

MISUSE OF DRUGS AMENDMENT (SEARCH POWERS) BILL 2016

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Attorney General)**, read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [5.10 pm]: I move —

That the bill be now read a second time.

The abuse of drugs is the root cause of many of the problems that our community faces. We are constantly hearing of death, injury and damage related to the abuse of alcohol and drugs. Members will be aware that in recent times, sadly, methylamphetamine has become readily available. The use of any prohibited drug or plant is dangerous, but methylamphetamine takes the danger to both the user and the community to new levels. Research indicates that methylamphetamine users are 1.6 times more likely to commit robbery, 1.8 times more likely to commit burglary, 2.1 more times likely to arm themselves with weapons and 1.5 times more likely to commit property offences than non-users. WA Police experienced a 40.8 per cent increase in the number of arrests related to amphetamine-type stimulants between 2013–14 and 2014–15.

The amount of methylamphetamine seized in Western Australia is increasing significantly, year by year. In the 2013–14 financial year, 122.7 kilograms of methylamphetamine was seized. In the 2014–15 financial year, this increased to 276.2 kilograms and in the half-year to December 2015, 418 kilograms of methylamphetamine were seized. It is of great concern that our postal and courier services are unwittingly being used by criminals to distribute this insidious drug. In the 2014 calendar year, the Australian Federal Police seized 193 kilograms of methylamphetamine destined for the Western Australian market. Of those seizures, 45 kilograms came from postal and parcel deliveries, 15.2 kilograms came from international air couriers—for example cargo, baggage and internal-human couriers—16.5 kilograms was concealed in freight and 115.7 kilograms was seized in other searches.

The Australian Crime Commission has determined that a high proportion of the methylamphetamine seized in Australia originates from overseas. It has become much more profitable for illicit drug manufacturers to purchase it from countries such as Taiwan and China than to manufacture it in Australia. In its 2013–14 annual report, the Australian Crime Commission established that one kilogram of methylamphetamine can be purchased in China for \$6 522 and sold in Australia for \$590 000. This has resulted in a decrease in the number of clandestine drug laboratories producing methylamphetamine in Western Australia.

The majority of police powers in Western Australia are contained in the Criminal Investigation Act 2006 and the Misuse of Drugs Act 1981. Currently, under the Criminal Investigation Act, police officers have the power to enter a place, stop and enter a vehicle or stop and enter and search a vehicle, provided that a “reasonable suspicion” requirement is satisfied before the use of that power. Under the Misuse of Drugs Act, a police officer may stop, detain and search a vehicle if the police officer reasonably believes that a person in possession of the vehicle possesses a “thing” suspected of being used in the commission of an offence. The current legislative scheme is quite limiting in that the Criminal Investigation Act and Misuse of Drugs Act powers require a “reasonable suspicion” requirement to be satisfied on the part of the police officer in regard to the particular vehicle, place or person in order for the police officer to be able to exercise the powers. This threshold requirement, whilst necessary in some circumstances, can severely limit the scope of police operational actions.

The Misuse of Drugs Amendment (Search Powers) Bill 2016 aims to provide WA Police with additional legislative powers to conduct targeted searches for prohibited drugs. A new part 4A is proposed to be inserted in the Misuse of Drugs Act 1981 that will contain new targeted search powers for police officers. Two new search powers are proposed—one will allow searches of vehicles in designated drug transit areas and the other will allow searches in the distribution centre of courier companies. The power to search vehicles in designated drug transit areas is based on the powers contained in the South Australian and Northern Territory legislation. The first mechanism of this framework will provide that if a senior police officer with the rank of superintendent or above reasonably suspects that an area is being used or is likely to be used for the transport of prohibited drugs, prohibited plants or controlled precursors, the senior police officer may authorise the exercise of certain police powers in relation to the area.

In an area to which the authorisation applies, police officers will have the power to stop and detain a vehicle and conduct searches, including preliminary drug detection tests on the vehicle and any persons or property in or on the vehicle, using an electronic drug detection system or a drug detection dog. Additionally, police officers will be able to allow a drug detection dog to enter any part of the vehicle, direct a person to open any part of the vehicle, and be able to move the vehicle to a place suitable for the exercise of the powers.

Unlike the South Australian provisions, which require a positive result from a preliminary drug detection test in order for police officers to be able to formally search a vehicle or a person, the Western Australian legislative framework will not require a reasonable suspicion requirement to be met in relation to being able to search a vehicle. Police officers will be authorised to immediately stop, detain and search a vehicle based on the fact that the vehicle is travelling through an area subject to an authorisation. However, in order to search a person, a police officer must satisfy the reasonable suspicion requirement currently contained in section 23 of the Misuse of Drugs Act. A positive result from a preliminary drug detection test will satisfy this requirement. Further, certain limitations will apply in respect of the authorisation. The authorisation must define the area to which it relates and must not operate for an initial period exceeding 14 days. The authorisation may also be subject to certain conditions specified by the granting officer, may be renewed from time to time by a senior police officer for a period not exceeding 14 days, and may be varied or revoked by a senior police officer at any time. Additionally, only three authorisations will be able to operate at any one time.

Certain limitations will also apply in relation to the area subject to an authorisation. The area cannot be situated in the Perth metropolitan area, nor can an area exceed five square kilometres. The second proposal targets the unwitting transportation of drugs into Western Australia by freight and/or courier companies. In 2015, WA Police conducted a suite of postal operations in conjunction with Australia Post and the Australian Border Force. These operations were conducted in order to formulate a baseline snapshot of the quantity of illicit drugs being sent to Western Australian addresses through domestic mail sorted and dispatched by Australia Post. Seven operations were conducted at the Australia Post Perth Gateway Facility, where 95 per cent of all package mail being delivered within Western Australia is sorted and dispatched. The operations involved the mass screening of domestic parcels and letters using drug detection dogs and electronic scanning devices. The operations were highly successful and resulted in a significant number of drug and other seizures, and charges being laid. In particular, 361.6 grams of methylamphetamine and 11.45 kilograms of cannabis were seized, with 16 charges laid relating to the possession of methylamphetamine.

Pursuant to this proposal, a senior police officer with a rank of superintendent or above will be able to authorise the exercise of certain police powers in freight and/or courier distribution facilities. Unlike the first mechanism of the proposed legislative framework, there will be no requirement for the senior police officer to meet a reasonable suspicion threshold in order to give the authorisation for the searching of a delivery business's premises. In premises subject to an authorisation, a police officer will have the power to enter the premises and conduct a preliminary drug detection test on articles being sorted and dispatched within the premises using electronic drug detection devices or drug detection dogs. Police will be able to open and examine any article that produces a positive result during the preliminary drug detection test.

Certain limitations will apply to the authorisation. The authorisation must clearly define the premises to which it relates and must not operate for an initial period exceeding 24 hours. The authorisation may also be subject to certain conditions specified by the granting officer, may be renewed from time to time by a senior police officer for a period not exceeding 24 hours, and may be varied or revoked by a senior police officer at any time. Additionally, only three authorisations will be able to operate at any one time. Certain limitations will also apply to premises subject to an authorisation. Police officers will be able to exercise the powers of entry and search provided in the legislation only in parts of the premises that are used for sorting, storing and dispatching of articles. Police officers will not be able to enter to search articles contained in other areas within the facility such as staff offices or staffrooms.

During the development of the bill, consultation took place with major freight distribution companies in Western Australia. They all indicated their support for the proposals.

Reporting and reviewing requirements have been incorporated into the bill. The Commissioner of Police will be required to report to the minister each financial year certain information in relation to the exercise of powers under the new part 4A of the act. The information required to be reported on includes the number of authorisations made under part 4A, areas of the state that were subject to vehicle-search authorisations and the premises that were subject to premises-search authorisations. The minister will be required to table in Parliament within 12 sitting days the report received from the Commissioner of Police. In addition, there will be a statutory review requirement in the legislation. The minister will be required to carry out a review of the operation and effectiveness of part 4A of the act after it has been in operation for five years. The minister will be required to lay, or cause to be laid, a report of the review before both houses of Parliament as soon as is practicable after the review has been completed, and no later than two years after the five-year anniversary.

The measures contained within the Misuse of Drugs Amendment (Search Powers) Bill 2016 are aimed at enhancing and strengthening the ability of police officers to target the sale and supply of methylamphetamine and other harmful drugs in Western Australia.

Pursuant to standing order 126(1), I advise that the bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party, nor does the bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 4471.]

Debate adjourned, pursuant to standing orders.