police. This will encourage more people to complain and restore the public's faith in the complaints process.

³³ CCL complaint #4 (14 May 2004) on King Street.

³⁴ CCL complaint #11 (11 May 2004) operation conducted by police in Cronulla Plaza shopping centre.

³⁵ CCL complaint #1 (15 May 2004).

³⁶ NSW Ombudsman, n 1, 57-59.

³⁷ NSW Ombudsman, n 1, 21 (median age of people searched is 26 years).

³⁸ CCL complaint #7 (1 July 2004) in a Bondi Junction pub.

2.6 sniffer dogs do not reduce crime

“It is clear that the dogs are actually deterring crime. Each time we use them we are seeing record low crime in the proceeding week.”

*Inspector Ian Lynch, Newtown Police crime manager*³⁹

It is often claimed that drug detection dog operations and high visibility policing actually reduce the incidence of crime.⁴⁰ Such claims falsely assume a direct correlation between the reporting of crime and the incidence of crime.

Out of sheer desperation, politicians and police are claiming that after drug detection dog operations there is a corresponding reduction in crime. This is based on *reports* of crime.

It is concerning that police would claim that there is a direct correlation between the reporting of crime and the incidence of crime. For example, it is ludicrous to suggest that the number of reported rapes is equivalent to the actual incidence of sexual assault in the community.

Just because crime reports go down, it does not mean that crime is down. Given the fear engendered in the community from heavy-handed high visibility policing, it is just as likely that people stop reporting crime after drug detection dog operations because they no longer trust the police or are genuinely in fear of the police.

It is also often suggested that drug detection dog operations reduce the *fear* of crime.⁴¹ This is a rather desperate argument put forward by politicians who are more concerned to see that people *feel* safer, rather than actually being safer. It is sobering to recall that the majority of people identified by the dogs are not in possession of prohibited drugs, and that the vast majority of those who are found to be in possession are only carrying small amounts of cannabis. How does removing these small amounts of cannabis from the streets reduce crime or the *fear* of crime? Police are *not* catching drug suppliers, they are only catching users of small amounts of cannabis.

The inability of drug detection dogs to identify drug suppliers or to accurately identify individuals in possession of prohibited drugs undermines any claim that these dogs can reduce *actual* crime. The community should not feel safer because drug detection dogs are on the street.

³⁹ Alison Riedy, ‘Dogs off the job’, *Wentworth Courier Central* (Alexandria, Sydney), 10 June 2004, 1.

⁴⁰ see also the comments of the NSW Police Minister quoted on page 8 above.

⁴¹ NSW Ombudsman, n 1, 57.

3. sniffer dogs cannot provide reasonable suspicion

“The power of the drug detection dogs to identify prohibited drugs by smell is a tool used by the police officer to engage their reasonable suspicion.”

*Bob Debus, NSW Attorney-General*⁴²

Given the dismal accuracy of drug detection dogs, CCL submits that it is not possible to claim that an identification by a sniffer dog is sufficient *of itself* to constitute reasonable suspicion that a person is *in fact* carrying prohibited drugs. It is certainly not possible to say that such a sniffer dog identification is sufficient *of itself* to formulate a reasonable suspicion that an individual is involved in the supply of prohibited drugs.

The question of reasonable suspicion is extremely important in policing. In the case of prohibited drugs, a police officer may stop, search and detain any person he or she reasonably suspects of having in their possession or control any prohibited drug or plant.⁴³

In *DPP v Darby*, O’Keefe J commented on this statutory police power:⁴⁴

...to satisfy statutory provisions requiring reasonable suspicion or like state of mind in such a context, what is required is less than is required to establish a fact. As the High Court said in *George v Rockett* [(1990) 170 CLR 105, 115]:

“Suspicion ... ‘in its ordinary meaning is a state of conjecture or surmise where proof is lacking: I suspect but I cannot prove’”.

However, the suspicion must be reasonable in the circumstances to enliven the powers conferred by s 37(4) of the Act [*Elcham & Anor v Commissioner of Police* (2001) 53 NSWLR 7, 16].

So reasonable suspicion consists of a two-stage test: a police officer must first be suspicious; and that suspicion must be reasonable in the circumstances. If these two conditions are not both met, then the police officer is not authorised by law to stop, search and detain a citizen.

However, an identification of a drug detection dog does not *of itself* constitute reasonable suspicion that a person is in possession of prohibited drugs. O’Keefe J further observed in *DPP v Darby* that:⁴⁵

⁴² New South Wales, *Parliamentary Debates*, Legislative Assembly, 6 December 2001, 19875 (Bob Debus, Attorney-General).

⁴³ *Drug Misuse and Trafficking Act 1985* (NSW) s 37(4)(a).

⁴⁴ *DPP v Darby* [2002] NSWSC 1157, [20] (O’Keefe J, sitting alone).

⁴⁵ *DPP v Darby* [2002] NSWSC 1157, [49].

The formation of a reasonable suspicion may not depend upon personal observation or sensation. It may depend, for example, on information conveyed to a police officer from some other source. That source may be another police officer. That source may be a private citizen. That source may be a dog. The reactions of the dog in such a case would be no more than a basis for the formation of a reasonable suspicion by the police officer. It does not seem to me that there is any difference in principle between information conveyed to a police officer by a fellow police officer or a private citizen on the one hand, and information conveyed to the police officer by the reactions of a trained drug detection dog on the other.

This passage must be treated with some caution, because it contains an underlying assumption that information conveyed to a police officer does not *of itself* constitute reasonable suspicion. It only 'forms the basis for the formation of a reasonable suspicion'. A police officer must *personally* form a reasonable suspicion and cannot simply rely on the suspicion of a third party – even a drug detection dog.

In the context of an arrest, Aronson and Hunter say of 'reasonable suspicion' that:

...where the arrestor relies on information given to him or her from a third party, the credibility of the informant will be relevant to determining the reasonableness of the arrestor's view. ...If the third party has low credibility, or did not actually see the alleged crime, then there may be greater cause to doubt the reasonableness of the arrestor's suspicion or belief that the arrestee has committed the offence. In each case it will depend on the circumstances.⁴⁶

The statistics show that sniffer dogs have low credibility when it comes to identifying people in possession of prohibited drugs (1 in 4) or involved in their supply (1 in 100). Therefore, any claim that a sniffer dog identification is sufficient for a police officer to form reasonable suspicion is extremely doubtful.

More than just an identification by a drug detection dog is required before it can be said that a police officer has formed a reasonable suspicion that a citizen is in possession of prohibited drugs.

CCL recommends that the Ombudsman makes it clear to NSW police that a sniffer dog identification, on its own, is not enough to enliven the statutory power to stop, search and detain a citizen in public. This is because of the low credibility of sniffer dogs as an accurate detector of people in possession of prohibited drugs or involved in their supply.

⁴⁶ Mark Aronson & Jill Hunter, *Litigation: evidence and procedure* (1998, 6th ed) 271 [8.82].

4. treated like a criminal: personal searches

4.1 indignity of the search

The immediate consequence of being identified by a drug detection dog is that the individual, on the word of a dog, becomes a criminal suspect. Police are also very likely to conduct a personal search of the identified citizen.

Police have a discretion as to how far to take a search. It is of great concern to CCL that once a dog falsely identifies a person as carrying drugs, police will carry a search quite far to discover those (non-existent) drugs. In a way, those actually in possession of drugs are the lucky ones because the search will cease when the drugs are discovered. Those who are not in possession of drugs will have to suffer the indignity of a longer and perhaps more humiliating search. This is because dog handlers and police have a misplaced blind faith in the accuracy of their dogs.

Many of the complaints about sniffer dogs received by CCL centre on the indignity and humiliation of the search that follows from being identified by a sniffer dog. All of the complaints chosen to illustrate points throughout this submission are from people who were not in possession of prohibited drugs at all. CCL hopes that their voices will be heard by the Ombudsman through this submission.

I was sitting in the [name deleted] Hotel in Bondi Junction with 3 of my friends drinking a soda water when 6 police officers and a dog came in. The dog apparently picked me as having an illicit substance on my person. I was asked if I was carrying any to which I replied no. It was my word against a dog's.

They then asked me to put my hands on the wall and went through my pockets, looked down my pants, removed my shoes, went through my wallet behind my back. Money could have been taken, I don't know how much I had on me. All this happened in front of all the people in the pub.

I feel really upset by the whole ordeal as I was treated as if I was a criminal. I am an honest, law abiding citizen of NSW. I have a perfect driving record and have never been in trouble with the police before.⁴⁷

Police can be positively rude and intimidating with young people they simply assume are associated with drug possession and supply:

...as I was exiting the [name deleted] Nightclub, I was absolutely sober as I do not drink or take drugs...

Now when I got asked questions about being a drug user I naturally answered no – to which the officer replied don't be a smart arse...

Now during the search the officer continually was abusive in his comments – whenever I answered a question honestly he would say “if you want to be a smart arse I'll take you straight down to the station”.

⁴⁷ CCL complaint #7 (1 July 2004) in a Bondi Junction pub.

...then he made me take off my shoes at 2am on a cold autumn night, made me stand there while he went through my shoes (very simply designed canvas shoes – so it should not take longer than a minute to go through them) and I was standing there shoeless, feeling like a criminal for something I had not done...

I have never felt so ashamed, embarrassed and harassed in my life. The police officers didn't even apologise for wasting half an hour of my time for nothing (on a cold street in bare feet no less).⁴⁸

Unfortunately threats by police officers are not uncommon. One complainant relayed this experience of a police search of her car after a drug dog identified her partner:

They did find a cork screw and multi tool in our glove box and stated "Ma'am, if people are uncooperative we can get pedantic you know, we could say these implements were weapons".⁴⁹

Perhaps the most disturbing account of a search related to CCL came from a young barman who was standing on the footpath in Oxford St. Prescription medicine was confiscated from this young man. Fortunately the medicine was not required to keep him alive, but the consequences could have been catastrophic if it had. The circumstances of the search are worth quoting in some detail:

As the police with dogs exited the club the dog ran straight towards me and jumped up clawing at the top of my jeans. At this point a very rude blonde female police sergeant told me that I was basically under arrest and anything I said or did could be used against me. The sergeant assumed I was drunk or under the influence of drugs, when in fact I had not had a drink all night. She was rude, unhelpful and very sarcastic to me when she asked me to spell my name I did so and she muttered under her breathe "That's what I said" as she shook her head...

I stayed very calm and assisted the police in every way possible. I had to lift my shirt above my head whilst a male officer stuck his leather not latex gloves down the top of my pants in front of my friends, boss, work colleagues and clients, this is not only unhygienic but has had a massive impact on my credibility within this group of people.

They found two items of interest in my bag:

1. Wine Knife: A standard barman tool for opening bottles of wine. The police did not confiscate it because they said "You seem like a nice guy" and they did not think I would use it as a weapon.

2. Metrogyl: This is a prescription medicine that I was taking to stop a stomach infection that I had. It had my name on it and all the tablets were marked the same way on both sides.

⁴⁸ CCL complaint #3 (15 May 2004) outside an Oxford St nightclub.

⁴⁹ CCL complaint #8 (20 June 2004) in the carpark outside a NSW Correctional Centre.

Immediately on discovering this, they removed the bottle from view to perform “independent tests” on it with the dog. Five minutes later or so they came back and said that this was what had set the dogs off and I didn’t see the tablets again til I was asked to verify the total weight of the tablets. The female sergeant told me that the prescription medication would be confiscated and I would get it back in 6 to 8 weeks or I would “Receive a knock on the door before that.” I asked the female blonde sergeant what would happen if there was nothing wrong with the tablets she aggressively told me not to ask her. I tried to explain to her that I needed to complete the prescription under doctors’ orders, she looked at me and shook her head with a sarcastic smile, my comment was hardly acknowledged.

Even though I did permit a search to take place, I feel that the police conducted a very poor search. What would happen if the medication was vital for my health eg a heart condition? I do not think these police would have cared they were just hell bent on busting me for something.

While the general public seems to be somewhat confused about what constitutes a strip-search, any kind of search of an innocent citizen in public is outrageous and humiliating:

I was in [name deleted] juice shop on King Street Newtown. A police sniffer dog came into the shop smelling me, then the police officer with the dog told me to come outside.

Then constable [name removed] and [name removed] told me that the dog had shown interest in me and that they had to do a strip search on me...

They put me in front of the shop window and proceeded to strip me down going through my wallet, pockets and groped my crotch and bum, which I found very offensive...

I was told I had to consent to the search or was going to be placed under arrest.⁵⁰

CCL recommends that youth liaison, gay and lesbian liaison, indigenous liaison and other culturally-appropriate liaison officers should accompany police on all drug detection dog operations. This may help alleviate many of the problems experienced by people identified by drug detection dogs.

Given the disturbing nature of the complaints from the general public about sniffer dogs, CCL recommends that all drug detection dog operations should be videotaped. At the very least, all searches, including the cautioning of suspects, should be videotaped by police. This will help to safeguard police against false allegations of misconduct and will also help to safeguard the community against actual police misconduct during these operations.

⁵⁰ CCL complaint #13 (14 May 2004) on King St.

4.2 the need to inform the public

As well as complaints about police, CCL also receives complaints from citizens about CCL's public opposition to drug detection dogs. This is a typical example:

I have absolutely and utterly no sympathy for law-breakers who fear capture at the hands of sniffer dogs. If searchees (sic) have nothing to hide from law enforcement, then there is no problem. If they do, the joke of a sentence they will receive from Australian courts is all they'll endure.⁵¹

This demonstrates the misunderstanding by the general public of what actually occurs when a sniffer dog identifies someone. It also displays an ignorance of the fact that the *majority* of people identified by the dogs are not 'law-breakers'.

CCL recommends that the Ombudsman insist that the NSW government and police publicly acknowledge that the majority of people detected by drug detection dogs are not guilty of any crime. This is essential so that people identified by the dogs are not assumed by the general public to be drug dealers or addicts.

CCL recommends a public media information campaign funded by the NSW government and police in all major daily newspapers, on radio and television.

To ensure that innocent citizens are not falsely branded as 'drug dealers', it is essential that such a campaign feature the fact that only about 1% of the people identified by sniffer dogs are *in fact* suppliers of prohibited drugs.

⁵¹ CCL complaint #10 (18 May 2004).

5. trawling the community

“You throw a fishing net into the water – you get big fish, you get little fish. Unfortunately, you target the big fish but the little fish get swept up in the net.”

*senior NSW police officer*⁵²

5.1 why police defend the dogs

From the statistics it is clear that police are not catching drug suppliers. So why do police continue to so vigorously defend the use of drug detection dogs? From observing the phenomenon over the past few years, CCL has come to the conclusion that NSW police are ‘trawling the community’ – and drug detection dogs are the net. In other words, the dogs are not being used so much for drug detection but rather as an excuse to arbitrarily stop, search and detain citizens police would not otherwise be able to.

Drug detection dogs allow police to stop, search and detain citizens on CityRail trains, at street parades, at entertainment venues, at pubs and clubs and other public places without a warrant. This unprecedented power has been given to police under the aegis of the ‘war on drugs’.

The reports on the execution of drug detection dog warrants executed by Kings Cross police provide an insight into the way police use these dogs to trawl the community for people committing crimes. The reports show that from April 2003 to May 2004 police did a lot more than just search people for drugs on drug detection dog operations. For example:

- 42 people were given move-on directions
- 194 COPS entries and intelligences were gathered
- unrelated charges were laid, such as:
 - railway offences
 - failure to quit licensed premises
 - littering
 - traffic infringements
 - possession of a prohibited knife
 - failure to furnish particulars
 - goods in custody
 - assaulting a police officer
 - breach of bail conditions
 - outstanding warrants
 - offensive language
 - having an unregistered dog.

It is not clear from the execution reports whether the people charged with non-drug offences were also in possession of prohibited drugs.

The obvious problem with police trawling the community for criminals like this is that many innocent people are being caught in the net. The collateral damage includes the

⁵² NSW Ombudsman, n 1, 55.

70% to 80% of people falsely identified by the sniffer dogs. When one considers drug supply, only about 1% of the 'fish in the net' are drug dealers.

5.2 'requesting' names and addresses: misuse of police powers

Under the guise of drug detection dog operations, police are asking thousands of people for their names and addresses. Police routinely check to see if there are any outstanding warrants on people identified by sniffer dogs. This occurs even if no drugs are found on the individual.

I was taken to a small room, forced to produce id... I was searched... After they had checked that there were no outstanding warrants against me I was allowed to go.⁵³

After the search they made me wait while they checked my name.⁵⁴

Police have no common law power to demand a citizen's personal details.⁵⁵

There are some statutory exceptions to this principle, but they apply in only limited circumstances. For example, police may ask for the name and address of a rail commuter who is travelling without a ticket or has breached railway regulations.⁵⁶ A police officer may also demand that the driver of a car or motorcycle produce their drivers licence if they are suspected of having breached driving regulations.⁵⁷ However, it is an offence in NSW for anyone – including police officers – to demand to see a person's drivers licence without lawful authority.⁵⁸

Police can also demand the name and address of a person whom the officer reasonably believes to have personal knowledge of the commission of an indictable offence.⁵⁹ In the context of offences involving prohibited drugs, supply is an indictable offence.⁶⁰ So, for example, if police conduct a search that results in the arrest of an individual for supply of a prohibited drug, then police may also have the power to demand the name and address of individuals who are in the surrounding area and whom the police have reason to believe can assist them in their investigation of that supply.

In the context of drug detection dog operations, when people are not in possession of prohibited drugs, there is no reason for police to ask for names and addresses. As soon as a search proves negative, police no longer have any cause for the reasonable suspicion based upon the dog's identification. This means that police no longer have the authority to stop, search or detain the citizen. The individual is free to go.

⁵³ CCL complaint #5 (February 2003) at Ashfield railway station – no drugs found, no charges laid.

⁵⁴ CCL complaint #13 (14 May 2004) King St, Newtown – no drugs found, no charges laid.

⁵⁵ *Rice v Connolly* [1966] 2 ALL ER 649.

⁵⁶ *Rail Safety Act 2002* (NSW) s 96.

⁵⁷ *Road Transport (General) Act 1999* (NSW) s 19.

⁵⁸ *Road Transport (General) Act 1999* (NSW) s 23.

⁵⁹ *Crimes Act 1900* (NSW) s 563. See also NSW Ombudsman, *Policing Public Safety*, Report (November 1999) 283-295.

⁶⁰ *Drug Misuse and Trafficking Act 1985* (NSW) ss 25 (supply) & 29 (deemed supply). Other indictable offences include possession of cannabis plants (s 23), manufacture & production of drugs (s 24) & conspiracy to commit an indictable drug-related offence (s 26).

CCL recommends that guidelines be issued to police for drug detection dog operations which clearly state that police must not ask for personal details of any person who is not in possession of prohibited drugs and who is not reasonably suspected of committing some other offence.

CCL disagrees with the suggestion in the Discussion Paper that this is acceptable policing practice because it is 'policing by consent'.⁶¹ It cannot be said that a citizen consents to giving police their personal details when they are under the mistaken belief that they are obliged to comply with police directions.

They took my name and address for no reason as they found nothing. When I asked why they needed my details they replied that's just what we do when you've been sniffed. I see no reason for them to take my details. I had done nothing wrong.⁶²

Nor can it be said that someone has given their consent, if they are not properly informed of their rights. The fact that 98% of people comply with police 'requests' for personal details suggests that no one understands their rights.⁶³ In fact, until recently, CCL was under the mistaken impression that citizens identified by a drug detection dog were legally obliged to comply with a police officer's direction to give their name and address.

CCL recommends that before asking a citizen who has not committed an offence for their name and address, police must inform the individual that they do not have to comply. Further, police must explain to the individual what police will do with this information.

These personal details are being entered into police databases⁶⁴ – even when the citizen has committed no offence. This is an outrageous abuse of police power and must be stopped.

CCL recommends that all records, electronic or otherwise, held by police identifying individuals who have been falsely identified by a drug detection dog should be destroyed immediately. It is an invasion of an individual's privacy and is an abuse of state power to record and retain this personal information when the individual has done nothing wrong.

CCL encourages the Ombudsman to recommend that no identifying information of people identified by drug detection dogs be kept at all by police – unless an individual is charged with a criminal offence.

Drug detection dogs are meant to help police catch drug suppliers, not to act as a cover for the gathering of police intelligence on ordinary citizens. Drug detection dogs are having no demonstrable impact on drug supply. Thousands of innocent people are having their privacy invaded by being searched and their personal details checked and recorded by police. The only 'winners' out of the *Police Powers (Drug Detection Dogs) Act* are police and their intelligence databases.

⁶¹ NSW Ombudsman, n 1, 31.

⁶² CCL complaint #7 (1 July 2004) Bondi Junction pub – no drugs found, no charges laid.

⁶³ NSW Ombudsman, n 1, 31.

⁶⁴ see NSW Ombudsman, n 1, 30-34.

5.3 targeting communities

When trawling the community, police are being quite discriminating about where they cast their net. For example, when police applied for a warrant to use sniffer dogs at Darling Harbour in February 2004 they were targeting 'Middle Eastern males'.⁶⁵

The targeting of CityRail commuters is well documented.⁶⁶ Newtown police, for example, single out Newtown railway station for particular attention:

...situated on King St is a railway station which many commuters use to access the amenities located along King St, and local experience is that many commuters are found in possession of illegal drugs.⁶⁷

The idea that *many* commuters possess drugs is an outlandish generalisation and cannot be substantiated in fact. The Oxford English Dictionary defines 'many' as 'a great (indefinite) number of'. The idea that a great indefinite number of commuters are carrying drugs at Newtown station is ludicrous. Newtown Railway Station is a busy inner-city station. If *many* commuters were in possession of drugs, the reports on the execution of warrants would show that *hundreds*, not a handful, of commuters were being detected during drug detection dog operations.

Obviously, the poor and the young, who frequent public spaces and public transport, are disproportionately targeted by drug detection dog operations.⁶⁸ The gay and lesbian communities of Oxford St and King St also feel that they are being targeted.

5.4 abuse of drug detection dog warrants

In his second reading speech for the *Police Powers (Drug Detection Dogs) Act* the Police Minister said:

It is clear that the activity envisaged [by the introduction of drug detection dog warrants] is drug dealing. If police notice the presence of drug activity and dealing in a particular area, they will have the legitimate ground to seek such a warrant. A marketplace situation, for example, may develop where police intelligence indicates that drug users have been congregating in a local park or laneway and that this is a clear indication that drug couriers are in the area and sniffer dogs should be brought in.⁶⁹

This suggests that the purpose of warrants is to identify a *specific* area, like a park or laneway, where drug detection dogs can be deployed. Instead, police are using the warrants to cover vast areas. In Newtown, police request and are granted warrants for the entirety of King St and 100m either side of King Street.⁷⁰ In Marrickville, police request and are granted warrants covering five whole suburbs.⁷¹ In Kings Cross police request and are granted warrants covering an area within a 1 kilometre radius of Kings

⁶⁵ Downing Centre Local Court, warrant 164/2004 (5/2/2004).

⁶⁶ eg NSW Ombudsman, n 1, 71-77.

⁶⁷ eg Newtown Local Court, warrant 12/2004 (28/1/2004).

⁶⁸ see also NSW Ombudsman, n 1, 77.

⁶⁹ New South Wales, *Parliamentary Debates*, Legislative Council, 6 December 2001, 19745 ff (Michael Costa, Minister for Police), 2nd reading speech.

⁷⁰ e.g. Newtown Local Court, warrant 71/2004 (18/5/2004).

⁷¹ e.g. Newtown Local Court, warrant 67/2004 (13/5/2004): Marrickville, Dulwich Hill, Enmore, Petersham and Stanmore.

Cross Station – an area encompassing Kings Cross, Elizabeth Bay, Darlinghurst, Woolloomooloo, Paddington and East Sydney.⁷²

Police are clearly misusing these warrants to cast their net over huge expanses of Sydney. It is clear from the Minister’s speech that the warrants are meant to cover small areas like a laneway or a park. It was never intended that warrants should be issued for whole streets and whole suburbs. This is another example of police using drug detection dogs to trawl the community.

CCL recommends that the Act be changed to make it abundantly clear that the area that may be covered by a warrant is geographically small. Parliament has not authorised police to trawl entire streets and suburbs and everyone in them.

5.5 harm minimisation: targeting methadone clinics

One of the more disturbing facts gleaned by CCL from the applications for warrants to use drug detection dogs is that police are targeting methadone clinics in Newtown and Central.

Two of the reasons used in all the warrant applications by Newtown police in 2004 are:⁷³

- “methadone clinic situated...[in] Enmore Rd is a destination of drug addicts, who usually arrive by train and traverse King St and Enmore Rd, evidence has found that many are in possession of illegal drugs.
- “proximity of methadone clinic attracts distributors of illegal drugs who know that there is a ready source of customers to be found in vicinity.”

In strikingly similar words, City Central police also mention a local methadone clinic in their applications:⁷⁴

- “The methadone clinic located at the corner of *[name deleted]* St & *[name deleted]* St is the destination for drug addicts, who usually arrive by train and traverse the Devonshire St tunnel to Railway Square.
- “The proximity of the methadone clinic attracts distributors of prohibited drugs who know that there is a ready source of customers to be found in the vicinity.”

This is of grave concern because methadone clinics are an important part of the government’s drug harm minimisation strategy, which was adopted after the 1999 Drug Summit. Aggressive policing such as this will scare people away from these clinics and, potentially, into the arms of unhealthy alternatives.

The fact that the vast number of prohibited drugs detected in public places by the sniffer dogs are for small amounts of cannabis *possession* demonstrates a failure of the police to substantiate the claims they make in these warrant applications that methadone clinics are a focus of illegal drug *supply*. If the clinics are targeted by suppliers, why can’t the sniffer dogs identify dealers during drug detection dog operations?

⁷² e.g. Downing Centre Local Court, warrant 253/2004 (26/2/2004).

⁷³ eg Newtown Local Court, warrant 12/2004 (28/1/2004).

⁷⁴ eg Downing Centre Local Court, warrant 283/2004 (3/3/2004).

5.6 The Big Day Out 2004

The 2004 Big Day Out concert was held over two days on the Australia Day long weekend. Many of the 75,000 concert-goers travelled to Olympic Park by train. It was more than 'coincidence' that NSW police chose the same two days for Operation Guardian – targeting drug offences on the Sydney rail network.

Nine drug-detection dogs, 300 police and 259 State Transit Officers were involved in Operation Guardian.⁷⁵ Across the Sydney rail network:

- more than 400 people were searched
- 550 infringement notices were issued
- 230 people were arrested
- 150 cannabis cautions were issued
- 130 Court Attendance Notices were issued

At Olympic Park police targeted Big Day Out ticket-holders exiting the railway station. Drug sniffer dogs identified people who might be carrying drugs. According to Big Day Out promoter Ken West it was "like shooting fish in a barrel".⁷⁶

At Burwood Local Court, where the magistrate was still dealing with the aftermath three weeks later, many people pleaded guilty to charges of possess prohibited drugs such as cannabis and speed. Most of these people were in their twenties and thirties. Most were employed and some had young families. They were unrepresented and this was the first time most had ever been to court, let alone charged with a criminal offence. For some, the prospect of a criminal charge meant that they faced the cancellation of their residency visas and deportation from Australia.⁷⁷

It is extremely unlikely that suppliers of prohibited drugs would be travelling to the concert by train. There may have been suppliers at the concert, but that is unlikely given that most people in possession of cannabis and party drugs would have already purchased their drugs earlier and brought them along for the concert. That means that Operation Guardian was destined, from the beginning, only to catch people in possession of small amounts of drugs for their personal use – not drug dealers.

Operation Guardian demonstrates two important points. First, that police are targeting concert and party goers. Those concert and party goers 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.

Second, this demonstrates how police trawl the community with drug detection dogs. Thousands of people would have been sniffed by the dogs. We know from past experience that approximately 70% to 80% of people identified by the dogs would not have drugs in their possession, but they would have been searched in front of their friends and family.

⁷⁵ NSW Police, 'More than 200 people arrested: Operation Guardian' (media release, 25 January 2004).

⁷⁶ Peter Holmes, 'Drug arrests at rock festival', *Sunday Telegraph*, 25 January 2004, 17.

⁷⁷ for a more detailed account see: Michael Walton, 'Big Day Out for Police Dogs' (March 2004) <<http://www.nswccl.org.au/unswwcl/issues/sniffer%20dogs.php>>, reproduced from Kingsford Legal Centre (2004) 1 *Unsolicted* 20.

6. drug detection dog warrants

11 Keeping and inspection of records

(1) The following documents must be kept in relation to each warrant that is issued:

- (a) the application for the warrant,
- (b) the report on the execution of the warrant.

(2) The documents must be kept at a Local Court for at least 6 years from the date on which the warrant was issued, but may be destroyed after that period has expired.

(3) During the hours that the Local Court is open to the public, the documents may be inspected by any person.

Police Powers (Drug Detection Dogs) Regulations 2002 (NSW) r 11.

6.1 impressions of the warrant system

Under the *Police Powers (Drug Detection Dogs) Act 2001 (NSW)* police can use sniffer dogs on trains, at entertainment venues and wherever alcohol is sold or served *without* a warrant.⁷⁸ If police wish to use the dogs anywhere else, for example on the street, in a park or in a shopping mall, then the police must apply for and obtain a drug detection dog warrant.⁷⁹ The applications and an associated report on the execution of each warrant must be kept at the issuing Local Courthouse and are available for the public to view.⁸⁰

CCL undertook to examine the warrants issued at selected Local Courts in Sydney during 2004. The table at the end of this section summarises the details of the 43 warrants inspected and issued at Newtown, Parramatta and Downing Centre Local Courts.⁸¹

Of the 43 applications for warrants under the Act, not one was rejected by the authorised justice – usually the court Registrar. One of the most frustrating aspects of reviewing the warrants is that the regulations are not being complied with.

For example, the regulations require that warrants be kept at the Local Court along with a report detailing the results of the execution of the warrant. Such a report should be filed with the warrant within ten days of its execution. Many execution reports are simply not available, despite the *mandatory* regulatory requirement that such reports be kept at the Local Court.

CCL recommends that Ombudsman ensure that the authorised justices and police fully comply with the regulations. Alternatively, Parliament should introduce penalties for non-compliance.

⁷⁸ *Police Powers (Drug Detection Dogs) Act 2001 (NSW) s 7.*

⁷⁹ *Police Powers (Drug Detection Dogs) Act 2001 (NSW) s 8.*

⁸⁰ *Police Powers (Drug Detection Dogs) Regulations 2002 (NSW) r 11.*

⁸¹ CCL also approached Central Local Court and Waverly Local Court, but no warrants under the Act had been issued by those courts in 2004 to that point in time.

Form 3, the regulatory report on the execution of warrants, does not currently require officers to provide statistics on how many people were identified by a dog, how many were searched and how many people were in possession of prohibited drugs.

CCL recommends that Form 3 be changed to require officers to provide more details about the results of the execution of a warrant. The minimum information required should be:

- ❖ **number of people indicated by the sniffer dog**
- ❖ **number of people searched**
- ❖ **number of people in possession of prohibited drugs**
- ❖ **number of drug suppliers charged**
- ❖ **number of CANs issued**
- ❖ **number of cannabis cautions issued**
- ❖ **number of non-drug related charges laid**
- ❖ **nature and quantity of drugs seized**

As a general comment, some of the warrants were poorly drafted. Some were even invalid. For example, warrants issued at Parramatta Local Court for Castle Hill police failed to include an essential particular – the time period of the warrant. These warrants must be invalid, otherwise they would still be in force to this every day.

6.2 police do not take the warrants on operations

Police do not carry a copy of the warrant with them during an operation. This makes it impossible for citizens to know if they are being lawfully stopped by police during a drug detection dog operation outside the areas prescribed by the Act and Regulations.

Then constable *[name removed]* and *[name removed]* told me that the dog had shown interest in me and that they had to do a strip search on me as they have a search warrant for the entire King Street. Which they would not produce.⁸²

It is essential that a warrant be available upon request if it is to be relied upon to make a search lawful.

CCL recommends that the Act be amended to ensure that police carry drug detection warrants on them when conducting an operation. That warrant should be shown to every citizen who is to be searched by police when a sniffer dog identifies them.

⁸² CCL complaint #13 (14 May 2004) King St Newtown.

Table: summary of warrants inspected by CCL

| Local Court | Police Station | number of applications | date range | number of execution reports missing |
|----------------|---|------------------------|---------------------|-------------------------------------|
| Newtown | Newtown | 6 | 28/1/2004-18/5/2004 | 1 |
| Newtown | Marrickville | 4 | 28/1/2004-13/5/2004 | 1 |
| Parramatta | Surry Hills | 1 | 17/4/2004 | 0 |
| Parramatta | Parramatta Transit Police | 2 | 7/6/2004 | 2 |
| Parramatta | Castle Hill | 3 | 18/3/2004-22/4/2004 | 3 |
| Downing Centre | Kings Cross ⁸³ | 19 | 9/1/2004-23/6/2004 | 3 ⁸⁴ |
| Downing Centre | City Central Transit Unit ⁸⁵ | 3 | 3/3/2004-3/6/2004 | 1 |
| Downing Centre | City Central Target Action Group | 3 | 5/2/2004-16/6/2004 | 2 ⁸⁶ |
| Downing Centre | Surry Hills | 1 | 14/5/2004 | 1 |
| Downing Centre | Manly | 1 | 14/3/2004 | 1 |
| | TOTAL: | 43 | | 15 |

⁸³ Kings Cross applications included results for execution of warrants dating back to 11 April 2003.

⁸⁴ 2 execution reports were not available when the warrants were inspected, but the regulatory 10 days to provide the execution report had not yet expired.

⁸⁵ includes one warrant for "City Central Local Area Command": warrant 283/2004 (3/3/2004).

⁸⁶ 2 execution reports were not available when the warrants were inspected, but the regulatory 10 days to provide the execution report had not yet expired.