



CCC | Corruption and
Crime Commission

Misuse of Drugs Act 1981
Border Search Areas

Annual Report
27-30 June 2023

26 OCTOBER 2023

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EXECUTIVE SUMMARY

- [1] In June 2023 the *Misuse of Drugs Amendment Bill 2023* was passed in both Houses of Parliament incorporating Part 4B - Border Search Areas into the *Misuse of Drugs Act 1981* (MDA).
- [2] The amendments to the MDA create a border search area (BSA) scheme that gives the WA Police Force (WA Police) greater stop and search powers within a designated BSA, once a BSA authorisation has been issued. The purpose of the scheme is to 'detect, deter and reduce the importation of illicit goods into Western Australia'.¹
- [3] The *Misuse of Drugs Amendment Act 2003* received Royal Assent on 26 June 2023. MDA pt 4B, and therefore the BSA scheme, came into force the following day on 27 June 2023.
- [4] The amendments to the MDA create 22 distinct BSA.² Each of the BSA zones are defined by the longitude and latitude coordinates specified in Schedule 6A.
- [5] The BSA prescribed in the MDA comprise of 'major road, rail, air and sea entry points into WA as well as other air and seaports which have been identified by the WA Police Force as potentially used for the movement of illicit drugs'.³ Some examples of BSA prescribed in the MDA include the Broome Port, Perth Airport, Port of Geraldton, and Eyre Highway in Eucla, on the border of WA and South Australia.
- [6] Under the new legislation, a WA Police officer of or above the rank of Inspector can issue a written notice known as a BSA authorisation. A BSA authorisation authorises other police officers to exercise powers under MDA pt 4B div 3 within the designated BSA.⁴ These powers include the ability to conduct preliminary drug detection tests and searches of vehicles in public places within the specified BSA.⁵
- [7] A BSA authorisation has effect for the period stated in the notice but cannot be in force for any longer than 28 days.⁶ If an authorisation is issued by an inspector, it must be ratified in writing by a more senior police officer, of or above the rank of superintendent, within 24 hours to remain

¹ Explanatory Memorandum, *Misuse of Drugs Amendment Bill 2023* (WA), 1.

² MDA s 20N.

³ Explanatory Memorandum, *Misuse of Drugs Amendment Bill 2023* (WA), 1.

⁴ MDA s 20R(1).

⁵ MDA ss 20T and 20U.

⁶ MDA s 20R(2).

in force. If not, the BSA authorisation ceases to have effect 24 hours from the time it was issued.⁷

- [8] The Corruption and Crime Commission is responsible for overseeing the use of these powers by WA Police. At least once every 12 months the Commission must inspect the records of the WA Police Commissioner to determine the extent of compliance with MDA pt 4B by WA Police and police officers.⁸
- [9] WA Police did not issue any BSA authorisations or execute any powers under pt 4B of the MDA between 27 June and 30 June 2023.

⁷ MDA s 20R(3) and (4).

⁸ MDA s 20Z(2).

CHAPTER ONE

LEGISLATIVE REQUIREMENTS

- [11] The Commission's new oversight role under the MDA is similar to its oversight function under the *Criminal Investigation (Covert Powers) Act 2012* (CICP Act) in relation to controlled operations.
- [12] The inspection and annual reporting provisions in the MDA are worded in very similar terms to those in pt 2 of the CICP Act.
- [13] The MDA requires the Commission to prepare an annual report on the exercise of powers under pt 4B div 3 for the preceding 12 months, as soon as practicable after 30 June each year.⁹
- [14] The report must include comments on the comprehensiveness and adequacy of the reports provided to the Commission by the Commissioner of Police.¹⁰ A copy of the report must also be provided to the Minister and the Commissioner of Police.
- [15] The Commissioner of Police must inform the Minister of any information in the Commission's Annual Report that, in the Commissioner's opinion, should be excluded before the report is laid before each House of Parliament because the information, if made public, could reasonably be expected to:¹¹
- endanger a person's safety; or
 - prejudice an investigation or prosecution; or
 - compromise any operational activities or methodologies of the Police Force.
- [16] If the Minister is satisfied as to the grounds for exclusion of material from the report, the Minister must exclude the information and insert a statement to the effect that information has been excluded from the report.¹²
- [17] The Minister is to cause a copy of the report to be laid before each House of Parliament within 15 sitting days of receipt of the report.¹³

⁹ MDA s 20Y(1).

¹⁰ MDA s 20Y(5).

¹¹ MDA s 20Y(2).

¹² MDA s 20Y(3).

¹³ MDA s 20Y(4).

- [18] Although the powers under MDA pt 4B were only in force for a matter of days at the end of June 2023, this annual report has been prepared to ensure technical compliance with MDA s 20(Y)(1).
- [19] A copy of this report was provided to the Office of the Minister for Police on 26 October 2023.

CHAPTER TWO

EXERCISE OF BSA POWERS

2.1 Legislative regime

- [20] The MDA enables a WA Police officer of the rank of inspector or above to issue a BSA authorisation for up to 28 days. A BSA authorisation must:¹⁴
- be issued in writing;
 - contain any directions approved by the Commissioner of Police relating to the exercise of powers under Division 3; and
 - otherwise be in a form approved by the Commissioner of Police.
- [21] Once issued, a BSA authorisation permits authorised police officers to exercise powers under MDA pt 4B div 3 within the geographical parameters of the BSA specified in the authorisation.¹⁵
- [22] Authorised officers are permitted to exercise two main powers under a BSA authority, namely:
- the power to conduct preliminary drug detection tests; and
 - the power to conduct vehicle searches.¹⁶
- [23] If a preliminary drug detection test or vehicle search yields a positive result for the presence of a prohibited drug, prohibited plant or a controlled precursor, this provides 'reasonable grounds' for an officer to suspect that person is in the possession of a thing suspected of being used in the commission of an offence.¹⁷ Once the 'reasonable grounds' threshold is reached, police officers are permitted to use the search powers under MDA s 23.
- [24] The powers under Division 3 may only be exercised for the period in which the BSA authorisation is in force.
- [25] To assist with exercising a power under Division 3, an authorised officer may authorise as many other persons 'as is reasonably necessary in the circumstances' to assist them.¹⁸

¹⁴ MDA ss 20R(1) and 20R(5).

¹⁵ MDA s 20R(1).

¹⁶ MDA s 3 defines vehicle to include 'aircraft, hovercraft, vessel and any other means of transportation'.

¹⁷ MDA ss 20T(3) and 20U(3).

¹⁸ MDA s 20P(1).

[26] There are some limitations to the exercise of powers under Division 3. Firstly, the powers can only be exercised in relation to a person or vehicle that is in a public place within a BSA.¹⁹

[27] Secondly, the powers cannot be exercised in relation to a person participating in, or a vehicle being used primarily for, any of the following:²⁰

- a) industrial action;
- b) a political protest or demonstration;
- c) a religious or cultural activity;
- d) an education activity;
- e) the seeking or provision of medical or emergency services; or
- f) an activity prescribed by the regulations.²¹

2.2 Summary of powers used by WA Police with respect to BSA authorisations

[28] WA Police did not issue any BSA authorisations during the reporting period and no powers were executed under pt 4B div 3.

[29] Accordingly, between 27 June and 30 June 2023:

- no preliminary drug detection tests were conducted under MDA s 20T(1); and
- no vehicle searches were conducted under MDA s 20U(2).

2.3 Commissioner reports

[30] The Commissioner of WA Police is required to submit a report to the Commission as soon as practicable after 30 June and 31 December each year in relation to the exercise of powers under Division 3 during the previous six months.²² The report must set out the following for the relevant six-month period:²³

- the number of preliminary drug detection tests carried out in each BSA under section 20T(1);

¹⁹ MDA s 20S(1).

²⁰ MDA s 20S(2).

²¹ No activities are currently prescribed in the regulations.

²² MDA s 20X(1).

²³ MDA s 20X(2).

- the number and nature of seizures under section 25 by virtue of sections 20T(4) and 20U(4);
- the number of searches carried out in each BSA under section 20U(2);
- the number of searches carried out in each BSA under section 23(1) by virtue of sections 20T(3) and 20U(3);
- the number and nature of seizures under section 26 by virtue of sections 20T(5) and 20U(5); and
- the number and nature of arrests and charges resulting from the exercise of the powers conferred by sections 20T and 20U and the results of prosecutions of those charges.

- [31] The Commission may require the Commissioner of Police to furnish additional information in relation to any exercise of a power under Division 3 to which a report relates.²⁴
- [32] On 02 October 2023, the Commission received a report from Commissioner Blanch advising that WA Police had not exercised any powers under Division 3 for the period 27 June to 30 June 2023.
- [33] In accordance with MDA s 20Y(5), the Commission must comment on the comprehensiveness and adequacy of the reports provided to it by the Commissioner of Police.
- [34] The report complied with the requirements of MDA s 20X(2) and was adequate and comprehensive in the circumstances.

²⁴ MDA s 20X(3).

CHAPTER THREE

OUTCOME OF INSPECTIONS

- [35] The BSA legislation is very much in its infancy. As of 30 June 2023, WA Police were yet to utilise the new powers under the MDA.
- [36] However, in June 2023 the Commission met with WA Police to discuss the new legislation, including how WA Police intended to use the BSA powers, and their proposed record keeping practices to demonstrate how such powers are utilised. The meeting was very informative.
- [37] It was evident to the Commission that WA Police had carefully considered how they would best use the legislation and create and manage records to evidence that the exercise of any powers under pt 4B was done so in accordance with the MDA.
- [38] As the WA Police Force did not issue any BSA authorisations during the reporting period, the Commission did not inspect any WA Police records.

CHAPTER FOUR

RECOMMENDATIONS

- [39] The Commission does not make any recommendations in this Annual Report.