

THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

**EXPLANATORY MEMORANDUM**

***DRUGS of DEPENDENCE AMENDMENT BILL 2001***  
***A BILL TO AMEND THE DRUGS of DEPENDENCE ACT 1989***

Distributed by Authority of the Minister for Health, Housing and  
Community Services

Michael Moore MLA

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## **Drugs of Dependence Amendment Bill 2001**

### **Outline**

This is an amending Bill. It amends the *Drugs of Dependence Act 1989*, referred to in the amending Act as the Act amended. The *Drugs of Dependence Act 1989* outlines the procedures the ACT Government Analyst must undertake when receiving, testing and disposing of cannabis and other drugs.

The amending Bill introduces new more flexible procedures and protocols for use by the ACT Government Analyst in the disposal of cannabis. Principally it aims to reduce the amount of cannabis held by the Analyst for reasons of safety and also minimise the occupational health and safety risks to laboratory staff and ensure that government storage facilities do not become overburdened. Further, the Bill aims to reduce the administrative burden on the court system by eliminating the need for a Magistrate's order for destruction of excess quantities of cannabis.

### **Revenue/Cost Implications**

This Bill has no revenue or cost implications.

### **Formal Clauses**

**Clauses 1, 2 and 3** are formal requirements. They refer to the name of the Bill, commencement and definition of the Principle Act. The Bill commences on a day fixed by the Minister by notice in the Gazette.

### **Offence Notices**

**Clause 4**, in amending subsection 171A(3) of the *Drugs of Dependence Act 1989* has three main aims:

subsection 171A(3)(f)(i) aims to inform the recipient of a simple cannabis offence notice of the government analyst's ability to destroy excess seized cannabis without a court order;

subsection 171A(3)(f)(ii) aims to inform the recipient of a simple cannabis offence notice of their ability to apply to the Magistrates Court for an order for the preservation of cannabis in relation to any cannabis which caused the issue of the simple cannabis offence notice; and

subsection 171A(3)(g) aims to provide the executive with the power to prescribe, by regulation, further information that shall appear on a simple cannabis offence notice.

#### **Notification of right to apply for preservation order**

**Clause 5**, inserts a new section 171B in to the *Drugs of Dependence Act 1989* that requires a police officer to give a person being arrested or charged with an offence against the *Drugs of Dependence Act 1989* relating to cannabis a prescribed written statement. The statement informs the recipient of their right to apply to the Magistrates Court for an order for the preservation of the cannabis that relates to the offence for which they have been charged or arrested.

This clause is provided to ensure that a person charged or arrested for an offence under the *Drugs of Dependence Act 1989* relating to cannabis is properly informed of their right to apply to the Magistrates Court to have all of the cannabis involved in the offence preserved.

#### **Interpretation**

**Clauses 6 and 7**, in amending section 193A of the *Drugs of Dependence Act 1989*, provides a number of new definitions to the Act and omits two definitions from the Act.

The following definitions are inserted:

Protocol, seized cannabis plant, seized cannabis plants protocol, seized cannabis product and seized cannabis product protocol.

The following definitions are omitted:

Seized cannabis and trafficable quantity.

#### **Protocols for the destruction etc of cannabis.**

**Clause 8** in repealing sections 193B, 193C, 193 D and 193E of the *Drugs of Dependence Act 1989* and replacing those sections with new sections 193B, 193C, 193 D, 193E and 193F provides new more flexible procedures for the destruction of cannabis.

**Clause 8** in inserting section 193B provides the government analyst with the power to determine protocols that set out the methods and procedures that may be used for the handling, destruction and preservation of cannabis. Both the chief health officer and the director of public prosecutions must approve the protocols, in writing, before the government analyst can determine them. The determination will be a disallowable instrument under the *Subordinate Legislation Act 1989*.

#### **Destruction of cannabis without court order.**

**Clause 8** in inserting section 193C provides the government analyst with the power to destroy cannabis without a court order, subject to the following requirements:

- The destruction of the cannabis is carried out in accordance with a protocol determined under section 193B;
- Samples of the cannabis are preserved in accordance with a protocol determined under section 193B;

- The destruction of the cannabis is not carried out earlier than 24 hours after the government analyst has received the product or plants;
- Provided that the government analyst has not received notice of a court order prohibiting the destruction of the cannabis product or plant delivered to the laboratory; and
- In relation to preserved samples, the government analyst must first obtain the written consent of the director of public prosecutions and ensure that there is no outstanding court orders prohibiting the destruction of the preserved samples in question before destroying the sample.

#### **Order for the preservation of cannabis.**

**Clause 8** in inserting section 193D provides a person accused or charged with an offence relating to a seized cannabis product or plants with the right to apply to the Magistrates Court for an order to preserve the entire sample of seized cannabis product(s) or plant(s).

This provision is provided to enable persons accused of, or charged with, an offence relating to the possession or use of cannabis the ability to have all of the cannabis material relating to that offence retained. This retention would be important to the defence of a charge in cases where there may be doubt regarding the amount or identity material seized.

In making an application for an order for the preservation of cannabis, the applicant must give notice of the application to the director of public prosecutions and the government analyst. This requirement will enable the director of public prosecutions or the government analyst to contest the application at the time it is made if either consider the application unreasonable or impractical.

The Magistrates Court has the discretion to make a temporary order for the preservation of cannabis without notice being given to the director of public prosecutions or the government analyst. This discretion is provided to ensure that an order may still be made even if there has not been sufficient time for the applicant to provide notice to the director of public prosecutions and the government analyst.

A preservation order made under section 193D may relate to all or part of the seized cannabis.

In making a preservation of cannabis order under section 193D the Magistrates Court must take into account the matters and circumstances outlined in section 193F.

#### **Amendment and revocation of cannabis preservation**

**Clause 8** in inserting section 193E provides the director of public prosecutions and the government analyst with the right to make an application to the Magistrates Court to amend or revoke an order for the preservation of cannabis made under section 193D.

In making an application for the amendment or revocation of a cannabis preservation order, the applicant (either the director of public prosecutions or the government analyst) must give written notice of the application to each person charged, or likely to be charged, with an offence relating to the seized cannabis. Notice in this circumstance may be given to the solicitor of the person charged or likely to be charged in order to meet the requirements of the notification provision.

This requirement will enable the person(s) charged, or likely to be charged, with the opportunity to contest the application to amend or revoke the preservation order at the time it is made. This provision is provided to enable the charged or accused to contest the application if they consider it unreasonable or likely to adversely affect the defense of a charge relating to the cannabis seized.

The Magistrates Court is provided with the power to amend a preservation of cannabis order provided that the amendment would be in the public interest and would not prejudice any person charged or likely to be charged with an offence in relation to the seized cannabis.

The Magistrates Court is provided with the power to revoke a preservation of cannabis order provided that all proceedings in relation to the seized cannabis have been completed and that there are not further proceedings likely to be brought.

The director of public prosecutions or the government analyst may make more than one application for amendment or revocation of a preservation of cannabis order. This provision is provided to enable the timely destruction of cannabis samples that are no longer subject to proceedings or required for use in proceedings.

#### **Making of orders about the preservation of cannabis**

**Clause 8** in inserting section 193F provides a list of matters that the Magistrates Court must take into account when making an order for the preservation of cannabis, amending an order for the preservation of cannabis or revoking an order for the preservation of cannabis.

The list of matters includes:

- Orders must not affect the preservation of cannabis required under a protocol declared under section 193B.
- Information provided on analysts' certificates that relate to the seized cannabis in question.
- The length of time the seized cannabis is likely to be kept.
- The availability of facilities for securely keeping the seized cannabis during the period of the order.
- The health and safety of laboratory and other workers that may come into contact with the seized cannabis.

- The number of persons charged with offences under the *Drugs of Dependence Act* 1989 that relate to the seized cannabis.
- The possibility of other people being charged with offences under the *Drugs of Dependence Act* 1989 that relate to the seized cannabis.
- The likely date of the hearing of a charge relating to the seized cannabis.
- Any other matter relevant to an order especially matters that should be considered in the interests of justice.

#### **Technical amendments**

**Clauses 9, 10, 11, 12 and 13** address matters of a technical drafting nature and provide for the renumbering of sections and the rewording of sections in order to give effect to the new provisions inserted by this Act.

#### **Transitional provisions**

**Clause 14** in inserting section 207 provides transitional powers that enable the cannabis destruction protocols provided by this Act to apply to cannabis seized before its commencement. This provision is provided to enable the government analyst to destroy, in accordance with the controls provided by this Act, excess quantities of cannabis held in storage at the time this Act commences.