

2001

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health, Housing and Community Care)

Drugs of Dependence Amendment Bill 2001

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2001

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health, Housing and Community Care)

Drugs of Dependence Amendment Bill 2001

A Bill for

An Act to amend the *Drugs of Dependence Act 1989*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

2000 197

1

2 **1 Name of Act**

3 This Act is the *Drugs of Dependence Amendment Act 2001*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by notice in the
6 Gazette.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see *Legislation Act 2001*, s 75).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see *Legislation*
11 *Act 2001*, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see *Legislation Act 2001*, s 79).

15 **3 Act amended**

16 This Act amends the *Drugs of Dependence Act 1989*.

17 **4 Offence notices**
18 **Section 171A (3) (f)**

19 *substitute*

20 (f) state that—

21 (i) unless a court orders otherwise, the government analyst
22 may, under section 193C (Destruction of cannabis
23 without court order), destroy seized cannabis without a
24 court order; and

25 (ii) the alleged offender may apply to the Magistrates Court,
26 under section 193D (Order for preservation of cannabis),
27 for an order for the preservation of cannabis to which the
28 offence relates; and

29 (g) contain any other particulars prescribed under the regulations.

5 New section 171B

insert

171B Cannabis offences—notification of right to apply for preservation order

(1) This section applies if a police officer seizes cannabis under this Act.

(2) As soon as practicable after seizing the cannabis, the police officer must give to each relevant person a written statement to the following effect:

‘You have been arrested for/charged with/may be charged with* an offence/offences* against the *Drugs of Dependence Act 1989* relating to seized cannabis. Unless a court orders otherwise, the government analyst may destroy seized cannabis without a court order. You have the right, under section 193D of that Act, to apply to the Magistrates Court for an order for the preservation of the seized cannabis. If you do not make an application within 24 hours, the cannabis may be destroyed and only a sample preserved.’

* *Omit any alternative that is not relevant*

(3) In this section:

relevant person means—

(a) a person arrested for, or charged with, an offence against this Act in relation to the seized cannabis; or

(b) a person who, to the knowledge or in the belief of the police officer, is likely to be charged with an offence against this Act in relation to the seized cannabis.

**6 Interpretation
Section 193A**

insert

protocol means the seized cannabis plants protocol or the seized cannabis product protocol.

1 *seized cannabis plant* means a cannabis plant that is a seized
2 substance.

3 *seized cannabis plants protocol* means the protocol determined
4 under section 193B (1) (a) (Protocols for destruction etc of
5 cannabis).

6 *seized cannabis product* means cannabis, other than in the form of a
7 cannabis plant, that is a seized substance.

8 *seized cannabis product protocol* means the protocol determined
9 under section 193B (1) (b) (Protocols for destruction etc of
10 cannabis).

11 **7 Section 193A, definitions of seized cannabis and**
12 **traffickable quantity**

13 *omit*

14 **8 Sections 193B, 193C, 193D and 193E**

15 *substitute*

16 **193B Protocols for destruction etc of cannabis**

17 (1) The government analyst may, in writing, determine the following
18 protocols:

19 (a) a protocol that sets out methods and procedures for—

20 (i) the handling and destruction of seized cannabis plants;
21 and

22 (ii) the preservation of samples of seized cannabis plants;

23 (b) a protocol that sets out methods and procedures for—

24 (i) the handling and destruction of seized cannabis product;
25 and

26 (ii) the preservation of samples of seized cannabis product.

1 (2) The government analyst may determine a protocol only if the
2 protocol has been approved, in writing, by the chief health officer
3 and the director of public prosecutions.

4 (3) A determination is a disallowable instrument.

5 *Note* A disallowable instrument must be notified, and presented to the
6 Legislative Assembly, under the *Legislation Act 2001*.

7 **193C Destruction of cannabis without court order**

8 (1) The government analyst may, without a court order, destroy seized
9 cannabis plants in accordance with the seized cannabis plants
10 protocol.

11 (2) Before destroying seized cannabis plants under subsection (1), the
12 government analyst must preserve samples of the plants in
13 accordance with seized cannabis plants protocol.

14 (3) The government analyst may, without a court order, destroy seized
15 cannabis product in accordance with the seized cannabis product
16 protocol.

17 (4) Before destroying seized cannabis product under subsection (3), the
18 government analyst must preserve a sample of the product in
19 accordance with the seized cannabis product protocol.

20 (5) The government analyst must not destroy seized cannabis plants or
21 seized cannabis product within 24 hours after the plants or product
22 are given to the analyst under section 191 (Analysis).

23 (6) The government analyst must not destroy seized cannabis plants or
24 seized cannabis product—

25 (a) contrary to a protocol; or

26 (b) contrary to a court order of which the analyst has notice; or

27 (c) if the analyst has notice of an application under section 193D
28 in relation to the plants or product—until the application is
29 finally decided.

- 1 (7) The government analyst must not destroy a sample preserved under
2 subsection (2) or (4)—
- 3 (a) without the written consent of the director of public
4 prosecutions; or
- 5 (b) contrary to a court order of which the analyst has notice.

6 **193D Order for preservation of cannabis**

- 7 (1) A person may apply to the Magistrates Court for an order for the
8 preservation of seized cannabis plants or seized cannabis product
9 (the *seized cannabis*) if the person—
- 10 (a) has been charged with an offence against this Act in relation to
11 the seized cannabis; or
- 12 (b) believes, on reasonable grounds, that he or she is likely to be
13 charged with an offence against this Act in relation to the
14 seized cannabis.
- 15 (2) The applicant must give notice of the application to the director of
16 public prosecutions and the government analyst.
- 17 (3) Without limiting the ways in which notice of the application may be
18 given, the applicant may give notice by telephone or fax.
- 19 (4) If the Magistrates Court considers that a temporary order should be
20 made to prevent the imminent destruction of the seized cannabis, the
21 court may make an order for the preservation of the seized cannabis
22 for a stated period.
- 23 (5) The Magistrates Court may make an order under subsection (4) even
24 if notice of the application has not been given to the director of
25 public prosecutions or the government analyst.
- 26 (6) The Magistrates Court may make an order for the preservation of
27 the seized cannabis, or a part or quantity of the seized cannabis.

28 **193E Amendment and revocation of cannabis preservation**

- 29 (1) This section applies if the Magistrates Court has made an order
30 under section 193D for the preservation of seized cannabis plants or

- 1 seized cannabis product (the *seized cannabis*) or a part or quantity
2 of the seized cannabis.
- 3 (2) The director of public prosecutions or the government analyst may
4 apply to the Magistrates Court for the amendment or revocation of
5 the order.
- 6 (3) The applicant must, if practicable, give written notice of the
7 application to—
- 8 (a) each person who has been charged with an offence against this
9 Act relating to the seized cannabis; and
- 10 (b) each person who, to the knowledge or in the belief of the
11 applicant, is likely to be charged with an offence against this
12 Act relating to the seized cannabis.
- 13 (4) For subsection (3), a notice may be given to a person by giving it to
14 a solicitor acting for the person in a proceeding, or expected
15 proceeding, relating to the seized cannabis.
- 16 (5) The Magistrates Court may amend the order on application under
17 subsection (2) if satisfied that the amendment—
- 18 (a) is in the public interest; and
- 19 (b) would not prejudice the proper interests of anyone mentioned
20 in subsection (3) (a) or (b).
- 21 (6) The Magistrates Court must revoke the order on application under
22 subsection (2) if satisfied that—
- 23 (a) all proceedings begun for offences against this Act in relation
24 to the seized cannabis have been finalised; and
- 25 (b) no other proceedings for offences against this Act in relation to
26 the seized cannabis are likely to be brought.
- 27 (7) However, the Magistrates Court must not revoke the order under
28 subsection (6) if it appears to the court that the public interest
29 requires the order to remain in effect.

- 1 (8) The director of public prosecutions or the government analyst may
2 make more than 1 application under this section in relation to an
3 order under section 193D.

4 **193F Making of orders about preservation of cannabis**

- 5 (1) This section applies to the making of an order under section 193D
6 (Order for preservation of cannabis), or an order under that section
7 as amended under section 193E (Amendment and revocation of
8 cannabis preservation), for the preservation of seized cannabis
9 plants or seized cannabis product (the *seized cannabis*) or a part or
10 quantity of the seized cannabis.
- 11 (2) The order must not affect a requirement for the preservation of—
- 12 (a) if the order relates to seized cannabis plants—a sample of the
13 plants required under the seized cannabis plants protocol; or
- 14 (b) if the order relates to seized cannabis product—a sample of the
15 product required under the seized cannabis product protocol.
- 16 (3) In deciding whether the order should require, or continue to require,
17 the preservation of the seized cannabis to a greater extent than
18 required by the relevant protocol, the Magistrates Court must take
19 account of the following matters:
- 20 (a) the matters mentioned in any certificate under section 192
21 (Analysts' certificates) in relation to the seized cannabis;
- 22 (b) how long the seized cannabis is likely to be kept;
- 23 (c) the extent (if any) to which facilities are available for the
24 secure keeping of the seized cannabis during that period;
- 25 (d) the health and safety of people working in or near the place
26 where the seized cannabis is, or will be, kept;
- 27 (e) the number of people (if any) charged with offences against
28 this Act in relation to the seized cannabis;
- 29 (f) the likelihood that anyone else will be charged with offences
30 against this Act in relation to the seized cannabis;

1 (g) when the hearing of any charge for an offence against this Act
2 in relation to the seized cannabis is likely to take place;

3 (h) any other relevant matter (including, in particular, the interests
4 of justice).

5 **9 Disposal of seized substances other than cannabis on**
6 **order of magistrate**
7 **Section 194 (1)**

8 *omit*

9 seized

10 **10 Section 194 (3)**

11 *omit*

12 analyst, whether pursuant to section 193B or otherwise,

13 *substitute*

14 analyst

15 **11 Section 194**

16 *renumber subsections when Act next republished under Legislation*
17 *Act 2001*

18 **12 Section 194A, heading**

19 *substitute*

20 **194A Applications under s 194**

21 **13 Section 194A**

22 *omit*

23 193D (2), 193E (1) or

1 **14 New part 14**

2 *insert*

3 **Part 14 Transitional provisions**

4 **207 Provisions for Drugs of Dependence Amendment Act**
5 **2001**

6 (1) The provisions of section 171B and part 11, division 4, as amended
7 by the *Drugs of Dependence Amendment Act 2001* apply in relation
8 to cannabis seized under part 11, division 3, before the
9 commencement of those amendments.

10 (2) However—

11 (a) section 171B applies as if the reference in subsection (2) to as
12 soon as practicable after seizing the cannabis were a reference
13 to as soon as practicable after the commencement of that
14 section; and

15 (b) any court order under part 11, division 4 that was in force
16 immediately before the commencement remains in force until
17 it ends or is amended or revoked.

18 (3) For the amendment or revocation of an order mentioned in
19 subsection (2) (b), the relevant provisions of part 11, division 4, as
20 amended by the *Drugs of Dependence Amendment Act 2001* apply
21 with all necessary changes.

22 (4) This section expires 3 years after it commences.

Endnote

Act amended

1 Republished as in force on 31 January 1999. See also Acts 1999 Nos 23 and 64.

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