

Serial 268

Police Administration Amendment (Powers and Liability) Bill 2004

Mr Henderson

**A BILL
for
AN ACT**

to amend the *Police Administration Act* and other legislation in relation to the powers and liability of members of the Police Force, and for other purposes

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NORTHERN TERRITORY OF AUSTRALIA
POLICE ADMINISTRATION AMENDMENT (POWERS AND LIABILITY)
ACT 2004

No. of 2004

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

AN ACT

to amend the *Police Administration Act* and other legislation in relation to the powers and liability of members of the Police Force, and for other purposes

[Assented to 2004]
[Second reading 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Police Administration Amendment (Powers and Liability) Act 2004*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

PART 2 – AMENDMENT OF *POLICE ADMINISTRATION ACT*

3. Principal Act amended

This Part amends the *Police Administration Act*.

4. Amendment of section 14 (Control and management of Police Force)

Section 14(3) –

omit, substitute

(3) The Commissioner may, in writing, delegate to a person the Commissioner's powers or functions under this Act.

(4) In addition, the Commissioner may, in writing, delegate to a member, or an employee within the meaning of the *Public Sector Employment and Management Act*, the Commissioner's powers or functions under another Act.

(5) Subsection (4) applies to the Commissioner's powers or functions as Commissioner or Chief Executive Officer, within the meaning of the *Public Sector Employment and Management Act*, of the Police Force.

(6) However, subsection (4) does not apply if the Commissioner has a power of delegation under the other Act.

(7) In addition, the Commissioner may delegate a power or function under subsection (3) or (4) to a person only if satisfied the person has the appropriate qualifications or experience to exercise the power or perform the function.

5. Amendment of section 16 (Commissioner may appoint or promote members)

(1) Section 16(1A) –

omit

section 16A

substitute

subsection (1B) and section 16A(2)(c)

(2) After section 16(1A) –

insert

(1B) The Commissioner may decide the person be appointed on probation for less than 2 years if the Commissioner is satisfied the person has relevant qualifications or experience, including for example, qualifications or experience gained in another jurisdiction.

6. Amendment of section 116 (Interpretation)

- (1) Section 116(2), definition of "ship" –

omit

- (2) Section 116(2) –

insert in (alphabetical order)

"at", a place, includes in or on the place;

"place" includes –

- (a) vacant land;
- (b) premises; and
- (c) an aircraft, ship, train or vehicle;

"premises" includes –

- (a) a building or structure;
- (b) a part of a building or structure; and
- (c) land on which a building or structure is situated;

"ship" means a vessel or boat of any description, and includes a floating structure and a hovercraft or similar craft, but does not include a ship under the control of the Australian Defence Force or the defence force of a foreign country;

- (3) Section 116(3) and (4) –

omit

7. New section 119A

After section 119 –

insert

119A. Powers incidental to search and entry powers

- (1) This section applies if a member is authorised –
 - (a) to search a person, clothing being worn by a person or property in the immediate control of a person under –
 - (i) a warrant issued under section 117(1);

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- (ii) a form of warrant completed by the member in accordance with section 118(4); or
 - (iii) section 119(1)(a) or (2); or
- (b) to enter a place under –
- (i) a warrant issued under section 117(2);
 - (ii) a form of warrant completed by the member in accordance with section 118(4); or
 - (iii) section 119(1)(b) or (3).
- (2) The member may exercise the power with the assistance, and using the force, that is necessary and reasonable in the circumstances.
- (3) For exercising the power mentioned in subsection (1)(a), the member may –
- (a) stop the person or an aircraft, ship, train or vehicle in which the member reasonably believes the person may be found; and
 - (b) detain the aircraft, ship, train or vehicle, and any persons found in or on it or who enter it while the search is in progress, for as long as reasonably required for the exercise of the power.
- (4) For exercising the power mentioned in subsection (1)(b), the member may –
- (a) if the place to which the power relates is an aircraft, ship, train or vehicle – stop and detain the aircraft, ship, train or vehicle for as long as reasonably required for the exercise of the power; and
 - (b) detain any persons found in or on the place, or who enter it while the search is in progress, for as long as reasonably required for the exercise of the power.
- (5) For section 112(1) of the Criminal Code, a person detained under subsection (3)(b) or (4)(b) is in the lawful custody of the member while so detained.

8. Amendment of section 120A (Definitions)

Section 120A –

insert in (alphabetical order)

"drug manufacturing equipment" means anything that may be used in the manufacture of a dangerous drug;

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"manufacture", for a dangerous drug, has the same meaning as in the *Misuse of Drugs Act*;

"precursor" has the same meaning as in the *Misuse of Drugs Act*.

9. Amendment of section 144 (Search of persons in lawful custody)

(1) Section 144(1) –

omit

on a charge of an offence

(2) Section 144(3) –

omit

the offence with which the person is charged

substitute

an offence

10. New Part VIIA

After section 148 –

insert

**PART VIIA – PROTECTION FROM LIABILITY OF MEMBERS,
TERRITORY'S VICARIOUS LIABILITY AND LEGAL PROCEEDINGS
FOR DAMAGES FOR CERTAIN TORTS BY MEMBERS**

Division 1 – Preliminary

148A. Part applies to duties of member as public official

(1) For this Part, an act done or omission made, or purported to have been done or made, by a member in the capacity of a public official under an Act or regulations (the "authorising law") is taken to have been done or omitted to be done by the member in the performance or purported performance of duties as a member.

(2) For subsection (1), a public official is a person appointed or authorised under the authorising law to perform inspection, investigation or other enforcement functions under that law for the Territory, an Agency or another Territory authority.

Examples of a public official for subsection (2) –

1. A Fisheries Officer within the meaning of the Fisheries Act.

2. *An inspector within the meaning of the Meat Industries Act.*
3. *An authorised officer within the meaning of the Tobacco Control Act.*

(3) This Part applies despite a provision of the authorising law providing for the protection from civil liability of a member (regardless of whether it also provides for protection from criminal liability) for an act done or omitted to be done in the exercise or purported exercise of a power, or the performance or purported performance of a function, under the law.

Division 2 – Protection of members from civil liability and Territory's vicarious liability

148B. Protection of members from civil liability

- (1) This section applies to a person who is or has been a member.
- (2) The person is not civilly liable for an act done or omitted to be done by the person in good faith in the performance or purported performance of duties as a member.

148C. Territory's vicarious liability

(1) The Territory is vicariously liable for a tort committed by a member in the performance or purported performance of duties as a member in the same way as an employer is liable for a tort committed by an employee of the employer in the course of the employee's employment.

(2) However, subsection (1) does not apply if, under the Act under which the duties were performed or purportedly performed, the Territory does not incur civil liability for the tort.

(3) In addition, the Territory's vicarious liability for a tort committed by a member does not extend to a liability to pay damages in the nature of punitive damages.

Division 3 – Legal proceedings for damages for torts by members

148D. Definition

In this Division –

"police tort claim" means a claim for damages, including damages in the nature of punitive damages, for a tort allegedly committed by a member in the performance or purported performance of duties as a member, whether or not committed jointly or severally with another person.

148E. Application of Division

(1) For this Division, a tort is committed or allegedly committed by a member if the tort is committed or allegedly committed by a person who was a member at the time of the tort or alleged tort.

(2) A reference in this Division to a claim against a member for a tort or alleged tort includes a reference to a claim against a person who was a member at the time of the tort or alleged tort but who has ceased to be a member since that time.

148F. How police tort claim is made

(1) Except as provided in this Division, a person cannot in any legal proceeding make a police tort claim against a member but may instead make the claim against the Territory.

(2) A person who makes a police tort claim against the Territory in any legal proceeding may join the member who allegedly committed the tort as a party to the proceeding only if –

- (a) the Territory denies it would be vicariously liable for the alleged tort if it were established the member had committed the tort; or
- (b) the court grants leave for the claim to include a claim for damages in the nature of punitive damages.

(3) However, subsection (2)(a) does not require the Territory to deny it would be vicariously liable for the alleged tort if it were established the member had committed the tort merely because the police tort claim includes a claim for damages in the nature of punitive damages.

(4) If a person seeks to join a member under subsection (2) as a party to a legal proceeding –

- (a) the person is not required to file a new originating process but may instead amend the existing originating process;
- (b) the court must make the orders it considers appropriate to enable the existing originating process to be amended; and
- (c) section 162 does not prevent the making of a claim in the amended originating process for damages against the member for the alleged tort if the amendment is made within 2 months after the Territory denies it would be vicariously liable for the alleged tort if it were established the member had committed the tort.

(5) If the court grants leave for the claim to include a claim for damages in the nature of punitive damages, the existing originating process must be amended within 2 months after the date the court grants the leave.

148G. Part does not affect certain claims and proceedings

- (1) This Division does not –
- (a) make the Territory vicariously liable for a tort committed by a member if it would not otherwise be vicariously liable for the tort;
 - (b) prevent the Territory from bringing a legal proceeding against, or claiming damages or a contribution or indemnity in any legal proceeding from, a member for a tort committed by the member;
 - (c) prevent the Territory from joining a member in a legal proceeding claiming damages for a tort committed by the member;
 - (d) prevent a person from bringing a legal proceeding, or claiming damages in any legal proceeding, against another person who is not a member but who is jointly or severally liable for a tort committed by a member;
 - (e) prevent a person from making a police tort claim against a member in any legal proceeding brought against the person by the member; or
 - (f) prevent a person from bringing a legal proceeding, or claiming damages in a legal proceeding, against a member for a tort committed by the member other than in the performance or purported performance of duties as a member.

(2) However, in a legal proceeding mentioned in subsection (1)(b) or (c), the amount of damages, contribution or indemnity the court may order is the amount found by the court to be just and equitable in the circumstances.

11. Amendment of section 162 (Actions and prosecutions to be commenced within 2 months)

Section 162(1) –

omit, substitute

(1) Subject to section 148F(4)(c), an action against the Territory under Part VIIA or a prosecution against a member for an offence against this Act must be commenced within 2 months after the act or omission complained of was committed, and not otherwise.

12. Repeal of section 163 (Protection from civil liability)

Section 163 –

repeal

13. New Part X

After section 167 –

insert

PART X – TRANSITIONAL MATTERS FOR *POLICE ADMINISTRATION AMENDMENT (POWERS AND LIABILITY) ACT 2004*

168. Territory's vicarious liability

(1) Part VIIA applies to a tort committed, or allegedly committed, by a member before the commencement of that Part.

(2) However, Part VIIA does not apply if a legal proceeding for the tort or alleged tort was started before the commencement of that Part.

14. Further amendments of Principal Act

The Schedule has effect.

PART 3 – AMENDMENT OF OTHER ACTS

15. Amendment of *Absconding Debtors Act*

(1) This section amends the *Absconding Debtors Act*.

(2) Section 24(2) –

omit

civil or

16. Amendment of *Associations Act*

(1) This section amends the *Associations Act*.

(2) After section 40(5) –

insert

(5A) The Commissioner's power of delegation under section 14(4) of the *Police Administration Act* does not apply to a power or function under this section.

17. Amendment of *Criminal Investigation (Extra-Territorial Offences) Act*

(1) This section amends the *Criminal Investigation (Extra-Territorial Offences) Act*.

(2) Section 9 –

omit

No action or proceeding, civil or criminal, shall

substitute

A criminal proceeding does not

18. Amendment of *Dangerous Goods (Road and Rail Transport) Act*

(1) This section amends the *Dangerous Goods (Road and Rail Transport) Act*.

(2) After section 48(2) –

insert

(3) This section has effect subject to Part VIIA of the *Police Administration Act* to the extent it relates to the civil liability of an authorised officer who is a member of the Police Force.

19. Amendment of *Domestic Violence Act*

(1) This section amends the *Domestic Violence Act*.

(2) Section 16 –

repeal

20. Amendment of *Fisheries Act*

(1) This section amends the *Fisheries Act*.

(2) Section 33(11), after "section," –

insert

but subject to subsection (12),

- (3) After section 33(11) –

insert

(12) Subsection (11) has effect subject to Part VIIA of the *Police Administration Act* to the extent it relates to the civil liability of a Fisheries Officer who is a member of the Police Force.

21. Amendment of *Food Act*

- (1) This section amends the *Food Act*.

- (2) After section 130(3) –

insert

(4) This section has effect subject to Part VIIA of the *Police Administration Act* to the extent it relates to the civil liability of an authorised officer who is a member of the Police Force.

22. Amendment of *Gaming Control Act*

- (1) This section amends the *Gaming Control Act*.

- (2) Section 79 –

omit

An

substitute

- (1) An

- (3) Section 79, at the end –

insert

(2) Subsection (1) has effect subject to Part VIIA of the *Police Administration Act* to the extent it relates to the civil liability of a member of the Police Force.

23. Amendment of *Liquor Act*

- (1) This section amends the *Liquor Act*.

- (2) Section 23 –

omit

An

substitute

(1) An

- (3) Section 23, at the end –

insert

(2) Subsection (1) has effect subject to Part VIIA of the *Police Administration Act* to the extent it relates to the civil liability of a person who is a member of the Police Force.

24. Amendment of *Private Security Act*

- (1) This section amends the *Private Security Act*.

- (2) After section 59(3) –

insert

(4) This section has effect subject to Part VIIA of the *Police Administration Act* to the extent it relates to the civil liability of an inspector who is a member of the Police Force.

25. Amendment of *Territory Parks and Wildlife Conservation Act*

- (1) This section amends the *Territory Parks and Wildlife Conservation Act*.

- (2) Section 110 –

omit

No

substitute

(1) No

- (3) Section 110, at the end –

insert

(2) Subsection (1) has effect subject to Part VIIA of the *Police Administration Act* to the extent it relates to the civil liability of an honorary conservation officer who is a member of the Police Force.

26. Amendment of *Terrorism (Emergency Powers) Act*

(1) This section amends the *Terrorism (Emergency Powers) Act*.

(2) After section 35(3) –

insert

(3A) Subsections (2) and (3) have effect subject to Part VIIA of the *Police Administration Act* to the extent it relates to the civil liability of a police officer.

27. Amendment of *Tobacco Control Act*

(1) This section amends the *Tobacco Control Act*.

(2) After section 56(3) –

insert

(4) This section has effect subject to Part VIIA of the *Police Administration Act* to the extent it relates to the civil liability of an authorised officer who is a member of the Police Force.

SCHEDULE

Section 14

FURTHER AMENDMENTS OF PRINCIPAL ACT

Provision	Amendment	
	omit	substitute
Section 16A(2)	referred to in section 16(1A)	
Section 94(6)(b)	79(3)(d)	81(2)(d)
Section 117(1)	, with such assistance as he thinks necessary, , if necessary by force,	
Section 117(2)	in or upon any land, vehicle or vessel, , with such assistance as he thinks necessary, to enter into or upon and search the land, vehicle or vessel, if necessary by force, and to seize any such thing that he may find in or upon the land, vehicle or vessel	at a place to enter and search the place and seize anything relating to an offence found in the course of the search at the place
Section 119(1)(b)	into or upon any land, vehicle or vessel, on or in	a place at
Section 119(1)	that search, or upon or in the land, vehicle or vessel, as the case may be	the search at the place
Section 119(2)	stop that person and	

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Section 119(3)	any vehicle or vessel may stop and enter the vehicle or vessel and seize any such weapon found in the vehicle or vessel	an aircraft, ship, train or vehicle may enter the aircraft, ship, train or vehicle and seize an offensive weapon found in it
Section 120(1) and (2)	into or upon any land	land or premises
Section 120(2)	that land	the land or premises
Section 120(3)	such land	the land or premises
Heading to Part VII, Division 2A	the whole heading	<i>Division 2A – Special provisions about dangerous drugs</i>
Section 120B(1)(a)	on or in land, an aircraft, vehicle or ship a dangerous drug	at a place a dangerous drug, precursor or drug manufacturing equipment
Section 120B(1)(b) and (ba)	drug	drug, precursor or drug manufacturing equipment
Section 120B(1)(ba)(i)	land, an aircraft, vehicle or ship	a place
Section 120B(1)(c)(i)	land, aircraft, vehicle or ship	place
Section 120B(1)(c)(ii)	on or in the land, aircraft, vehicle or ship	at the place
Section 120B(1)(c)(iii)	land, aircraft, vehicle or ship	place
Section 120B(2)	on or in the land, aircraft, vehicle or ship	at the place
	land, aircraft, vehicle or ship and	place and
Section 120BA(a), (b), (c) and (e)	drug	drug, precursor or drug manufacturing equipment

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Section 120BA(f)	any vehicle, vessel, aircraft or other conveyance	an aircraft, ship, train or vehicle
Section 120C(a)	aircraft, vehicle or ship if the member has reasonable grounds to suspect that a dangerous drug	aircraft, ship, train or vehicle if the member has reasonable grounds to suspect that a dangerous drug, precursor or drug manufacturing equipment
Section 120C(b)	aircraft, vehicle or ship	aircraft, ship, train or vehicle
Section 120C(c)	drug	drug, precursor or drug manufacturing equipment
Section 120D(a)	land, aircraft, vehicle or ship	place
Section 120D(b)	on or in the land, aircraft, vehicle or ship	at the place
Section 126(1)	into or upon any premises, vehicle or vessel	a place
	in or on the premises, vehicle or vessel	at the place
Section 126(2)	into or upon any premises, vehicle or vessel,	a place
	in or on the premises, vehicle or vessel	at the place
Section 126(2A)	any premises, vehicle or vessel	a place
	on or in the premises, vehicle or vessel (all references)	at the place

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Section 126(2AA)	premises or a vehicle or vessel in pursuance of subsection (2A), search the premises, vehicle or vessel	a place under subsection (2A), search the place
Section 126(2AA)(a) and (b)	on or in the premises, vehicle or vessel (all references)	at the place
Section 126(2B)	the whole subsection	
Section 126(3)	into or upon any premises, vehicle or vessel	a place
Section 148(1) and (3)	in or upon (all references)	at

ALTERATION TO SECTION HEADING

On the day on which the *Police Administration Act* is amended by this Act, in addition to any alteration to section headings indicated in the text of this Act, the heading to section 120 is altered by omitting "**premises**" and substituting "**place**".

