

# **Explanatory Memorandum**

## ***MISUSE OF DRUGS AMENDMENT BILL 2023***

### **Overview of the Bill**

The *Misuse of Drugs Amendment Bill 2023* (the Bill) introduces amendments to the *Misuse of Drugs Act 1981* to create a Border Search Areas scheme (BSA scheme) to detect, deter and reduce the importation of illicit drugs into Western Australia.

The BSA scheme is centred on:

- identifying the key locations of entry and egress into Western Australia (WA) used to import and export illicit drugs; and
- providing police with powers at these locations in order to detect illicit drugs and disrupt drug-related serious and organised crime activity.

### **BSA locations**

Under the Bill, the locations identified as drug import/export locations are referred to as 'Border Search Areas' (BSAs). The Bill provides for 22 BSA locations, comprised of all major road, rail, air and sea entry points into WA as well as other air and sea ports which have been identified by the WA Police Force as potentially used for the movement of illicit drugs.

The Bill contains a comprehensive process for modifying existing BSAs or establishing additional BSAs which requires the Minister for Police to consult with other relevant Ministers and seek approval from the Attorney General. Once these requirements have been met, any amendments would then be able to be made by the Governor by Order in Council, published in the Gazette

### **Activation of a BSA**

Police will only be able to use the powers under the BSA scheme within a BSA that has been 'activated'. The process for 'activating' a BSA requires a senior officer to provide a written authorisation for the exercise of powers within a particular BSA. The authorisation can only be in effect for a maximum of 28 days.

### **Powers within a BSA**

Once a BSA is activated, police officers are provided with two key powers:

- conducting preliminary drug detection tests; and
- conducting vehicle searches.

A preliminary drug detection test is a non-invasive test involving either placing a drug detection dog in the vicinity of a person or property; or using a drug detection device, such as a wand, by passing it over the person or property.

A vehicle search is where police can enter and search a vehicle or any part of a vehicle and includes conducting a preliminary drug detection test on the vehicle.

Preliminary drug detection tests are used to detect the presence of prohibited drugs, prohibited plants and controlled precursors. If any of these substances are detected during a preliminary drug detection test conducted on either a person or a vehicle, the

Bill provides that the test result is considered 'reasonable grounds' to suspect that the person involved is in possession of a thing suspected of being used in the commission of an offence. This then enables police to utilise powers under section 23, where police can stop, detain and search the person along with any baggage, package, vehicle or other thing in their possession and use such force as is reasonably necessary.

Any person who hinders a police officer conducting a preliminary drug detection test or a vehicle search will be committing a simple offence under section 29 of the Act. This offence has a penalty of a fine of up to \$3,000, or to a term of imprisonment of up to 3 years, or both.

#### Limitations of the powers

The Bill places several limitations on the BSA powers. These function as safeguards to ensure the powers are targeted at those involved in illicit drug trade and include:

- that the powers can only be used in a public place (i.e. cannot be used on any private residence within the BSA); and
- that the powers cannot be exercised in regards to persons engaging in certain exempt activities such as political demonstrations, religious or cultural activities and medical emergencies.

#### Reporting and oversight

The scheme requires the Commissioner of Police to provide a report to the Corruption and Crime Commission (CCC) every 6 months. The report must include the number of times that search operations were carried out in each BSA, and any seizures, arrests and prosecutions arising from the utilisation of powers. The CCC must then provide an annual report to the Minister for Police on the work and activities undertaken by police. This report must be tabled in Parliament.

#### Review and sunset clause

Two key mechanisms are included to ensure that the reforms are effective and necessary.

Three years after the reforms commence, the BSA scheme will be subject to a review to scrutinise the operation and effectiveness of the BSA scheme. Following this review, and to ensure that due consideration is given as to whether the BSA scheme continues to be appropriate and necessary, a sunset clause will take effect 5 years after the scheme commences. The sunset clause will immediately cease the BSA scheme unless Parliament takes active steps to extend its operation.

## **PART 1 – Preliminary**

### **Clause 1. Short Title**

Pursuant to clause 1, when the Bill receives Royal Assent, it will be known as the *Misuse of Drugs Amendment Act 2023*.

### **Clause 2. Commencement**

Clause 2 provides that:

- 1) the short title and commencement provisions come into effect on Royal Assent;
- 2) the provisions creating the BSA scheme take effect on the day after Royal Assent; and
- 3) the sunset clause, whereby the BSA scheme is removed from the *Misuse of Drugs Act 1981*, takes effect 5 years and one day after the BSA scheme has taken effect.

### **Clause 3. Act amended**

Clause 3 provides that the Bill amends the *Misuse of Drugs Act 1981* (the Act).

## **PART 2 – Amendments commencing on day after Royal Assent**

### **Clause 4. Section 3 amended**

Section 3 lists and defines the terms used under the Act. Clause 4 amends section 3 by introducing a new definition for the term “Border Search Area”.

“**Border Search Area**”, also referred to as BSA, has the meaning given in section 20N(1), which is an area described in Schedule 6A, Division 1. There are currently 22 BSAs in Schedule 6A. The BSAs are:

1. **Broome Port**
2. **Broome Airport**
3. **Port of Port Hedland**
4. **Port Hedland International Airport**
5. **Port of Dampier**
6. **Port of Ashburton (Onslow)**
7. **Port of Geraldton**
8. **Perth Airport**
9. **Fremantle Port (Inner Harbour)**
10. **Fremantle Port (Outer Harbour)**
11. **Jandakot Airport**
12. **Wyndham Port**
13. **Bunbury Port**
14. **Busselton Airport**
15. **Albany Port**
16. **Esperance Port**
17. **Eyre Highway, Eucla (WA/SA border)**
18. **Victoria Highway near Kununurra (WA/NT border)**
19. **Tanami Road (WA/NT border)**
20. **Duncan Road (WA/NT border)**
21. **Great Central Road (WA/NT border)**
22. **Rawlinna Rail Siding**

Clause 4 also inserts definitions for “controlled precursor”, “drug detection device”, “drug detection dog” and “preliminary drug detection test” into section 3. These are not new terms or definitions, however, these terms were previously defined at section 20A, under Part 4A of the Act. As these terms are now also relevant to the BSA scheme which will be inserted at Part 4B, these terms have been relocated to section 3 of the Act which is the section reserved for defining key terms used by the Act.

#### **Clause 5. Section 20A amended**

Clause 5 removes the terms and definitions of “controlled precursor”, “drug detection device”, “drug detection dog” and “preliminary drug detection test” from section 20A, under Part 4A of the Act. These terms and their respective definitions have been relocated to section 3 of the Act as they are now not only applicable to Part 4A of the Act, but also Part 4B, which is the BSA scheme.

#### **Clause 6. Part 4B inserted**

Clause 6 inserts a new Part ‘Part 4B – Border Search Areas’ into the Act. Part 4B consist of five Divisions and provides for the majority of the BSA scheme.

##### **Division 1 – Preliminary**

##### **Section 20M. Terms used**

Section 20M inserts and defines three new terms: “authorised officer”, “Corruption and Crime Commission” and “public place”.

“**authorised officer**” is inserted to have the meaning outlined in section 20R(1) which is a police officer who has been authorised to exercise the powers under Division 3. These powers include preliminary drug detection testing, vehicle searches and associated powers to seize and detain. Police officers become ‘authorised officers’ once a written ‘BSA authorisation’ provided by a police officer of or above the rank of inspector has been issued. The officer who issued the BSA authorisation cannot act as an authorised officer.

“**Corruption and Crime Commission**” is inserted to mean the Corruption and Crime Commission established under the *Corruption, Crime and Misconduct Act 2003*.

“**public place**” is inserted to have the same definition as this term in the *Criminal Investigation Act 2003* which is:

*public place includes —*

- (a) *a place to which the public, or any section of the public, has or is permitted to have access, whether on payment or not; and*
- (b) *a place to which the public has access with the express or implied approval of, or without interference from, the occupier of the place; and*
- (c) *a school, university or other place of education, other than a part of it to which neither students nor the public usually has access.*

## **Section 20N. Border Search Area (BSA)**

Section 20N outlines what a BSA is, how existing BSAs can be modified, and how new BSAs can be created. A BSA is any area which has been described in Schedule 6A, Division 1.

There are 22 BSAs listed in Schedule 6A and should there be any intention to modify these BSAs, or to create additional BSAs, the following steps must be followed:

1. The Minister for Police must consult with the Ministers responsible for the administration of the *Local Government Act 1995*; the *Port Authorities Act 1999*; and the *Transport Co-ordination Act 1996*, and:
  - a. **For modification:** be satisfied that the modification is necessary for the ongoing effectiveness of the BSA in reducing the transport of prohibited drugs, prohibited plants or controlled precursors into WA;  
**OR**
  - b. **For creation of a new BSA:** be satisfied that there are reasonable grounds to suspect that the proposed BSA is being or is likely to be, used for the transport of prohibited drugs, prohibited plants or controlled precursors into WA;  
**AND**
  - c. be satisfied that the entire BSA is kept to a size no bigger than 5 km<sup>2</sup> and that it is the minimum size necessary to allow for effective use of the BSA powers.
2. The Minister for Police must seek the approval of the Attorney General.
3. The Minister for Police then makes a recommendation to the Governor.
4. The Governor may amend Schedule 6A by Order in Council published in the Gazette, under the powers outlined in section 42.

## **Division 2 – Ancillary provisions in relation to exercising powers in Division 3**

### **Section 20O. Other written laws**

Section 20O outlines that Part 4B does not affect the operation of any other written laws. This section also outlines that the powers of authorised officers within a BSA are in addition to the powers conferred to police officers under Part 4A which deals with targeted searches relating to vehicle search authorisations and premises search authorisations; and Part V, which outlines powers of police officers to search, seize and dispose of things used in the commission of offences.

### **Section 20P. Assistance when exercising powers under Division 3**

Section 20P provides that a police officer who has been identified in a BSA authorisation to exercise powers under Division 3, can authorise further other persons (including persons who are not police officers) to assist in exercising the Division 3 powers. 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 or vehicle searches.

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 20P of the Act. 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

### **Section 20Q. Use of force**

Section 20Q authorises the use of force by persons exercising powers under Division 3. This enables authorised officers to use force to overcome any resistance when carrying out a preliminary drug detection test or vehicle search within a BSA.

## **Division 3 – Powers of authorised officers in public place in BSA**

### **Section 20R. Authorised officers and BSA authorisations**

Whilst there are 22 established BSAs, police are required to ‘activate’ a BSA before any BSA-related powers, such as preliminary drug detection tests and vehicle searches, can be exercised. Section 20R outlines the authorising environment and parameters for activating a BSA.

The process for activating a BSA requires a police officer of or above the rank of inspector to provide a written ‘BSA authorisation’ notice. This officer is then known as the ‘issuing officer’. The ‘BSA authorisation’ notice authorises other police officers (known as ‘authorised officers’) to exercise powers under Division 3. If the officer who issues the BSA authorisation is of the rank of inspector, the BSA authorisation must then be further ratified in writing within a 24-hour period by a police officer of or above the rank of Superintendent. If this does not happen, the BSA authorisation ceases to have effect. This section is worded to ensure that the ‘issuing officer’ cannot also be an ‘authorised officer’.

The BSA authorisation can only have effect for a maximum of 28 days and must contain certain information, such as any directions approved by the Commissioner of Police relating to the exercise of BSA-related powers.

### **Section 20S. Exercise of powers under Division**

Section 20S outlines the scope of where the Division 3 powers, such as preliminary drug detection tests and vehicle searches, can be exercised.

The powers can only be exercised in a ‘public place’ (as defined in section 3(1) of the *Criminal Investigation Act 2006*) within a BSA.

The BSA scheme will specifically exclude persons or vehicles involved in the following activities from being subject to the Division 3 powers:

- Industrial action/protects
- political protests/demonstrations;
- religious or cultural activities;
- educational activities; and
- medical appointments or emergencies.

To ensure that any additional exemptions can be added if identified, section 20S(2)(f) allows for further exemptions to be able to be made by way of regulations.

### **Section 20T. Powers of authorised officers in relations to persons**

Section 20T outlines the powers of authorised officers when conducting preliminary drug detection tests on persons within a BSA. This includes a power to detain the person for a reasonable time in order to do the test.

This section also enables police officers to utilise additional powers under sections 23, 25 and 26 of the Act through prescribing how those sections are to be read with consideration to the BSA scheme powers of preliminary drug detection tests.

Section 20T(3) provides that if a preliminary drug detection test indicates the presence of a prohibited drug, prohibited plant or a controlled precursor, then this is considered 'reasonable grounds' to suspect that the person is in possession of a thing suspected of being used in the commission of an offence. This then enables police to utilise powers under section 23, where police can stop, detain and search the person along with any baggage, package, vehicle or other thing in their possession and use such force as is reasonably necessary.

Section 20T(4) provides that authorised officers undertaking preliminary drug detection tests or detaining people for the purpose of conducting a preliminary drug detection test, can utilise powers under section 25 of the Act. This enables police to:

- seize and/or make copies of any documents etc. found;
- require the person to give information; and
- charge a person with committing a simple offence if they do not comply or they provide false or misleading information.

Section 20T(5) outlines that any thing suspected of being used in the commission of an offence which is found during a preliminary drug detection test is to be treated as per section 26 of the Act. It also specifies that if the thing found is a controlled precursor, or contaminated by a controlled precursor, then that thing is to be treated the same as if it were any other item listed under section 26(1)(a), meaning it can be seized and detained until being dealt with under the disposal provisions under section 27.

### **Section 20U. Powers of authorised officers in relation to vehicles**

Section 20U outlines the powers of authorised officers when conducting vehicle searches within a BSA. This includes:

- requiring the driver to stop;
- entering and searching the vehicle, including doing a preliminary drug detection test on the vehicle, as this is included in the definition of 'search';
- detaining the vehicle for a reasonable time in order to conduct the search;

- moving the vehicle to a more suitable place within the BSA in order to conduct the search;
- requiring the driver or passenger to open any part of the vehicle;
- requiring the driver or passenger to remain in the vehicle; and
- taking any action that is reasonably necessary in order to search the vehicle.

This section also enables police officers to utilise additional powers under sections 23, 25 and 26 of the Act through prescribing how those sections are to be read with consideration to vehicle searches.

Section 20U(3) provides that if a preliminary drug detection test on a vehicle indicates the presence of a prohibited drug, prohibited plant or a controlled precursor, then this is considered 'reasonable grounds' to suspect that the driver and/or passenger is in possession of a thing suspected of being used in the commission of an offence. This then enables police to utilise powers under section 23 where police can stop, detain and search the person along with any baggage, package, vehicle or other thing in their possession and use such force as is reasonably necessary.

Section 20U(4) provides that authorised officers undertaking vehicle searches, can utilise powers under section 25 of the Act. This enables police to:

- seize and/or make copies of any documents etc. found;
- require the person to give information; and
- charge a person with committing a simple offence if they do not comply or they provide false or misleading information.

Section 20T(5) outlines that any thing suspected of being used in the commission of an offence which is found during a vehicle search is to be treated as per section 26 of the Act. It also specifies that if the thing found is a controlled precursor, or contaminated by a controlled precursor, then that thing is to be treated the same as if it were any other item listed under section 26(1)(a), meaning it can be seized and detained until being dealt with under the disposal provisions under section 27.

## **Division 4 – Offences**

### **Section 20V. Application of section 29 to exercise of powers conferred by or under this part**

Section 29 of the Act deals with persons who hinder police officers and approved persons in the exercise of their powers under Part V. New section 20V provides that section 29 of the Act also applies to situations where a person hinders a police officer (or a person assisting a police officer) who is conducting a preliminary drug detection test or vehicle search.

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.

### **Section 20W. Failure to comply with requirement of authorised officer**

Section 20W creates a new simple offence for failing to comply with a requirement from an authorised officer under sections 20U(2)(a), (e), or (f). This



applies to circumstances where the authorised officer has required the driver or passenger of a vehicle to either:

- stop the vehicle (applies to driver only);
- open any part of the vehicle (can apply to driver and/or passenger); or
- not to leave/to remain at the vehicle (can apply to driver and/or passenger).

The penalty for this offence will be outlined in section 34(1)(d) of the Act (via clause 8), which is a fine of up to \$3,000, or to a term of imprisonment of up to 3 years, or both.

## **Division 5 – Reporting, oversight and review**

### **Section 20X. Commissioner's reports**

Section 20X outlines the reporting obligations on the Commissioner of Police to provide to the Corruption and Crime Commission (CCC) regarding the BSA scheme.

Every six months (as soon as practicable after 30 June and 31 December each year) the Commissioner of Police must submit a report to the CCC outlining the use of powers under Division 3 during the preceding six-month period. The report must include:

- the number of preliminary drug detection tests carried out on persons in each BSA;
- the number of vehicle searches carried out in each BSA;
- the number and nature of seizures under sections 25 and 26 exercised as a result of preliminary drug detection tests and vehicle searches;
- the number of searches under section 23(1) exercised in each BSA as a result of preliminary drug detection tests and vehicle searches;
- the number and nature of arrests and charges resulting from BSA preliminary drug detection tests and vehicle searches and the outcomes of those prosecutions.

The CCC may required the Commissioner of Police to provide additional information if relevant to the report.

### **Section 20Y. Annual report by Corruption and Crime Commission**

Section 20Y outlines the process for preparing and tabling an annual report on the BSA scheme.

The CCC is responsible for preparing an annual report that is to be tabled in both Houses of Parliament. The purpose of the report is to provide an account on the exercise of powers under the BSA scheme. This will be achieved through the CCC scrutinising the six-monthly reports prepared by the Commissioner of Police (under section 20X) and providing an overview of the powers exercised, as well as comments by the CCC on the quality of the reports prepared by the Commissioner of Police.

The Commissioner of Police and the Minister for Police will receive copies of the annual report before it is finalised. This is to enable the Commissioner of Police to identify if the report contains any information which should be withheld

as it could endanger a person's safety; prejudice an investigation or prosecution; or compromise operational activities or methodologies of the WA Police Force. The Minister for Police must then exclude any information which meets any of these criteria.

### **Section 20Z. Inspection of records by Corruption and Crime Commission**

Section 20Z provides for the CCC to inspect the records kept by the Commissioner of Police in regards to the BSA scheme.

This section inserts and defines two new terms: "Department" and "officer".

**"Department"** is defined as the public service department responsible for assisting in the administration of the *Police Act 1892*. This means the WA Police Force.

**"officer"**, of the Department, means a person employed or engaged by the WA Police Force.

The CCC has responsibility for assessing the WA Police Force compliance with the BSA scheme, including the reporting requirements. The CCC must at least every 12 months, inspect the police records on the BSA scheme. The CCC powers of inspection can be delegated in writing, in accordance with sections 185(3) to (6) of the *Corruption, Crime and Misconduct Act 2003*, to other staff that have been appointed to, seconded to, or engaged by, the CCC.

The CCC can do any of the following as part of the inspection and the Commissioner of Police must ensure that the WA Police Force provides any assistance reasonably required to support the inspection:

- after notifying the Commissioner of Police, enter any premises occupied by the WA Police Force;
- have full access to all WA Police Force records relevant to the inspection: and
- require any employee or person engaged by the WA Police Force to give the CCC any information in their possession which is relevant to the inspection.

### **Section 20ZA. Review of Part**

Section 20ZA contains a statutory review mechanism in respect of the new Part 4B of the Act. Section 20ZA(1) requires the Minister for Police to carry out a review of the operation and effectiveness of Part 4B of the Act after it has been in operation for 3 years.

Section 20ZA(2) requires the Minister for Police 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, but no later than 4 years after Part 4B has been in operation.

## **Clause 7. Section 23 amended**

Clause 7 amends section 23 by inserting section 23(1A). This new section is intended to provide a more comprehensive framework for searches exercised on persons under BSA scheme, than is currently provided under the Act.

The Act contains minimal provisions or rules for conducting a search on a person. Sections 23(2) to (4) of the Act outline that the search is required to be conducted by a person of the same sex as the person being searched or a medical practitioner; and that a person can be detained and/or conveyed prior to a search in order to meet this requirement.

The new section 23(1A) provides that sections 23(2) to (4) do not apply to BSA-related searches and instead, any searches of persons by virtue of the BSA scheme are to be done in accordance with sections 70(2), 70(3) and 71(2) of the *Criminal Investigation Act 2006*. This means that a search of a person by virtue of the BSA scheme will require the person conducting the search to:

- identify themselves;
- inform the person being searched of the reasons for the search;
- request the person being searched to consent to the search and if they do not consent, inform them that it is an offence to obstruct the search;
- do the search as quickly as possible;
- ensure the search is as least intrusive as possible in the circumstances;
- tell the person being searched the reason why it is necessary to remove any articles of clothing;
- allow the person being searched to dress as soon as the search is finished;
- provide the person with adequate replacement clothing or footwear if these items are seized; and
- for the duration of the search, not question the person being searched about any offences that they are suspected of having committed.

The person doing the search must also, if practicable, be the same gender as the person being searched, unless the searcher is a doctor or nurse.

Clause 7 also amends section 23 by modernising the language through:

- removing the gender-biased terms of 'his' and 'him' and replacing these with gender neutral terms; and
- replacing references to 'shall' with 'must'.

## **Clause 8. Section 34 amended**

Section 34 outlines the penalties for the various crimes and offences listed in the Act. Clause 8 amends section 34 by inserting reference to section 20W into section 34(1)(d). This means that the offence of failing to comply with an authorised officer under new section 20W, will have a penalty of a fine of up to \$3,000, or to a term of imprisonment of up to 3 years, or both.

This applies to circumstances where the authorised officer has required the driver or passenger of a vehicle within a BSA to either:

- stop the vehicle (applies to driver only)
- open any part of the vehicle (can apply to driver and/or passenger)

- not to leave/to remain at the vehicle (can apply to driver and/or passenger).

### **Clause 9. Section 42 amended**

Section 42 provides for powers for the Governor to make amendments to specific schedules of the Act via an Order in Council published in the Gazette.

Clause 9 amends section 42 by inserting a new section at 42(1A) which provides for the Governor to amend Schedule 6A by modifying an existing BSA or establishing a new BSA through an Order in Council Published by the Gazette. This enables BSAs to be modified or created without requiring an amendment Act to be passed by Parliament.

Clause 9 also amends sections 42(2) to 42(5) to provide that Schedule 6A amendments would be subject to the same provisions as other schedule amendments enacted by the Governor under the section 42 of Act, such as:

- upon publication in the Gazette, the Schedule 6A amendments would take effect immediately;
- the Minister for Police must table a copy of the Order in Council in both Houses of Parliament within 14 sitting days of the Gazettal (the order will cease to have effect if this is not done); and
- Parliament can pass a disallowance motion to cease the operation of the Order.

These amendments have been designed to ensure that the legislation can be appropriately agile to respond to criminal activity.

For example, the WA Police Force may identify a location that is not listed as a BSA but is an entry/egress point into WA that is suspected of being used to import drugs into the State. Rather than an amendment Act being required to list the BSA, which would require a lengthy process through Cabinet and both Houses of Parliament, instead, the Minister for Police could request a change to Schedule 6A via the Governor. Whilst this is intended to be a more agile approach, a comprehensive process has also been developed to ensure that a high-level of scrutiny takes place before any amendments are made to Schedule 6A. This comprehensive process is provided at new section 20N which outlines the steps and safeguards which need to be met prior to the Governor exercising the powers under section 42(1A).

### **Clause 10. Schedule 6A inserted**

Clause 10 inserts Schedule 6A which lists and provides details for the following 22 BSAs:

- 1. Broome Port**
- 2. Broome Airport** (comprised of 2 separate zones)
- 3. Port of Port Hedland** (comprised of 2 separate zones)
- 4. Port Hedland International Airport**
- 5. Port of Dampier**
- 6. Port of Ashburton (Onslow)**
- 7. Port of Geraldton** (comprised of 2 separate zones)
- 8. Perth Airport** (comprised of 3 separate zones)
- 9. Fremantle Port (Inner Harbour)** (comprised of 4 separate zones)
- 10. Fremantle Port (Outer Harbour)** (comprised of 7 separate zones)

- 11. Jandakot Airport**
- 12. Wyndham Port**
- 13. Bunbury Port** (comprised of 3 separate zones)
- 14. Busselton Airport**
- 15. Albany Port**
- 16. Esperance Port** (comprised of 2 separate zones)
- 17. Eyre Highway, Eucla (WA/SA border)**
- 18. Victoria Highway near Kununurra (WA/NT border)**
- 19. Tanami Road (WA/NT border)**
- 20. Duncan Road (WA/NT border)**
- 21. Great Central Road (WA/NT border)**
- 22. Rawlinna Rail Siding**

These 22 locations were selected to cover the major entry and egress points within WA. This includes five recognised highways into WA from the eastern states, one railway line from the eastern states, and six major air and sea ports. A number of additional air and sea ports have also been included as BSAs as they are entry points into WA and have been linked to drugs seizures in the past as either the seizure site or the intended destination.

Some of the BSAs are comprised of multiple 'zones' in order to ensure that the BSA:

- is limited in size to only being what is reasonably necessary to utilise the Division 3 powers;
- covers all ingress and egress points;
- allows for access to suitable road space to safely establish vehicle checkpoints; and
- where practicable, excludes all private residences and public spaces which are used for recreational, cultural or social purposes.

Division 1 of Schedule 6A provides a description of the boundary lines of each BSA using longitude and latitude coordinates. These coordinates are listed using the Geocentric Datum of Australia 2020.

Division 2 of Schedule 6A provides a visual representation of each BSA and where applicable, each zone, using an aerial photograph overlaid with an illustration of the boundary lines. These images are provided for information purposes only. The coordinates outlined in Division 1 should be relied upon to determine the exact boundaries of each BSA.

## **PART 3 – Amendments commencing 5 years after Royal Assent**

Part 3 of the Bill contains the collection of clauses to enact the sunset clause, whereby the entire BSA scheme will be repealed 5 years from the date of its commencement, unless action is taken to preserve or extend its effect.

Sunset is used to ensure that legislative instruments are only in force while they are effective and necessary. The Part 3 sunset clause will complement the review provisions introduced under the new Section 20ZA as an additional mechanism to ensure the BSA reforms are effective.

The review, under section 20ZA will take place 3 years after the reforms commence and will scrutinise the operation and effectiveness of the BSA scheme. Following this review, and to ensure that due consideration is given as to whether the BSA scheme continues to be appropriate and necessary, Part 3 will take effect 5 years and one day after commencement of the BSA scheme and will immediately cease the scheme, unless Parliament takes steps to retain it.

#### **Clause 11. Section 3 amended**

Clause 11 deletes the amendments made by clause 4. This means the definitions of “Border Search Area”, “controlled precursor”, “drug detection device”, “drug detection dog” and “preliminary drug detection test” will be removed from section 3. This amendment is being made as part of the sunset clause to remove all aspects of the BSA scheme from the Act.

#### **Clause 12. Section 20A amended**

Clause 12 deletes the amendments made by clause 5. This means that the definitions of “controlled precursor”, “drug detection device”, “drug detection dog” and “preliminary drug detection test” will be re-inserted into section 20A. This amendment is being made as part of the sunset clause to remove all aspects of the BSA scheme. Without the BSA scheme, these terms will no longer be required in section 3 of the Act as they return to only being relevant to Part 4A, so will be re-inserted into that Part.

#### **Clause 13. Part 4B deleted**

Clause 13 deletes the amendments made by clause 6. This means that ‘Part 4B – Border Search Areas’ will be removed from the Act and the entire BSA scheme will cease to exist. This is being removed as part of the sunset clause to remove all aspects of the BSA scheme.

#### **Clause 14. Section 23 amended**

Clause 14 deletes most of the amendments made by clause 7. The new sections 23(1A) and 23(1B), which provide the framework for searching persons under the BSA scheme, will be deleted. This is being removed as part of the sunset clause to remove all aspects of the BSA scheme.

The following amendments made to section 23 by clause 7 will not be impacted by clause 14 and will therefore remain in the Act following the sunset date:

- the gender-biased terms of ‘his’ and ‘him’ will remain deleted and replaced with gender neutral terms; and
- references to ‘shall’ in sections 23(2) and 23(4) will remain deleted and replaced with ‘must’.

#### **Clause 15. Section 34 amended**

Clause 15 deletes the amendments made by clause 8. This will remove reference to the offence outlined in new section 20W (failure to comply with requirement of authorised officer), from section 34. Section 34 outlines the penalties for the various crimes and offences listed in the Act. Clause 15 deletes reference to section 20W as part of the sunset clause to remove all aspects of the BSA scheme. Section 20W itself will be removed from the Act via clause 13.

**Clause 16. Section 43 amended**

Clause 16 deletes the amendments made by clause 9. This means that the Governor will no longer have powers to amend Schedule 6A by Order in Council. This is being removed as part of the sunset clause to remove all aspects of the BSA scheme. Schedule 6A will be removed from the Act via clause 17.

**Clause 17. Schedule 6A deleted**

Clause 17 deletes Schedule 6A. This means deleting the descriptions and plans of all BSAs. This is being removed as part of the sunset clause to remove all aspects of the BSA scheme.