



Australian Capital Territory

Drugs of Dependence Amendment Act 2001

No 48 of 2001

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Australian Capital Territory

Drugs of Dependence Amendment Act 2001

No 48 of 2001

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

[Notified in ACT Gazette No. 28: 12 July 2001]

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

1 Name of Act

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

2 Commencement

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

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

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

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

3 Act amended

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

Note The *Drugs of Dependence Act 1989* is amended in the body of this Act and in sch 1.

4 Interpretation **Section 3 (1), new definitions of *opioid dependency treatment centre* and *reconciliation amount***

insert

opioid dependency treatment centre means a treatment centre or other facility where treatment, including the supply and administration of methadone or buprenorphine, is provided to drug dependent persons for their drug dependency—

- (a) if the facility is—
 - (i) conducted by the Territory; or

- (ii) approved under part 9, division 4, as a treatment centre of that type; and
- (b) whether or not the main purpose of the facility is to provide treatment for drug dependent persons.

reconciliation amount means—

- (a) for a dose of methadone—the quantity of methadone allowed for wastage in preparing the dose; and
- (b) for a dose of buprenorphine—the quantity of buprenorphine allowed for wastage in preparing the dose.

5 Section 3 (1), definition of *treatment*, paragraph (b)

substitute

- (b) in relation to the treatment of a person with methadone or buprenorphine at an opioid dependency treatment centre—
 - (i) the administration of methadone or buprenorphine to the person at the centre; or
 - (ii) the supply of methadone or buprenorphine to the person at the centre for self-administration at the centre or elsewhere.

6 Ward registers New section 101 (1) (aa)

after paragraph (a), insert

- (aa) in relation to buprenorphine administered at an opioid dependency treatment centre for the purpose of treating drug dependency—a ward buprenorphine register in accordance with the appropriate form approved under section 205 (Approved forms) for this paragraph; or

7 Section 101 (1)

renumber paragraphs when Act next republished under Legislation Act 2001

8 New section 102B

insert

102B Entries in ward buprenorphine registers

- (1) A person who administers buprenorphine during a shift at an opioid dependency treatment centre for the purpose of treating drug dependency must enter in the ward buprenorphine register—
 - (a) at the beginning of the shift—
 - (i) the name of the centre and its location; and
 - (ii) the strength and form in which the buprenorphine is to be administered; and
 - (iii) the amount of buprenorphine removed from the dispensary or other place where the buprenorphine is stored; and
 - (b) immediately after each dose of buprenorphine is administered—
 - (i) the date and time of administration; and
 - (ii) the name of the patient to whom the buprenorphine was administered; and
 - (iii) the quantity of buprenorphine administered; and
 - (iv) the name of the person who administered the buprenorphine; and
 - (v) the name of the person who witnessed under section 84 (Administration—witnesses) the administration; and

- (vi) the name of the medical practitioner who prescribed the buprenorphine; and
- (c) at the end of the shift—
 - (i) the reconciliation amount for each dose; and
 - (ii) the quantity of buprenorphine returned to the dispensary or other place where the buprenorphine is stored.
- (2) The person who administered the buprenorphine during the shift must, at the end of the shift, sign the ward buprenorphine register.
- (3) The person who witnessed that administration must, at the end of the shift, countersign the ward buprenorphine register.

**9 Sale or supply
Section 164 (4) (bb)**

insert

- (bb) for buprenorphine supplied to a person at an opioid dependency treatment centre conducted by the Territory or a Territory authority—a nurse who supplies the buprenorphine in the course of his or her professional practice or employment for the treatment of the person’s drug dependence; or

10 Section 164 (4)

renumber paragraphs when Act next republished under Legislation Act 2001

**11 Offence notices
Section 171A (3) (f)**

substitute

- (f) state that—
 - (i) unless a court orders otherwise, the government analyst may, under section 193C (Destruction of cannabis

without court order), destroy seized cannabis without a court order; and

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

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

12 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.

13 Interpretation Section 193A

insert

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

seized cannabis plant means a cannabis plant that is a seized substance.

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

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

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

14 Section 193A, definitions of *seized cannabis* and *traffickable quantity*

omit

15 Sections 193B, 193C, 193D and 193E

substitute

193B Protocols for destruction etc of cannabis

- (1) The government analyst may, in writing, determine the following protocols:
- (a) a protocol that sets out methods and procedures for—

- (i) the handling and destruction of seized cannabis plants;
and
 - (ii) the preservation of samples of seized cannabis plants;
- (b) a protocol that sets out methods and procedures for—
 - (i) the handling and destruction of seized cannabis product;
and
 - (ii) the preservation of samples of seized cannabis product.
- (2) The government analyst may determine a protocol only if the protocol has been approved, in writing, by the chief health officer and the director of public prosecutions.
- (3) A determination is a disallowable instrument.

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

193C Destruction of cannabis without court order

- (1) The government analyst may, without a court order, destroy seized cannabis plants in accordance with the seized cannabis plants protocol.
- (2) Before destroying seized cannabis plants under subsection (1), the government analyst must preserve samples of the plants in accordance with seized cannabis plants protocol.
- (3) The government analyst may, without a court order, destroy seized cannabis product in accordance with the seized cannabis product protocol.
- (4) Before destroying seized cannabis product under subsection (3), the government analyst must preserve a sample of the product in accordance with the seized cannabis product protocol.
- (5) The government analyst must not destroy seized cannabis plants or seized cannabis product within 24 hours after the plants or product are given to the analyst under section 191 (Analysis).

- (6) The government analyst must not destroy seized cannabis plants or seized cannabis product—
 - (a) contrary to a protocol; or
 - (b) contrary to a court order of which the analyst has notice; or
 - (c) if the analyst has notice of an application under section 193D in relation to the plants or product—until the application is finally decided.
- (7) The government analyst must not destroy a sample preserved under subsection (2) or (4)—
 - (a) without the written consent of the director of public prosecutions; or
 - (b) contrary to a court order of which the analyst has notice.

193D Order for preservation of cannabis

- (1) A person may apply to the Magistrates Court for an order for the preservation of seized cannabis plants or seized cannabis product (the *seized cannabis*) if the person—
 - (a) has been charged with an offence against this Act in relation to the seized cannabis; or
 - (b) believes, on reasonable grounds, that he or she is likely to be charged with an offence against this Act in relation to the seized cannabis.
- (2) The applicant must give notice of the application to the director of public prosecutions and the government analyst.
- (3) Without limiting the ways in which notice of the application may be given, the applicant may give notice by telephone or fax.
- (4) If the Magistrates Court considers that a temporary order should be made to prevent the imminent destruction of the seized cannabis, the court may make an order for the preservation of the seized cannabis for a stated period.

- (5) The Magistrates Court may make an order under subsection (4) even if notice of the application has not been given to the director of public prosecutions or the government analyst.
- (6) The Magistrates Court may make an order for the preservation of the seized cannabis, or a part or quantity of the seized cannabis.

193E Amendment and revocation of cannabis preservation

- (1) This section applies if the Magistrates Court has made an order under section 193D for the preservation of seized cannabis plants or seized cannabis product (the *seized cannabis*) or a part or quantity of the seized cannabis.
- (2) The director of public prosecutions or the government analyst may apply to the Magistrates Court for the amendment or revocation of the order.
- (3) The applicant must, if practicable, give written notice of the application to—
 - (a) each person who has been charged with an offence against this Act relating to the seized cannabis; and
 - (b) each person who, to the knowledge or in the belief of the applicant, is likely to be charged with an offence against this Act relating to the seized cannabis.
- (4) For subsection (3), a notice may be given to a person by giving it to a solicitor acting for the person in a proceeding, or expected proceeding, relating to the seized cannabis.
- (5) The Magistrates Court may amend the order on application under subsection (2) if satisfied that the amendment—
 - (a) is in the public interest; and
 - (b) would not prejudice the proper interests of anyone mentioned in subsection (3) (a) or (b).
- (6) The Magistrates Court must revoke the order on application under subsection (2) if satisfied that—

- (a) all proceedings begun for offences against this Act in relation to the seized cannabis have been finalised; and
 - (b) no other proceedings for offences against this Act in relation to the seized cannabis are likely to be brought.
- (7) However, the Magistrates Court must not revoke the order under subsection (6) if it appears to the court that the public interest requires the order to remain in effect.
- (8) The director of public prosecutions or the government analyst may make more than 1 application under this section in relation to an order under section 193D.

193F Making of orders about preservation of cannabis

- (1) This section applies to the making of an order under section 193D (Order for preservation of cannabis), or an order under that section as amended under section 193E (Amendment and revocation of cannabis preservation), for the preservation of seized cannabis plants or seized cannabis product (the *seized cannabis*) or a part or quantity of the seized cannabis.
- (2) The order must not affect a requirement for the preservation of—
- (a) if the order relates to seized cannabis plants—a sample of the plants required under the seized cannabis plants protocol; or
 - (b) if the order relates to seized cannabis product—a sample of the product required under the seized cannabis product protocol.
- (3) In deciding whether the order should require, or continue to require, the preservation of the seized cannabis to a greater extent than required by the relevant protocol, the Magistrates Court must take account of the following matters:
- (a) the matters mentioned in any certificate under section 192 (Analysts' certificates) in relation to the seized cannabis;
 - (b) how long the seized cannabis is likely to be kept;

- (c) the extent (if any) to which facilities are available for the secure keeping of the seized cannabis during that period;
- (d) the health and safety of people working in or near the place where the seized cannabis is, or will be, kept;
- (e) the number of people (if any) charged with offences against this Act in relation to the seized cannabis;
- (f) the likelihood that anyone else will be charged with offences against this Act in relation to the seized cannabis;
- (g) when the hearing of any charge for an offence against this Act in relation to the seized cannabis is likely to take place;
- (h) any other relevant matter (including, in particular, the interests of justice).

**16 Disposal of seized substances other than cannabis on order of magistrate
Section 194 (1)**

omit

seized

17 Section 194 (3)

omit

analyst, whether pursuant to section 193B or otherwise,

substitute

analyst

18 Section 194

renumber subsections when Act next republished under Legislation Act 2001

19 Section 194A, heading

substitute

194A Applications under s 194

20 Section 194A

omit

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

21 New part 14

insert

Part 14 Transitional provisions

207 Provisions for Drugs of Dependence Amendment Act 2001

- (1) The provisions of section 171B and part 11, division 4, as amended by the *Drugs of Dependence Amendment Act 2001* apply in relation to cannabis seized under part 11, division 3, before the commencement of those amendments.
- (2) However—
 - (a) section 171B applies as if the reference in subsection (2) to as soon as practicable after seizing the cannabis were a reference to as soon as practicable after the commencement of that section; and
 - (b) any court order under part 11, division 4 that was in force immediately before the commencement remains in force until it ends or is amended or revoked.
- (3) For the amendment or revocation of an order mentioned in subsection (2) (b), the relevant provisions of part 11, division 4, as

amended by the *Drugs of Dependence Amendment Act 2001* apply with all necessary changes.

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

208 Transitional provisions about approved forms

- (1) This section applies only if this section commences before the date of commencement of the *Legislation Act 2001*, section 18 (the *Legislation Act commencement date*).
- (2) This Act is modified by renumbering section 205 (Completion of forms in Schedules) as section 205A.
- (3) This Act is further modified by inserting after section 204 the following section:

205 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (4) The modifications mentioned in subsections (2) and (3) cease to apply on the Legislation Act commencement date.
- (5) This section expires on the later of—
- (a) the Legislation Act commencement date; and
 - (b) the date of commencement of this section.

209 Transitional provisions about *reconciliation amount*

- (1) Section 3 (1) is amended by omitting the definition of *reconciliation amount* inserted by the *Legislation (Consequential Amendments) Act 2001*, schedule 1, part 113 (*part 113*).
- (2) This section commences—
- (a) immediately after the commencement of part 113; or

- (b) if the *Drugs of Dependence Amendment Act 2001*, section 21, commences after the commencement of part 113—on the date of commencement of that section.
- (3) This section expires on the day after it commences.

Schedule 1 Minor amendments

(see s 3)

[1.1] Section 3 (1), definition of *methadone program treatment centre*

omit

[1.2] Section 3 (1), definition of *ward*

omit

a methadone program treatment centre

substitute

an opioid dependency treatment centre

[1.3] Section 3 (3)

before

cannabis

insert

buprenorphine,

[1.4] Section 58 (1) (a)

after

methadone

insert

or buprenorphine

[1.5] Section 59, heading

substitute

59 Methadone or buprenorphine

[1.6] Section 59

omit

methadone for

substitute

methadone or buprenorphine for

[1.7] Section 59 (a)

after

methadone

insert

or buprenorphine

[1.8] Section 59 (b)

omit

a methadone program treatment centre

substitute

an opioid dependency treatment centre

[1.9] Section 78 (2) (e)

omit

a methadone program treatment centre, not being

substitute

an opioid dependency treatment centre, other than

[1.10] Section 80 (1) (e)

substitute

- (e) if the drug is methadone or buprenorphine—a nurse employed at an opioid dependency treatment centre conducted by the Territory or a Territory authority.

[1.11] Section 84 (1), definition of *institution*

omit

a methadone program treatment centre

substitute

an opioid dependency treatment centre

[1.12] Section 95, definitions of *prescribed person*, paragraph (e), and *ward*

omit

a methadone program treatment centre

substitute

an opioid dependency treatment centre

[1.13] Section 101 (1) (a)

omit

a methadone program treatment centre

substitute

an opioid dependency treatment centre

[1.14] Section 101 (2)

omit

a methadone program treatment centre

substitute

an opioid dependency treatment centre

[1.15] Section 108

omit

a methadone program treatment centre

substitute

an opioid dependency treatment centre

[1.16] Section 114 (1) (c) and (2) (b)

omit

a methadone program treatment centre

substitute

an opioid dependency treatment centre

[1.17] Section 117 (1) and (3) (a)

omit

a methadone program treatment centre

substitute

an opioid dependency treatment centre

[1.18] Section 149 (2) (b) (viii)

after

methadone

insert

or buprenorphine

[1.19] Section 151 (a)

after

methadone

insert

or buprenorphine

[1.20] Section 164 (4) (ba)

omit

a methadone program treatment centre

substitute

an opioid dependency treatment centre

[1.21] Section 164 (4)

renumber paragraphs when Act next republished under Legislation Act 2001

[1.22] Section 170 (3) (f)

substitute

- (f) a pharmacist who administers methadone or buprenorphine, in accordance with a doctor's prescription, to a drug dependent person for the treatment of the person's drug dependency at an opioid dependency treatment centre approved under section 150 (1).

Endnote

Act amended

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

[Presentation speech made in Assembly on 3 May 2001]

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