

NORTHERN TERRITORY OF AUSTRALIA

MISUSE OF DRUGS AMENDMENT ACT 2015

Act No. 31 of 2015

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 31 of 2015

An Act to amend the *Misuse of Drugs Act*, and for related purposes

[Assented to 8 December 2015]
[Second reading 16 September 2015]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Misuse of Drugs Amendment Act 2015*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Misuse of Drugs Act

3 Act amended

This Part amends the *Misuse of Drugs Act*.

4 Section 3 amended

(1) Section 3(1)

insert (in alphabetical order)

authorisation, for Part IIAB, see section 19U.

detection dog, see section 19U.

drug detection area, see section 19U.

electronic drug detection system, see section 19U.

general drug detection, see section 19U.

police dog, see section 19U.

reasonably believes means believes on reasonable grounds.

reasonably suspects means suspects on reasonable grounds.

road, see section 19U.

senior police officer, see section 19U.

- (2) Section 3(1), at the end

insert

Note for subsection (1)

The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

- (3) After section 3(7)

insert

- (7A) In this Act, unless the contrary intention appears, a thing is taken to be connected with, or relate to, an offence if the thing is taken to be a thing connected with, or relating to, an offence under section 116(1) of the *Police Administration Act*.

5 Section 11R amended

Section 11R(6)

omit

6 Part IIAB inserted

After section 19TA

insert

Part IIAB Drug detection areas**19U Definitions**

In this Part:

authorisation means an authorisation under section 19V(1).

detection dog means a police dog trained to detect dangerous drugs or precursors.

drug detection area means the area that is subject to an authorisation.

electronic drug detection system means:

- (a) an electronic device of a kind approved by the Commissioner of Police for the purpose of detecting the presence of a dangerous drug or precursor; 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 dangerous drug or precursor.

general drug detection means:

- (a) deploying a detection dog in a vehicle or near a person or other 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 dangerous drug or precursor.

police dog, see section 4(1) of the *Police Administration Act*.

road, see section 5(1) of the *Control of Roads Act*.

senior police officer means a police officer of or above the rank of Commander.

19V Senior police officer may authorise special powers in drug detection areas

- (1) If a senior police officer reasonably suspects that an area is being, or is likely to be, used for the transport of dangerous drugs or precursors in contravention of this Act, the senior police officer may give an authorisation in relation to the area.
- (2) An authorisation must comply with any guidelines issued by the Commissioner of Police for this Part.
- (3) An authorisation must specify the area that is subject to the authorisation.
- (4) An authorisation is subject to any conditions specified in the authorisation.
- (5) An authorisation has effect for the period, not exceeding 14 days, specified in the authorisation.
- (6) An authorisation may be given in respect of the area that was subject to an authorisation that has expired.
- (7) An authorisation may be varied or revoked at any time by a senior police officer.
- (8) An authorisation or the variation or revocation of an authorisation must be in writing.

19W Restrictions relating to drug detection areas

An area may be subject to an authorisation only if:

- (a) all of the area is more than 30 kilometres from the General Post Office at Darwin; and
- (b) the area is not greater than 3 square kilometres; and
- (c) for an area that consists of or includes one or more roads, any such road is no longer than 3 kilometres.

19X Effect of authorisations

- (1) An authorisation authorises a police officer to exercise, for the detection of an offence against this Act that has been, is being or is likely to be committed, the powers conferred by this Part in the drug detection area to which the authorisation relates:
 - (a) without a warrant; and

- (b) without reasonable suspicion that an offence against this Act has been committed.
- (2) The Commissioner of Police must establish written procedures:
 - (a) to be followed by police officers when exercising the powers conferred by this Part to ensure, as far as is reasonably practicable, that any undue delay or inconvenience to a person who is subject to those powers is avoided; and
 - (b) to ensure that no more than 3 authorisations are in force at the same time.
- (3) An authorisation given when 3 authorisations are already in force has no effect.

19Y Special powers to stop, detain, search and seize in relation to vehicles and people

- (1) A police officer may:
 - (a) direct the driver of a vehicle in a drug detection area to stop the vehicle, whether at a drug detection point established under section 19Z or some other place; and
 - (b) detain the vehicle and carry out general drug detection in relation to the vehicle and any person or property in or on the vehicle; and
 - (c) inspect or search the vehicle, and do the following:
 - (i) direct the driver or another person to open any part of the vehicle or any cupboard, drawer, chest, trunk, box, package or other receptacle found in the vehicle;
 - (ii) use the reasonable force necessary to open any part of the vehicle or any cupboard, drawer, chest, trunk, box, package or other receptacle found in the vehicle; and
 - (d) enter the vehicle, using the reasonable force necessary; and
 - (e) detain or search a person:
 - (i) who was in the vehicle when it was detained; or
 - (ii) who the police officer reasonably believes has recently left the vehicle; and
 - (f) seize any item or thing that the officer reasonably believes is connected with any offence against this Act; and

- (g) give any other directions that are reasonably necessary for, or incidental to, the effective exercise of powers under this section.
- (2) Section 11R(4) and (5) apply in relation to a search carried out under this section.
- (3) If a police officer, under subsection (1)(e), detains a person who is or was in a vehicle, the person may be detained only for as long as is reasonably necessary for the police officer to carry out general drug detection in relation to, and searches of, the vehicle and any person or property in or on the vehicle.
- (4) A person commits an offence if the person fails to comply with a direction under subsection (1)(a).

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (5) A person detained by a police officer under subsection (1)(e) commits an offence if the person fails to inform the police officer of the person's name, address and date of birth if requested by the police officer to do so.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (6) In this section:

driver, see section 3(1) of the *Traffic Act*.

Note for section 19Y

Additional powers are conferred under Part VII, Division 2A of the Police Administration Act on a police officer in relation to stopping, detaining, searching and seizing if the police officer has reasonable grounds to suspect the presence of a dangerous drug or precursor.

19Z Drug detection points

- (1) A drug detection point may be established by police officers at any time on or near a road in a drug detection area for the purpose of exercising the powers conferred by this Part in relation to persons driving vehicles on the road and those vehicles.
- (2) A drug detection point must be established in the way, and consist of the facilities and warning and other devices, that the Commissioner of Police considers necessary to enable vehicles to be stopped in a safe and orderly manner.

19ZA Annual report to Minister

- (1) The Commissioner of Police must give a report to the Minister that provides the following information for each financial year:
 - (a) the number of authorisations given by senior police officers during the financial year;
 - (b) the areas that were subject to those authorisations;
 - (c) the periods during which those authorisations had effect;
 - (d) the number of occasions when, in the course of the exercise of the powers conferred by this Part, a dangerous drug or precursor was seized.
- (2) The report for a financial year must be given to the Minister within 3 months after the end of the financial year.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 7 sitting days after the Minister receives the report.

7 Section 36 amended

- (1) Section 36
omit
Part relating to the power of a member of the Police Force
insert
Act relating to the power of a police officer
- (2) Section 36
omit
he or she
insert
the police officer

8 Section 40 amended

- (1) Section 40, before "In"
insert

(1)

(2) Section 40(c)

omit

evidence that the drug or precursor was then in the person's possession unless it is shown

insert

taken to be proof that the drug or precursor was then in the person's possession unless the person proves

(3) Section 40(e)

omit

authorization

insert

authorisation

(4) Section 40, at the end

insert

- (2) In proceedings for an offence against this Act, a certificate purporting to be signed by the Commissioner of Police and stating any of the following matters is prima facie evidence of the matter:

- (a) on a specified day, a police officer was a senior police officer;
- (b) on a specified day, an area was an authorised drug detection area.

9 Part IV, Division 3 inserted

After section 47

insert

**Division 3 Transitional matters for Misuse of Drugs
Amendment Act 2015**

48 Application of amendment

- (1) Section 40(c), as amended by the *Misuse of Drugs Amendment Act 2015*, applies only in relation to offences committed after the commencement of section 8 of that Act (the **commencement**).

- (2) Section 40(c), as in force before the commencement, continues to apply in relation to offences committed before the commencement.
- (3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

Part 3 Consequential amendments

Division 1 Misuse of Drugs Regulations

10 Regulations amended

This Division amends the *Misuse of Drugs Regulations*.

11 Regulations 14 and 15 inserted

After regulation 13

insert

14 Electronic drug detection – people

- (1) For section 19U of the Act, definition ***general drug detection***, paragraph (b), an electronic drug detection system may be used in relation to a person only in the manner prescribed by this regulation.
- (2) Samples of particulate matter may be taken for analysis to detect the presence of a dangerous drug or precursor from:
 - (a) the outside of the person's clothing; and
 - (b) the person's hands.
- (3) When samples are taken from the person's clothing:
 - (a) the person cannot be required to remove, undo or rearrange any clothing; and
 - (b) care must be taken to avoid disturbing the person's clothing.
- (4) Samples of particulate matter may be taken by swabbing, wiping or otherwise touching a surface to obtain a sample of particles from that surface.

15 Electronic drug detection – property

- (1) For section 19U of the Act, definition **general drug detection**, paragraph (b), an electronic drug detection system may be used in relation to property only in the manner prescribed by this regulation.
- (2) Samples of particulate matter may be taken for analysis to detect the presence of a dangerous drug or precursor from:
 - (a) both the exterior and interior of:
 - (i) a vehicle; and
 - (ii) any cupboard, drawer, chest, trunk, box, package or other receptacle found in the vehicle; and
 - (b) the outside of any other property.
- (3) Samples of particulate matter may be taken by swabbing, wiping or otherwise touching a surface to obtain a sample of particles from that surface.
- (4) In this regulation:

vehicle includes a caravan, trailer or anything else being towed by the vehicle.

Division 2 Police Administration Act

12 Act amended

This Division amends the *Police Administration Act*.

13 Section 4 amended

- (1) Section 4(1)

insert (in alphabetical order)

precursor, see section 3(1) of the *Misuse of Drugs Act*.

- (2) Section 4(1), at the end

insert

Note for subsection (1)

The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

14 Section 116A amended

- (1) Section 116A, definition ***dangerous thing***, after paragraph (a)
insert
- (ab) a precursor;
- (2) Section 116A, definition ***dangerous thing***, paragraph (b)
omit
- a precursor or

15 Part VII, Division 1B inserted

After section 116H

insert

Division 1B Use of electronic drug detection systems

**116J Reasonable grounds for search without warrant on indication
of electronic drug detection system**

- (1) Subsection (2) applies if, before exercising a power under an Act to search a person or place without a warrant, a member is required to form a suspicion on reasonable grounds that:
- (a) the person is carrying or has in the person's possession, or is in control of, a dangerous substance; or
- (b) there is something at the place (including in a vehicle at a public place) that may be a dangerous substance.
- (2) There are reasonable grounds for the suspicion if an electronic drug detection system indicates the presence of a dangerous substance:
- (a) on the person or on, or in, a thing in the person's immediate control; or
- (b) on or in a thing, not in the person's immediate control but which the member suspects on reasonable grounds is connected with the person, that is at the place where the detection is being carried out; or
- (c) at the place.

(3) In this section:

dangerous substance means any of the following:

- (a) a dangerous drug;
- (b) a precursor;
- (c) a substance prescribed by regulation to be a dangerous substance.

electronic drug detection system, see section 19U of the *Misuse of Drugs Act*.

16 Section 120A amended

Section 120A, definition ***precursor***

omit

Part 4 Expiry of Act

17 Expiry of Act

This Act expires on the day after it commences.