

# Misuse of Drugs Amendment (Search Powers) Bill 2016

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Western Australia

LEGISLATIVE ASSEMBLY

**Misuse of Drugs Amendment (Search Powers)  
Bill 2016**

**A Bill for**

**An Act to amend the *Misuse of Drugs Act 1981*.**

The Parliament of Western Australia enacts as follows:

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1   **1.     Short title**

2           This is the *Misuse of Drugs Amendment (Search Powers)*  
3           *Act 2016*.

4   **2.     Commencement**

5           This Act comes into operation as follows —

- 6           (a)   sections 1 and 2 — on the day on which this Act  
7                receives the Royal Assent;
- 8           (b)   the rest of the Act — on a day fixed by proclamation,  
9                and different days may be fixed for different provisions.

10 **3.     Act amended**

11           This Act amends the *Misuse of Drugs Act 1981*.

12 **4.     Section 3 amended**

13           In section 3(1) insert in alphabetical order:

14

15                   *category 1 item* has the meaning given in section 12;

16                   *category 2 item* has the meaning given in section 12;

17                   *vehicle* includes aircraft, hovercraft, vessel and any  
18                   other means of transportation;

19

1   **5.    Part 4A inserted**

2           After section 20 insert:

3  
4                           **Part 4A — Targeted searches**

5                                   **Division 1 — Preliminary**

6           **20A.   Terms used**

7           In this Part —

8           *Australia Post* has the meaning given in the *Australian*  
9           *Postal Corporation Act 1989* (Commonwealth)  
10          section 3;

11          *consigned article* means any article, including a letter,  
12          document, envelope, packet, parcel, package, container  
13          or wrapper, consigned for delivery by a delivery  
14          business;

15          *controlled precursor* means a category 1 item or a  
16          category 2 item;

17          *delivery business* means a business that delivers  
18          consigned articles but does not include Australia Post;

19          *drug detection area* means an area referred to in  
20          section 20B(2)(a);

21          *drug detection device* means an electronic device, or a  
22          system that uses or involves an electronic device, of a  
23          type approved by the Commissioner for the purpose of  
24          detecting the presence of any of the following —

- 25               (a) a prohibited drug;  
26               (b) a prohibited plant;  
27               (c) a controlled precursor;

28          *drug detection dog* means a dog trained to detect the  
29          presence of any of the following —

- 30               (a) a prohibited drug;

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- 1 (b) a prohibited plant;
- 2 (c) a controlled precursor;
- 3 **metropolitan region** has the meaning given in the
- 4 *Planning and Development Act 2005* section 4(1);
- 5 **preliminary drug detection test** means —
- 6 (a) leading or otherwise placing a drug detection
- 7 dog in the vicinity of a person or property; or
- 8 (b) using a drug detection device in relation to a
- 9 person or property;
- 10 **premises search authorisation** means an authorisation
- 11 issued by a senior police officer under section 20C;
- 12 **senior police officer** means a police officer who is, or
- 13 is acting as, a superintendent or an officer above the
- 14 rank of superintendent;
- 15 **vehicle search authorisation** means an authorisation
- 16 issued by a senior police officer under section 20B.

17 **Division 2 — Authorisations**

18 **20B. Authorisation to exercise powers to search a vehicle**

19 **or a person**

- 20 (1) A senior police officer may issue a vehicle search
- 21 authorisation under this section if the senior police
- 22 officer is satisfied there are reasonable grounds to
- 23 suspect that an area is being, or is likely to be, used for
- 24 the transport of any of the following —
- 25 (a) a prohibited drug;
- 26 (b) a prohibited plant;
- 27 (c) a controlled precursor.

- 
- 1 (2) A vehicle search authorisation must set out the  
2 following —
- 3 (a) subject to subsection (3), the boundaries of the  
4 area to which the authorisation relates (the *drug*  
5 *detection area*);
- 6 (b) the date and time from which it is to take effect;
- 7 (c) the period, not exceeding 14 days, for which it  
8 has effect.
- 9 (3) A senior police officer must not specify an area under  
10 subsection (2)(a) that —
- 11 (a) is in the metropolitan region; or
- 12 (b) exceeds an area of 5 square kilometres.
- 13 (4) A vehicle search authorisation may be subject to any  
14 conditions specified in the authorisation by the senior  
15 police officer issuing the authorisation.
- 16 (5) A vehicle search authorisation —
- 17 (a) may be renewed by a senior police officer —
- 18 (i) before the vehicle search authorisation  
19 expires; and
- 20 (ii) for a period not exceeding 14 days; and
- 21 (iii) if the senior police officer is satisfied  
22 that the requirements set out in  
23 subsection (1) are met;
- 24 and
- 25 (b) may be renewed under paragraph (a) more than  
26 once; and
- 27 (c) may be revoked or varied by a senior police  
28 officer.
- 29 (6) A vehicle search authorisation issued when  
30 3 authorisations are already in force has no effect.

- 1           (7) A vehicle search authorisation, or the renewal,  
2           variation or revocation of a vehicle search  
3           authorisation, must be in writing.
- 4           **20C. Authorisation to exercise powers to search premises**
- 5           (1) A senior police officer may issue a premises search  
6           authorisation under this section in respect of premises  
7           used primarily for carrying on a delivery business.
- 8           (2) A premises search authorisation must set out the  
9           following —
- 10           (a) the address of the premises to which the  
11           authorisation relates;
- 12           (b) the date and time from which it is to take effect;
- 13           (c) the period, not exceeding 24 hours, for which it  
14           has effect.
- 15           (3) A premises search authorisation may be subject to any  
16           conditions specified in the authorisation by the senior  
17           police officer issuing the authorisation.
- 18           (4) A premises search authorisation —
- 19           (a) may be renewed by a senior police officer —
- 20           (i) before the premises search authorisation  
21           expires; and
- 22           (ii) for a period not exceeding 24 hours;
- 23           and
- 24           (b) may be renewed under paragraph (a) more than  
25           once; and
- 26           (c) may be revoked or varied by a senior police  
27           officer.
- 28           (5) A premises search authorisation issued when  
29           3 authorisations are already in force has no effect.



- 1 (6) A premises search authorisation, or the renewal,  
2 variation or revocation of a premises search  
3 authorisation, must be in writing.

4 **Division 3 — Ancillary provisions in relation to**  
5 **exercising powers**

6 **20D. Other written laws**

7 Unless the contrary intention appears in this Act or  
8 another written law —

- 9 (a) this Part does not affect the operation of any  
10 other written law; and  
11 (b) the powers in this Part are in addition to, and  
12 not in derogation of, the powers conferred on  
13 police officers by Part V or any other written  
14 law.

15 **20E. Assistance when exercising powers under this Part**

- 16 (1) A police officer may authorise as many other persons  
17 to assist in exercising a power under this Part as are  
18 reasonably necessary in the circumstances.  
19 (2) If a police officer authorises other persons to assist in  
20 the exercise of powers under this Part, the *Criminal*  
21 *Investigation Act 2006* section 15, with any necessary  
22 changes, applies to and in relation to the exercise of  
23 powers by, or the assistance of, that person.

24 **20F. Use of force**

25 When exercising a power under this Part, a person may  
26 use such force as is reasonably necessary and with such  
27 assistance as the person considers necessary —

- 28 (a) to exercise the power; and  
29 (b) to overcome any resistance to exercising the  
30 power that is offered, or that the person

1                                    exercising the power reasonably suspects will  
2                                    be offered, by any person.

3                                    **Division 4 — Vehicle searches**

4                                    **20G. Powers of police officers in relation to searching**  
5                                    **vehicle in drug detection area**

- 6                                    (1) In this section —  
7                                    *search* includes doing a preliminary drug detection  
8                                    test.
- 9                                    (2) Under a vehicle search authorisation, a police officer  
10                                    may do one or more of the following in relation to a  
11                                    vehicle in the drug detection area set out in the  
12                                    authorisation —
- 13                                    (a) require the driver of the vehicle to stop the  
14                                    vehicle;
  - 15                                    (b) enter and search any part of the vehicle;
  - 16                                    (c) detain the vehicle for a reasonable period in  
17                                    order to search the vehicle;
  - 18                                    (d) move the vehicle to a place suitable to search  
19                                    the vehicle;
  - 20                                    (e) require a person to open any part of the vehicle;
  - 21                                    (f) require the driver, or a passenger, of the vehicle  
22                                    not to leave, or to remain in, the vehicle;
  - 23                                    (g) take any action that is reasonably necessary in  
24                                    order to search the vehicle.
- 25                                    (3) A police officer has reasonable grounds to suspect that  
26                                    any thing referred to in section 23(1)(a), (b) or (c) is in  
27                                    the possession of a person, if a preliminary drug  
28                                    detection test in relation to a vehicle in which the  
29                                    person is, or was, the driver or a passenger, indicates  
30                                    the detection of any of the following —
- 31                                    (a) a prohibited drug;

- 1 (b) a prohibited plant;  
2 (c) a controlled precursor.
- 3 (4) Section 25 applies as if the reference in subsection (1)  
4 of that section to a police officer exercising the powers  
5 conferred by section 22 or 23 included a reference to a  
6 police officer exercising the powers conferred by  
7 subsection (2) of this section.
- 8 (5) Section 26 applies as if —  
9 (a) the reference in subsection (1)(a)(i) and (ii) of  
10 that section to a dangerous substance included a  
11 reference to a controlled precursor; and  
12 (b) the reference in subsection (1) of that section to  
13 the exercise of the powers conferred by  
14 section 22 or 23 included a reference to the  
15 exercise of the powers conferred by  
16 subsection (2) of this section.

17 **20H. Powers of police officers in relation to searching**  
18 **persons in a drug detection area**

- 19 (1) Under a vehicle search authorisation, a police officer  
20 may do a preliminary drug detection test on the  
21 following persons —  
22 (a) the driver of a vehicle in the drug detection  
23 area; or  
24 (b) a passenger of a vehicle in the drug detection  
25 area; or  
26 (c) a person who a police officer has reasonable  
27 grounds to suspect has recently left a vehicle  
28 that is, or was, in the drug detection area.
- 29 (2) A police officer who wishes to do a preliminary drug  
30 detection test on a person under subsection (1) may  
31 detain the person for a reasonable period in order to do  
32 the test.

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- 1 (3) A police officer has reasonable grounds to suspect that  
2 any thing referred to in section 23(1)(a), (b) or (c) is in  
3 the possession of a person, if a preliminary drug  
4 detection test indicates the detection of any of the  
5 following on the person —  
6 (a) a prohibited drug;  
7 (b) a prohibited plant;  
8 (c) a controlled precursor.
- 9 (4) Section 25 applies as if the reference in subsection (1)  
10 of that section to a police officer exercising the powers  
11 conferred by section 22 or 23 included a reference to a  
12 police officer exercising the powers conferred by  
13 subsection (1) of this section.
- 14 (5) Section 26 applies as if —  
15 (a) the reference in subsection (1)(a)(i) and (ii) of  
16 that section to a dangerous substance included a  
17 reference to a controlled precursor; and  
18 (b) the reference in subsection (1) of that section to  
19 the exercise of the powers conferred by  
20 section 22 or 23 included a reference to the  
21 exercise of the powers conferred by  
22 subsection (1) of this section.

23 **Division 5 — Searches of delivery business premises**

24 **20I. Powers of police officers in relation to premises**

- 25 (1) In this section —  
26 *premises* includes a vehicle at the premises.
- 27 (2) Under a premises search authorisation, a police officer  
28 may do one or more of the following in respect of the  
29 premises to which the authorisation relates —  
30 (a) enter the premises;

- 
- 1 (b) subject to subsection (3), do a preliminary drug  
2 detection test on, or in relation to, any  
3 consigned article;
- 4 (c) take into and use in the premises any equipment  
5 that is, or facilities that are, reasonably  
6 necessary in order to exercise any power under  
7 the authorisation;
- 8 (d) make reasonable use of any equipment,  
9 facilities or services in the premises in order to  
10 exercise any power under the authorisation and  
11 for that purpose —
- 12 (i) to operate the equipment or facilities;  
13 and
- 14 (ii) to require an occupier of the premises to  
15 do anything that is reasonable and  
16 necessary to facilitate that use;
- 17 (e) open and examine a consigned article if a  
18 preliminary drug detection test indicates the  
19 detection of any of the following in relation to  
20 the article —
- 21 (i) a prohibited drug;  
22 (ii) a prohibited plant;  
23 (iii) a controlled precursor;
- 24 (f) take any action that is reasonably necessary in  
25 order to search the premises.
- 26 (3) A police officer may do a preliminary drug detection  
27 test on, or in relation to, a consigned article under  
28 subsection (2)(b) only if the consigned article is in a  
29 part of the premises used for the purpose of —
- 30 (a) storing consigned articles prior to delivery; or  
31 (b) sorting consigned articles prior to delivery; or  
32 (c) dispatching consigned articles for delivery; or

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- 1 (d) if the consigned article is in a vehicle, parking  
2 vehicles.
- 3 (4) Section 25 applies as if the reference in subsection (1)  
4 of that section to a police officer exercising the powers  
5 conferred by section 22 or 23 included a reference to a  
6 police officer exercising the powers conferred by  
7 subsection (2) of this section.
- 8 (5) Section 26 applies as if —
- 9 (a) the reference in subsection (1)(a)(i) and (ii) of  
10 that section to a dangerous substance included a  
11 reference to a controlled precursor; and
- 12 (b) the reference in subsection (1) of that section to  
13 the exercise of the powers conferred by  
14 section 22 or 23 included a reference to the  
15 exercise of the powers conferred by  
16 subsection (2) of this section.

17 **Division 6 — Offences**

18 **20J. Failure to comply with requirement of police officer**

19 A person who fails to comply, without reasonable  
20 excuse, with a requirement of a police officer in the  
21 exercise of powers conferred on that police officer  
22 under section 20G(2)(a), (e) or (f), or 20I(2)(d)(ii),  
23 commits a simple offence.

24 **20K. Application of section 29 to exercise of powers**  
25 **conferred by or under this Part**

26 Section 29 applies as if references in paragraphs (a)  
27 and (b) of that section to a police officer acting in the  
28 exercise of the powers conferred on the police officer  
29 by or under Part V or a person assisting a police officer  
30 so acting included a reference to a police officer acting  
31 in the exercise of the powers conferred by

1 section 20G(2), 20H(1) or 20I(2) or a person assisting a  
2 police officer so acting.

3 **Division 7 — Prescribed procedures**

4 **20L. Regulations as to the exercise of powers under this**  
5 **Part**

6 (1) The regulations may prescribe procedures to be  
7 followed in relation to the exercise of the powers  
8 conferred by this Part.

9 (2) Without limiting the generality of subsection (1),  
10 regulations may —

11 (a) provide for the manner in which vehicles may  
12 be stopped in a drug detection area, including  
13 the establishment of facilities, warnings and  
14 other devices to enable vehicles to be stopped  
15 in a safe and orderly manner; and

16 (b) provide for the procedure to be followed in  
17 relation to doing a preliminary drug detection  
18 test.  
19

20 **6. Section 21 amended**

21 (1) In section 21 delete the definition of *vehicle*.

22 (2) In section 21 in the definition of *search warrant* delete  
23 “section 24;” and insert:

24  
25 section 24.  
26

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1    **7.       Section 34 amended**

2       (1) In section 34(1)(d) before “25(2)” insert:

3

4           20J,

5

6    **8.       Section 42A and 42B inserted**

7           At the end of Part VI insert:

8

9       **42A.    Annual report to Minister on Part 4A**

10       (1) The Commissioner must give a report to the Minister  
11       that provides the following information for each  
12       financial year —

13           (a) the numbers of vehicle search authorisations  
14           and premises search authorisations issued  
15           during the financial year;

16           (b) the areas that were subject to a vehicle search  
17           authorisation;

18           (c) the premises that were subject to a premises  
19           search authorisation;

20           (d) the periods during which any authorisations had  
21           effect;

22           (e) the number of occasions when, as a result of the  
23           exercise of the powers conferred by  
24           section 20G(2), a prohibited drug, prohibited  
25           plant or a controlled precursor was detected by  
26           a preliminary drug detection test;

27           (f) the number of occasions when, as a result of the  
28           exercise of the powers conferred by  
29           section 20H(1), a prohibited drug, prohibited  
30           plant or a controlled precursor was detected by  
31           a preliminary drug detection test;



- 1 (g) the number of occasions when, as a result of the  
2 exercise of the powers conferred by  
3 section 20I(2)(e), a prohibited drug, prohibited  
4 plant or controlled precursor was detected;
- 5 (h) a statement of any defect or irregularity  
6 identified in relation to a vehicle search  
7 authorisation or premises search authorisation.
- 8 (2) The Minister is to cause the report to be laid before  
9 each House of Parliament no later than 12 sitting days  
10 of that House after receiving the report.

11 **42B. Review of Part 4A**

- 12 (1) In this section —  
13 *commencement day* means the day on which the  
14 *Misuse of Drugs Amendment (Search Powers)*  
15 *Act 2016* section 5 comes into operation.
- 16 (2) The Minister must carry out a review of the operation  
17 and effectiveness of Part 4A as soon as practicable  
18 after the expiration of 5 years from commencement  
19 day.
- 20 (3) The Minister must lay (or cause to be laid) a report of  
21 the review under this section before both Houses of  
22 Parliament —
- 23 (a) as soon as practicable after the review is  
24 completed; but
- 25 (b) not later than 2 years after the end of the period  
26 of 5 years.
- 27

28