

2007

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY OF AUSTRALIA
MINISTER FOR POLICE, FIRE AND EMERGENCY SERVICES
POLICE ADMINISTRATION AMENDMENT BILL 2007
SERIAL NO. 97

EXPLANATORY STATEMENT

GENERAL OUTLINE

The purpose of the Bill is to amend the *Police Administration Act* to improve the administration of the Act, to implement new technologies into the Act and allow for the appointment of Special Constables in urgent cross-border emergencies to ensure compliance with the Australasian Police Ministers' Council (APMC) resolution.

The Bill will also introduce:

- (a) the possession and use of dangerous drugs for the purposes of training;
- (b) the use of police dogs and police horses for policing purposes;
- (c) the establishment and maintenance of crime scenes; and
- (d) other related amendments.

NOTES ON CLAUSES

Clause 1 Short Title

Describes the short title of the Bill.

Clause 2 Commencement Date

Provides that Part 1 and sections 3 and 15 are taken to have come into effect on 1 December 1996. The remainder of the Act comes into operation on a date fixed by the Administrator in the *Gazette*.

Clause 3 Act amended

Provides that the Bill amends the *Police Administration Act*.

Clause 4 Amendment of section 4 (Interpretation)

Inserts a number of definitions into the Act.

This clause also inserts a new section 4(3) into the Act, which provides the term “member” includes a member on probation under section 16A, but only those members who have not yet taken the oath or made an affirmation under section 26. These members are trainee Constables and trainee Aboriginal Community Police Officers or Auxiliaries.

Clause 5 Amendment of section 5 (Northern Territory Police Force)

Inserts the core functions of the Police Force into the Act. They are:

- (a) to uphold the law and maintain social order; and
- (b) to protect life and property; and
- (c) to prevent, detect, investigate and prosecute offences; and
- (d) to manage road safety education and enforcement measures; and
- (e) to manage the provision of services in emergencies.

Clause 6

New section 15A

Provides the kinds of matters which are merit based for the purposes of an appointment or promotion to a rank in the Police Force.

Clause 7

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

Substitutes section 16(3) of the Act by replacing the phrase “skill and efficiency” with “superior merit”. Proposed section 16(4) provides definitions for the terms, “qualified “member” and “relevant rank”.

Clause 8

Repeal and substitution of section 16A

Repeals and replaces section 16A to include a probationary Aboriginal Community Police Officer (“ACPO”) and a probationary Auxiliary so that section 16A applies to all members on probation.

By including probationary ACPOs and Auxiliaries into section 16A, it means members holding these ranks will be subject to the same conditions for their confirmation of appointment or termination of appointment including the disciplinary provisions as other members of the Police Force on probation.

Proposed section 16A(6) gives the Commissioner the power to terminate the appointment of a member on probation if, during the period of probation, the Commissioner becomes aware of information about the person’s integrity or character which, had the Commissioner considered, at the time of making the appointment, the appointment would not have been made.

Proposed section 16A clarifies that a member on

probation, and who is yet to take the oath or make an affirmation, must not exercise any of the powers of a member of the Police Force under Part VII of the Act.

Clause 9 **Amendment of section 17 (Preference for members, &c.)**

Substitutes the existing heading with “Requirements for appointment to rank other than constable”.

Substitutes the words “the skill and efficiency suitable” with “merit” into sections 17(a)(i) and (b)(iii).

Clause 10 **Amendment of section 19 (Community and Auxiliary Police)**

Repeals and replaces section 19 by revoking the power to terminate a probationary ACPO or Auxiliary under this provision. Confirmations of appointment and terminations will now be provided under section 16A. See Clause 8 above.

Clause 11 **Amendment of section 21 (Reappointment of person who resigned to contest elections)**

Substitutes section 21(6) to bring the provision into line with the amendment at Clause 12 below. Clause 12 increases a member’s compulsory retirement age to 65 years.

Clause 12 **Amendment of section 22 (Retirement)**

Repeals and replaces section 22(2) so that a member (including an Auxiliary) ceases to be a member of the Police Force when the member attains the age of 65 years.

Clause 13 **Repeals and substitution of Part II, Division 4**

This clause repeals and substitutes Division 4 as well as inserting new Division 5 into Part II of the Act, and comprises proposed sections 29 to 34F.

Proposed section 29 replaces the existing provision and provides the Commissioner may appoint a member of a police force of another Australian jurisdiction to be a Special Constable. The appointment may be made on such terms and conditions as the Commissioner considers appropriate. An appointment made under this section deems the person to have all the powers, obligations, duties, functions and privileges that are imposed or conferred on a member under any law in force in the Territory. The appointment may be made by reference to the person's work location, operational unit, work group or other identifiable designation.

Proposed section 30 re-writes existing section 30 to provide the Commissioner may appoint a person (who is not a member of a police force of another State or Territory) to be a Special Constable. An appointment made under this section may be made on such terms and conditions as the Commissioner thinks appropriate. On appointment, the person is taken to have all the powers, duties, obligations and privileges as specified in the instrument of appointment.

Proposed section 31, sets out that the Commissioner may revoke a Special Constable's appointment at any time and is similar to existing section 31.

Proposed section 32, clarifies that before a Special Constable may discharge the duties of the office, the Special Constable must take the oath or make an affirmation, which is to be administered by a person authorised by the Commissioner. The form of the oath

or the affirmation is provided in the Schedule to the Act.

Proposed section 33 requires the Commissioner to provide to each Special Constable appointed under this Part, with evidence of the appointment and the authority of the Special Constable.

Proposed section 34 provides the offence of neglecting or refusing to obey any lawful order given to the Special Constable in connection with his or her duties. The penalty is \$500 or imprisonment for 3 months.

The following provisions are inserted into a new Division 5 - "Special Constables and urgent cross-border assistance".

Proposed section 34A provides for a number of definitions under this Division.

Proposed section 34B permits the Commissioner to declare an incident to be an incident which requires urgent cross-border police assistance from another jurisdiction. The section also sets out the criteria which must be taken into account in determining whether to make the declaration. The declaration remains in force for a period of 14 days from the date on which it was made. A copy of the declaration is to be forwarded to the Minister as soon as practicable, but in any event within 14 days after it has been made. A failure to forward the declaration does not invalidate the making of the declaration.

Proposed section 34C provides that a declaration may be extended any number of times. The same considerations under section 34B apply in determining whether to extend the declaration under this section.

Proposed section 34D provides that the appointment of a Special Constable under Division 5 may be made under section 29 of the Act. As soon as practicable after the end of the period of appointment the Commissioner must notify the Minister of the name of each Special Constable, the police force from which the member is permanently appointed and the member's rank. However, a failure to comply with the obligation will not invalidate the appointment.

Proposed section 34E clarifies that despite the effect of section 32, it is not necessary for a Special Constable to take the oath prior to lawfully exercising their powers, duties or functions. However, the Special Constable must take the oath as soon as practicable thereafter. If the oath is administered outside of the Territory, the person who administers the oath must forward to the Commissioner within 14 days, a copy of the oath or affirmation as made by the Special Constable and a written statement signed by the person who administered the oath or affirmation, that they had the authority to administer the oath. A failure to comply does not invalidate the appointment of a Special Constable.

Proposed section 34F clarifies that unless the appointment is terminated under section 31 of the Act, the appointment is nevertheless terminated at the end of the period of appointment.

Clause 14

Amendment of section 84G (Payment of salary during suspension)

Replaces the term "Minister" with "Commissioner". This authorises the Commissioner to suspend a member under sections 76A or 80 without salary during a period

of suspension.

Clause 15 Repeal of section 85

Section 85 is repealed.

Section 85 is an interpretation provision which provides that for the purposes of Part V of the Act, the “Commissioner” is to include a delegate of the Commissioner.

Clause 16 Amendment of section 94 (Inability or disciplinary appeals)

Inserts a new subsections 94(1)(ca) and 94(1)(fa) into the Act. Sections 94(1)(ca) and 94(1)(fa) have the combined effect that a member who is aggrieved with a decision of the Commissioner to suspend them without pay may appeal the Commissioner’s decision to the Disciplinary Appeal Board.

Clause 17 New Part VIA

Inserts a new “Part VIA – Use of dangerous drugs for training” into the Act, comprising proposed sections 102 to 111 inclusive.

Proposed section 102 sets out the objects of this Part. The objects are to ensure the training of the Police Force about dangerous drugs is realistic and effective and is to be achieved by putting into place certain arrangements. The arrangements will allow members to have access to dangerous drugs for training purposes and ensure the adequate controls for the safe handling and tracking including being accountable in respect of the dangerous drugs.

Proposed section 103 sets out a number of definitions

under this Part.

Proposed section 104 gives the Commissioner the power to enter into an agency arrangement or arrangements, with a CEO of another department or agency (which includes a Commissioner of another jurisdiction) if that department or agency is authorised to enter into an arrangement. An agency arrangement will enable the Police to acquire, possess and use a batch of dangerous drugs for training purposes. The agreement may provide for the transfer of the batch of dangerous drugs, the kind of dangerous drugs, the type of training and how the drugs are to be disposed of or destroyed at the end of the training period. The Commissioner must ensure compliance to the terms of the agency agreement.

Proposed section 105 enables a senior member (who is a member of or above the rank of Assistant Commissioner) to give a drug training direction. A drug training direction may only be given for a batch which is in the possession of Police under an agency arrangement, has been forfeited to the Territory under an Act or been ordered to be disposed of or destroyed. A drug training direction may authorise the keeping of a batch of drugs, the use of a batch of drugs, the disposal of the drugs at the end of training and any specific conditions for the keeping, use and disposal of a batch. Section 105(3) sets out the essential conditions that a drug training direction must contain, although other conditions may be included. The senior member who gave the training direction must ensure compliance to the direction.

Proposed section 106 creates the position of a drug control officer whose role is to take possession of a

batch of dangerous drugs, store the batch, log movements of the batch into and out of storage and the disposal of the batch at the end on the training. A drug control officer is a member of, or above the rank of, Superintendent who is authorised in writing by the Commissioner to be the drug control officer. An authorization may contain conditions. A drug control officer must ensure they do all the things necessary for compliance in the performance of their functions.

Proposed section 107 provides that it is lawful for a batch of dangerous drugs to be kept and used if a training direction authorises the keeping and use of the batch and the batch is being kept and used in accordance with the terms of the training direction.

Proposed section 108 sets out the requirements for the possession of a batch of dangerous drugs for training. Section 108(2) provides that for the purposes of an audit (which must be conducted at least once every three months (under section 108(1)(g)) the audit must include certain measures to ensure compliance with a training direction. Section 108(3) sets out certain mandatory requirements for the conduct of an audit.

Proposed section 109 requires the Commissioner to keep a Register of dangerous drugs that are used for training. The Register, which may form part of another Register, must be kept in a safe place and facilitate the drug control officer in the performance of his or her functions. Only the drug control officer or another authorised member can make entries into the Register. If the senior member restricts access to the Register under proposed section 111, the drug control officer must ensure the senior member's direction is followed.

Proposed section 110 prescribes the kind of information which must be recorded in the Register about a batch, or part of a batch, of dangerous drugs. The entries must be entered into the Register as soon as is practicable after each prescribed event.

Proposed section 111 provides a senior member may make a direction restricting access to the information in the Register to:

- a drug control officer;
- a member who reasonable needs the information for the purposes of carrying out an audit;
- a member who is performing a function in relation to the possession of the dangerous drugs and who reasonably requires the information to enable the member to perform the function; and
- any other person specified in the direction.

The direction may restrict access to all or any part of the information and may only remain in place for so long as the senior member considers it is necessary for the purposes of security and the safety of the drug control officer or some other person.

Clause 18 Amendment of section 116 (Interpretation)

Provides a number of definitions for the purposes of new “Division 1A – Use of dogs and horses”.

Clause 19 New Part VII, Division 1A

Inserts a new “Division 1A - Use of dogs and horses” into Part VII, comprising proposed sections 116A to 116H inclusive.

Proposed section 116A is a definition provision and provides a number of definitions for the purposes of this Division. Of particular note, is the definition of

“police dog” which includes a “detection dog”. It is to be noted that some provisions deal specifically with the functions of a “detection dog”.

Proposed section 116B expands the operation of Division 1A of Part VII to include a police dog of another jurisdiction assisting Police Force in the exercise of a power in the performance of a function as if the police dog was a Police Force police dog. Sections 116D and 116E apply to a dog’s handler as if the handler was a member of the Police Force.

Proposed section 116C provides that a member of the Police Force is authorised to use a police dog, horse or detection dog to assist the member in the exercise of a power or in the performance of the member’s functions. A member using a police dog, horse or detection dog must comply with this Division including any general orders, instructions or Guidelines which have been published in the *Police Gazette*.

Proposed section 116D has the effect of, despite any law to the contrary, authorizing a police dog or horse to accompany a member of the Police Force entering and remaining at any place the member can lawfully enter and remain. This provision operates whether the member is authorised to enter and remain on the place with or without a warrant.

Proposed section 116E provides that a police dog or horse must be kept under control to the extent it is reasonable to do so in the circumstances. For example, it may not be reasonable to prevent a police dog reacting against a person if the person intentionally attacks or injures the police dog or horse. In relation to a detection dog, a member using a detection dog must

take all reasonable precautions to prevent the dog from touching a person.

Proposed section 116F clarifies that if a detection dog indicates it has detected the odour of a dangerous drug or a dangerous thing, the indication is sufficient evidence for a member to form a reasonable suspicion to enable the member to carry out a search for the drug or thing, without a warrant.

Proposed section 116G provides a member of the Police Force is not civilly or criminally liable if a police dog or horse physically comes into contact with a person or a person's clothing or damages a thing, if the animal was being used in the exercise of a power or performance of a member's functions in good faith. Coming into contact with a person includes restraining, pushing, biting or kicking the person. In addition, a member of the Police Force or the Territory is not civilly or criminally liable merely because a police dog or horse entered, or was at, a place.

Proposed section 116H provides that section 75 of the *Summary Offences Act* or Part X of the *Law Reform (Miscellaneous Provisions) Act* or any other Territory law relating to dogs or horses do not apply in relation to a police dog or horse.

Clause 20

New section 118A

Inserts a new section 118A into the Act. This section gives an authorised member executing a search warrant under sections 117 or 118 the power to seize any other thing if the member reasonably believes the thing is connected with an offence, whether or not it is the same offence for which the warrant was issued. By way of

example, the thing may have been stolen.

Clause 21 Amendment of section 119 (Searches and emergencies)

This amendment replaces the existing title with “Urgent searches without warrant”. It also amends section 119(1) by replacing and expanding the basis for the search to be on the grounds the thing is connected with an offence or because it may significantly increase the risk to the health or safety of a particular person or the public generally. This amendment is required to retain consistency between the search provisions as a result of inserting section 119AA into the Act. It also inserts sub-section 119(3A) into the Act. This section clarifies that for the purposes of seizing a thing Police may remove the thing from where it is found or guard the thing where it is found. For example, Police may find an explosive substance and await specialist Police assistance before touching or moving the thing.

Clause 22 New section 119AA

Inserts section 119AA – “Search without warrant for explosive, offensive weapon etc” into the Act. This section is similar to section 120C and gives a member, without warrant, the power to stop, detain, search and seize an explosive substance, offensive weapon or ammunition if the member reasonably suspects those things are:

- in a person’s possession or control in a public place;
- are being carried in an aircraft, ship, train or vehicle; or
- is at any other place.

The provision is inserted to complement the use of the detection dogs in Clause 18 above. For To seize the

thing includes removing the thing or guarding the thing at the place where it is found.

Clause 23 Amendment of section 119A (Powers ancillary to search and entry powers)

Makes ancillary amendments to section 119A by inserting new section 119AA and section 119A(1)(a)(iii) as required.

Clause 24 Amendment of section 120A (Definitions)

Amends the definition of “public place” in section 120A by inserting paragraph (d), which provides a school, college university or similar institution offering courses of instruction to be a public place.

This amendment expands the term of “public place” used in section 120C of the Act only.

Clause 25 Amendment of section 120BB (Seizure authorised under search warrant)

Inserts subsection 120BB into the Act. Subsection 120BB is similar to the amendment to subsection 117(5)(b) above, and gives a member the power to seize other things found during the execution of a search warrant if the member reasonably believes the thing is connected with an offence. The offence need not be the same offence for the purposes of which the warrant was issued.

Clause 26 Amendment of section 120C (Searching of vehicles, &c.)

Makes consequential amendments to section 120C.

Clause 27 Amendment of section 126 (Power to enter to make

arrest or preserve the peace)

Section 126(2AC) of the Act, is amended by substituting the provision (which is no longer required due to the insertion of the definitions into section 116) and clarifying that a member who is searching a place is authorised to use reasonable force to open, amongst other things, any cupboard, drawer or chest.

Clause 28 Amendment of section 128 (Circumstances in which a person may be apprehended)

Inserts subsection 128(6), to clarify that a member may use reasonable force in apprehending a person under this section.

Clause 29 New section 138A

Inserts subsection 138A into the Act.

Section 138A provides that Police may continue holding a person in lawful custody prior to charging and bailing or bringing the person before a justice or a court, until the person no longer appears to be intoxicated.

The member must charge the person and either bail the person or bring them before a justice or court as soon as practicable after the member is satisfied the person is no longer intoxicated. The term “intoxicated” conforms to the term used in section 127A of the Act, which means “seriously affected apparently by alcohol or a drug”.

Clause 30 Amendment of section 142 (Electronic recording of confessions and admissions)

Inserts proposed sections 142(2)(ab) and 142(3) into

the Act. This section gives Police the option of using digital recorders to record a confession or admission. To comply with the requirement the electronic recording must be available to be tendered in evidence, the investigating member must certify in writing the recording has not been tampered with or altered after being made. The certificate must also include that the investigating member has complied with all the prescribed requirements in relation to the making of the recording.

Section 142(3) provides that a digital recording which is used in proceedings must be accompanied by the certificate under section 142(2)(ab).

Clause 31 Amendment of section 144 (Search of persons in lawful custody)

This provision amends section 144 by giving a member the power to search any person in lawful custody as of a right, and can seize any weapon or other article found on the person which may be used to inflict injury or assist the person escape from lawful custody.

Clause 32 Amendment of section 145A (Non-intimate procedures)

Substitutes section 145A(1), to reduce the rank from a Superintendent or higher to a member of, or above the rank of, Senior Sergeant to carry out a non-intimate procedure on a person.

Clause 33 Amendment of section 145B (Voluntary non-intimate procedures)

Substitutes section 145B(1), to reduce the rank from a Superintendent or higher to a member of, or above the

rank of, Senior Sergeant to carry out a voluntary non-intimate procedure on a person.

Clause 34

New Part VII, Division 7A

Inserts Division 7A – “Crime Scenes” into Part VII of the Act, comprising sections 147G to 147N inclusive.

Proposed section 147G provides various definitions for the purposes of this Division.

Proposed section 147H, provides that this Division applies to any place (which is defined in section 116) including a public place or private premises, despite any law to the contrary, including the common law.

In exercising a power under this Division, a member does not require to be issued with a search warrant, although it does not prevent a member from apply for a search warrant or the exercise of any other power under this Act at the crime scene.

Proposed section 147J authorises a member (the responsible member) to enter a place and establish a crime scene if the member reasonably suspects a relevant offence has been, is being, or is about to be committed at the place. A crime scene may be established for the purposes of preserving, searching for and gathering evidence of the relevant offence, along with the exercise of a crime scene power. To establish a crime scene, the responsible member must, wherever practicable, identify the crime scene, including its boundaries and, if practicable, mark the boundaries in a way that alerts public to the establishment of the crime scene.

The responsible member must comply with all general

orders or other instructions or guidelines published in the *Police Gazette*.

Once established, the member can exercise any of the crime scene powers at the place. The crime scene powers are described at proposed section 147N below. The responsible member must also notify a senior member of the establishment of the crime scene.

Proposed section 147K provides the responsible member must take steps to protect things in the crime scene being damaged, interfered with or destroyed. Subsection 147K(2) provides that unauthorized persons must not enter a crime scene unless for an authorised purpose. The provision sets out examples of what is authorised.

Proposed section 147L imposes an obligation on the responsible member to ensure that nothing within the crime scene is unnecessarily touched or moved.

Proposed section 147M sets out the kinds of matters which determine what is a reasonable period for the continuation of the crime scene.

Proposed section 147N lists the responsible member's crime scene powers.

Clause 35

Repeal of section 150

Section 150 of the Act is repealed. Section 150 is the offence of making a false complaint to Police. A similar provision exists at section 68A of the *Summary Offences Act*, which will be used following the repeal of section 150.

Clause 36

Amendment of section 154 (False representation)

Inserts subsection 154(3) into the Act. Subsection 154(3) provides that the limitation period for commencing a prosecution for the making of a false representation in an application for appointment to the Police Force is 6 months commencing from the date the Commissioner first becomes aware the false representation has been made. Previously, the limitation period of 6 months commenced from the date of the making of the false representation.

Clause 37 Amendment of section 159 (Hindering member)

Inserts subsection 159(2) into the Act. Subsection 159(2) provides that the hindering or obstructing a police dog or horse being used in the execution of a member's duties is taken to be hindering or obstructing the member for the purposes of the offence.

Clause 38 New section 159A

Inserts section 159A into the Act which creates the offence of killing or injuring a police dog or horse if the person knew the police dog or horse was being used by a member in the execution of the member's duties or as a consequence of or in retaliation for the use of the dog by a member. The penalty for the offence is \$25,000 or 5 years imprisonment.

In addition to the penalty, the court may order the offender compensate the Commissioner for a reasonable amount for the treatment, care, rehabilitation, retaining or replacement of the police dog or horse.

Clause 39 Further Amendments

Provides that the amendments in the Schedule are to

have effect.

Clause 40 Act amended

This clause provides that Part 3 of the Bill amends the *Kava Management Act*.

Clause 41 Amendment of section 32 (Powers of authorised officers)

Amends sections 32(1), 32(1)(d)(ii) and (f) of the *Kava Management Act*. These sections are amended by substituting the requirement a member (or an authorised officer) must have reasonable grounds to believe for the purposes of a carrying out a search under that Act, with a suspicion. This is necessary to retain consistency between section 32 of the *Kava Management Act* and section 120C of the Act, both of which provide a power to search, without warrant, for kava.

Clause 42 Amendment of Summary Offences Act

Provides that this Part (Part 4) amends the Summary offences Act.

Clause 43 Amendment of section 68A (False reports to police)

Increases the penalty for the making of a false report to police to \$200,000 or imprisonment for 10 years.

Schedule – Further amendments.

Makes ancillary amendments to a number of provisions in the Act.