

Explanatory Statement

Drugs of Dependence (Cannabis Handling, Destruction and Preservation Protocol) Determination 2009 (No 1)

Disallowable instrument DI2009—168

made under the

Drugs of Dependence Act 1989, s 193B (1) Protocols for destruction etc of cannabis

This instrument made under section 193B of the *Drugs of Dependence Act 1989* (DODA) outlines the handling, destruction and preservation protocols to be followed when enacting provision 193C and 193E of DODA.

DODA is an 'Act to prohibit the sale, supply and possession of drugs of dependence and prohibited substances, and for related purposes'.

Section 193C of DODA enables the Government Analyst, subject to certain conditions being met, to destroy seized cannabis plants and cannabis products without approval from the Courts. The destruction under section 193C must be in accordance with a protocol for the handling and destruction of cannabis plants and products made under section 193B of DODA. Furthermore, for any cannabis plant or product destroyed, section 193C also requires that a sample be taken and preserved in accordance with the protocol under section 193B.

It is not necessary or appropriate to retain and store all seized cannabis plants and cannabis products delivered to the Government Analyst. To do so would pose significant occupational health and safety risks to analysts who must handle this material. Retention of bulk quantities can also have significant security implications. Accordingly, in the absence of this protocol destruction of excess quantities of cannabis plants or products can only occur if ordered by a Court.

A requirement to periodically seek and obtain court approval for the destruction of excess quantities of cannabis plants and cannabis products would be time and resource consuming, and administratively burdensome. Furthermore, it would mean large seizures would routinely exceed safe and secure storage capacities, which would take several days to resolve. The associated risks are high and unnecessary. A protocol for the handling and destruction of cannabis appropriately mitigates those risks in a manner that is efficient, effective and, by virtue of section 193B(2), endorsed by both the Chief Health Officer and the Director of Public Prosecutions.

A protocol for the handling and destruction of cannabis under section 193B of DODA is a disallowable instrument made by the Government Analyst. However, under section 193B(2) the Government Analyst cannot determine a protocol for the handling and destruction of cannabis unless the Chief Health Officer and the Director of Public Prosecutions have approved the protocol in writing. Approval from the Chief Health Officer and the Director of Public Prosecutions has been sought and obtained for these protocols.

These provisions were first introduced into DODA in 2001 by amendment No 56. Subsequently, a disallowable instrument was made under section 193B(1) of DODA. That disallowable instrument being Cannabis Handling, Destruction and Preservation Protocol Determination 2001 DI2001-No. 328.

At the time of these amendments the Government Analyst was the officer performing the duties of the office created by the Chief Executive of Health under section 183A of DODA. Analysts were appointed by the Chief Health Officer under section 183 of DODA and analyst's certificates were issued under section 192 of the same Act.

In February 2009 DODA was amended as part of the introduction of the *Medicines, Poisons and Therapeutic Goods Act 2008* (MPTGA). Provisions which were previously in DODA dealing with appointment of analysts and preparation of analyst's certificates were moved to the *Public Health Act 1997*. These administrative changes made parts of the 'Cannabis Handling, Destruction and Preservation Protocol Determination 2001' outdated.

The Cannabis Handling, Destruction and Preservation Protocol Determination 2009 is substantially the same as the 2001 protocol, but contains editorial changes to update the 2001 determination to reflect the recent amendments to DODA. Only minor additional editorial changes have been made.

This protocol has been approved in writing by the Chief Health Officer and the Director of Public Prosecutions in accordance with section 193B of DODA.