

Explanatory Memorandum

Misuse of Drugs Amendment (Search Powers) Bill 2016

1. Short Title

Pursuant to this clause, when the Bill is passed and receives Royal Assent, it will be known as the *Misuse of Drugs Amendment (Search Powers) Act 2016*.

2. Commencement

This clause provides that the short title and commencement clauses come into effect on Royal Assent. The rest of the provisions in the Bill will come into operation by way of proclamation. The commencement provisions are drafted this way so that any necessary police procedures etc., and, if necessary, Regulations, are all in place prior to the provisions becoming law.

3. Act amended

This clause provides that the Act being amended by the Bill is the *Misuse of Drugs Act 1981*.

4. Section 3 amended

Section 3 of the *Misuse of Drugs Act 1981* is amended to insert definitions of 'category 1 item', 'category 2 item' and 'vehicle'. These definitions are necessary as they are then referred to in the proposed new Part 4A to be inserted through clause 5 of the Bill. Category 1 and category 2 items are substances and things that can be used in the manufacture of prohibited drugs. They are currently only defined in section 12 for the purposes of Part IV of the Act. Adding these definitions to section 3 of the Act will allow police to conduct targeted searches for these items under the new Part 4A of the Act. The definition of vehicle is currently only defined in section 21 of the Act, but is also to be referenced in the new Part 4A, so there is a need to define what is meant by vehicle under these new targeted search powers.

5. Part 4A inserted

Clause 5 of the Bill inserts a new Part 4A into the *Misuse of Drugs Act 1981*. The new Part 4A contains new powers for police officers in relation to targeted searches of vehicles, persons and premises searching for prohibited drugs, prohibited plants and controlled precursors.

20A. Terms used

Section 20A contains a range of defined terms that are necessary in relation to the use of powers under the new Part 4A.

Australia Post has been defined, as Australia Post delivery business premises will be excluded from being searched under a premise search authorisation [see definition of 'delivery business'].

Consigned article has been defined so as to describe the types of articles on which a preliminary drug detection test can be conducted under a premises search authorisation.

Controlled precursor means anything that is a category 1 or category 2 item under section 21 of the Act. Category 1 and category 2 items are substances and things that can be used in the manufacture of prohibited drugs. They are defined for the purposes of Part 4A as they are items for which searches can be conducted for.

Delivery business means a business that delivers consigned articles, but excludes Australia Post. The definition is necessary to outline the types of businesses that can be subject to a premises search authorisation.

Drug detection area means the area of the State declared for the purposes of a vehicle search authorisation. The definition is necessary so that it is clear which vehicles and persons can be searched and in which areas.

Drug detection device is defined as any electronic device or system approved by the Commissioner of Police for the purpose of detecting prohibited drugs, prohibited plants or controlled precursors. These devices or systems are utilised for preliminary drug detection tests conducted pursuant to either a vehicle search authorisation or a premises search authorisation.

Drug detection dog is defined as a dog that has been trained in the detection of prohibited drugs, prohibited plants or controlled precursors. These dogs are utilised for preliminary drug detection tests conducted pursuant to either a vehicle search authorisation or a premises search authorisation.

Metropolitan region is defined as being the Metropolitan Region described in Schedule 3 of the Planning and Development Act 2005. The definition is necessary as a vehicle search authorisations cannot be conducted in the Perth metropolitan area [see s.20B(3)(a)].

Preliminary drug detection test is defined as using a drug detection dog in the vicinity of a person or property or using a drug detection device in relation to a person or property. Preliminary drug detection tests can be carried out under a vehicle search authorisation or a premises search authorisation.

Premises search authorisation means an authorisation to search a delivery business premises to look for prohibited drugs, prohibited plants or controlled precursors.

Senior police officer means a police officer of or above the rank of Superintendent, or an officer acting as a Superintendent. This is the rank of officer who will be able to issue a vehicle search authorisation or a premises search authorisation.

Vehicle search authorisation means an authorisation to search vehicles or persons in a drug detection area to look for prohibited drugs, prohibited plants or controlled precursors.

20B. Authorisation to exercise powers to search a vehicle or a person

Section 20B enables a senior police officer to be able to declare an area for the purposes of a vehicle search authorisation, if the officer is satisfied that there are reasonable grounds to suspect that the area is being used or is likely to be used for the transportation of prohibited drugs, prohibited plants or controlled precursors. A vehicle search authorisation has to be in writing and must specify the area to which it applies, and can be subject to further conditions specified by the senior officer in the authorisation instrument. The declared area cannot be in the Perth metropolitan area and must not be larger than 5 square kilometres. A vehicle search authorisation can be in force for up to 14 days, and can be renewed for additional periods of up to 14 days. No more than three vehicle search authorisations can be in force at any one time.

20C. Authorisation to exercise powers to search premises

Section 20C enables a senior police officer to be able to issue a premises search authorisation in relation to a delivery business premises. A premises search authorisation has to be in writing and must specify the premises to which it applies, and can be subject to further conditions specified by the senior officer in the authorisation instrument. A premises search authorisation can be in force for up to 24 hours, and can be renewed for additional periods of up to 24 hours. No more than three premises search authorisations can be in force at any one time.

20D. Other written laws

The provisions contained in Part 4A of the Act do not affect the operation of any other written laws and do not derogate the powers that police officers have either under Part V of the *Misuse of Drugs Act 1981* or under other written laws.

20E. Assistance when exercising powers under this Part

Under section 20E police officers can authorise other persons to assist them in exercising powers under Part 4A. For example, officers from the Australian Federal Police or the Australian Border Force may be called upon to assist police officers with carrying out preliminary drug detection testing. Similar 'assistance' provisions are contained in section 15 of the *Criminal Investigation Act 2006*, and in that regard, section 15 of the *Criminal Investigation Act 2006* applies where a person assists a police officer under section 20E of the *Misuse of Drugs Act 1981*. The effect of this is that, the person assisting the police officer has to comply with any reasonable directions given by the police officer, and the person [and the State] is protected from liability for their actions when assisting the police officer, in the same way as the police officer is protected from liability for their actions.

20F. Use of force

Section 20F authorises the use of force by persons exercising powers under Part 4A.

20G. Powers of police officers in relation to searching vehicle in drug detection area

Section 20G outlines the powers that can be exercised in relation to vehicles that are in a drug detection area which has been declared under a vehicle search authorisation. A police officer can:

1. require the driver of the vehicle to stop the vehicle;
2. enter and search any part of the vehicle;
3. detain the vehicle for a reasonable period in order to search the vehicle;
4. move the vehicle to a place suitable to search the vehicle;
5. require a person to open any part of the vehicle;
6. require the driver, or a passenger, of the vehicle not to leave, or to remain in, the vehicle;
7. take any action that is reasonably necessary in order to search the vehicle.

A search under section 20G includes doing a preliminary drug detection test. If such a test indicates the presence of a prohibited drug, prohibited plant or a controlled precursor, the police officer can then utilise powers under sections 23, 25 and 26 of the *Misuse of Drugs Act 1981*. These other sections give police officers the power to seize items, carry out further searches, require persons to provide information etc.

20H. Powers of police officers in relation to searching persons in drug detection area

Section 20H provides that a police officer can do a preliminary drug detection test on certain persons who are in a drug detection area which has been declared under a vehicle search authorisation. A police officer can only do a preliminary drug detection test on the following persons:

1. the driver of a vehicle in the drug detection area; or
2. a passenger of a vehicle in the drug detection area; or
3. a person who a police officer has reasonable grounds to suspect has recently left a vehicle that is, or was, in the drug detection area.

If such a test indicates the presence of a prohibited drug, prohibited plant or a controlled precursor, the police officer can then utilise powers under sections 23, 25 and 26 of the *Misuse of Drugs Act 1981*. These other sections give police officers the power to seize items, carry out further searches, require persons to provide information etc.

20I. Powers of police officers in relation to premises

Section 20I outlines the powers that can be exercised in relation to premises that are subject to a premises search authorisation. A police officer can:

1. enter the premises;
2. do a preliminary drug detection test on, or in relation to, any consigned article;
3. take into and use in the premises any equipment that is, or facilities that are, reasonably necessary in order to exercise any power;
4. make reasonable use of any equipment, facilities or services in the premises in order to exercise any power under the authorisation and to operate that equipment or require an occupier of the premises to do anything that is reasonable and necessary to facilitate use of that equipment;
5. open and examine a consigned article if a preliminary drug detection test indicates the detection of a prohibited drug, a prohibited plant or a controlled precursor;
6. take any action that is reasonably necessary in order to search the premises.

A preliminary drug detection test can only be carried out on consigned articles that are located in certain areas of the delivery business. These areas are those where the articles are stored or sorted prior to delivery, where the articles are dispatched for delivery, or if the article is in a vehicle, where those vehicles are located.

If a preliminary drug detection test indicates the presence of a prohibited drug, prohibited plant or a controlled precursor, the police officer can then utilise powers under sections 25 and 26 of the *Misuse of Drugs Act 1981*. These other sections give police officers the power to seize items, carry out further searches, require persons to provide information.

20J. Failure to comply with requirement of police officer

If a police officer places a requirement on a person to do a certain thing under section 20G(2)(a), (e) or (f) or section 20I(2)(d)(ii), and the person, without reasonable excuse, fails to comply with that requirement, they commit an offence. The penalty for this offence is contained in section 34(1)(d) of the *Misuse of Drugs Act 1981*, and is a fine of up to \$3,000, or to a term of imprisonment of up to 3 years, or both [see clause 7 of the Bill].

20K. Application of section 29 to exercise of powers conferred by or under this Part

Section 29 of the *Misuse of Drugs Act 1981*, deals with persons who hinder police officers in the exercise of their powers under Part V of the Act. Section 20K makes provision that section 29 of the Act also applies if a person hinders a police officer, or a person assisting a police officer, in the exercise of powers under Part 4A. Under section 34(1)(d) of the Act, the penalty for an offence under section 29 is a fine of up to \$3,000, or to a term of imprisonment of up to 3 years, or both.

20L. Regulations as to the exercise of powers under this Part

Section 20L is a Regulation making power in respect of the new Part 4A of the *Misuse of Drugs Act 1981*. It enables Regulations to be made, if necessary, and provides that Regulations can be made, for the following:

1. the manner in which vehicles may be stopped in a drug detection area, including the establishment of facilities, warnings and other devices to enable vehicles to be stopped in a safe and orderly manner; and
2. the procedure to be followed in relation to doing a preliminary drug detection test.

6. Section 21 amended

Section 21 of the *Misuse of Drugs Act 1981* contains a number of defined terms that are used in Part V of the Act. Clause 6 deletes the definition of 'vehicle' from section 21 of the Act as this definition is now contained in section 3 of the *Misuse of Drugs Act 1981*, through clause 4 of the Bill. A minor drafting change is then also required in the definition of 'search warrant' in section 21 of the Act to insert a full stop at the end of that definition.

7. Section 34 amended

Section 34 of the *Misuse of Drugs Act 1981* contains all of the penalty provisions for offences that are contained throughout the Act. Section 34(1)(d) is amended to include reference to the offence created by the new section 20J, which is inserted in the Act through clause 5 of the Bill. The effect of this change is that a person convicted of an offence under section 20J of the Act is liable to a fine of up to \$3,000, or to a term of imprisonment of up to 3 years, or both.

8. Section 42A and 42B inserted

Clause 8 of the Bill inserts two new sections into the *Misuse of Drugs Act 1981* dealing with reporting and review requirements in respect of the new Part 4A of the Act.

42A. Annual report to Minister on Part 4A

New section 42A places a requirement on the Commissioner of Police to report to the Minister, each financial year, certain information in relation to the exercise of powers under Part 4A of the Act. The information required to be reported on, is detailed in subsection 42A(1), and 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. Under subsection 42A(2) the Minister is required to table in Parliament, within 12 sitting days, the report she receives from the Commissioner of Police under subsection 42A(1).

42B. Review of Part 4A

New section 42B contains a statutory review mechanism in respect of the new Part 4A of the *Misuse of Drugs Act 1981*. Subsection 42B(1) requires the Minister to carry out a review of the operation and effectiveness of Part 4A of the Act after it has been in operation for 5 years. Furthermore, under subsection 42B(2) the Minister is 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.