



AUSTRALIAN CAPITAL TERRITORY

Drugs of Dependence (Amendment) Act 1993

No. 7 of 1993

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

[Notified in ACT Gazette S22: 25 February 1993]

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

Short title

1. This Act may be cited as the *Drugs of Dependence (Amendment) Act 1993*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) Subject to subsection (3), the remaining provisions commence on a day, or on respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the expiration of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the expiration of that period.

Principal Act

3. In this Act, “Principal Act” means the *Drugs of Dependence Act 1989*.¹

Interpretation

4. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition:

“ ‘Government Analyst’ means the person appointed as such under subsection 183A (1);”.

Insertion

5. After section 183 of the Principal Act, the following sections are inserted:

Government Analyst

“183A. (1) The Minister may, by instrument, appoint an analyst to be the Government Analyst.

“(2) The appointment ceases to have effect if the person appointed ceases to be an analyst.

Acting Government Analyst

“183B. (1) The Minister may, by instrument, appoint an analyst to act as the Government Analyst—

- (a) during a vacancy in the office of the Government Analyst, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Government Analyst is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his or her office.

“(2) The appointment ceases to have effect if the person appointed ceases to be an analyst.

“(3) Anything done by or in relation to a person purporting to act under this section is not invalid on the ground that—

- (a) the occasion for the person’s appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person’s appointment;
- (c) the person’s appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.”.

Insertion

6. After section 193 of the Principal Act, the following heading and sections are inserted:

“Division 4—Disposal of seized substances, compensation and recovery

Interpretation

“193A. In this Division—

‘seized cannabis’ means that quantity of a substance in relation to which section 193B applies which is identified as cannabis by the relevant analyst;

‘seized substance’ means a substance seized under Division 3;

‘traffickable quantity’, in relation to a seized substance, means a traffickable quantity of that substance within the meaning of Part X.

Notification of Director of Public Prosecutions

“193B. Where, after weighing and identifying a seized substance, an analyst believes that—

- (a) the substance is, or contains, a drug of dependence or prohibited substance; and
- (b) the quantity of the substance identified as a drug of dependence or prohibited substance is greater than the traffickable quantity;

he or she shall, within 24 hours of identifying the substance, notify the Director of Public Prosecutions accordingly.

Disposal of cannabis by Government Analyst before charges laid

“193C. (1) Before any person is charged with an offence in relation to seized cannabis, the Government Analyst shall cause a disposable quantity of the cannabis to be disposed of if—

- (a) a certificate under section 192 has been prepared in relation to the cannabis; and
- (b) he or she believes on reasonable grounds that that quantity of the cannabis cannot be securely stored until the earliest time at which he or she would reasonably expect a person to be charged with such an offence.

“(2) In this section—

‘disposable quantity’, in relation to seized cannabis, means a quantity of the cannabis no greater than that by which the total quantity of the cannabis exceeds the traffickable quantity.

Disposal of cannabis on order of Magistrate—application by Director of Public Prosecutions

“193D. (1) This section applies where, at the time a person is charged before a Magistrate with any offence in relation to seized cannabis, there is remaining a quantity of the cannabis greater than the traffickable quantity.

“(2) At the time that a person is charged before a Magistrate with any offence in relation to seized cannabis, the Director of Public Prosecutions shall apply to the Magistrate in accordance with section 194A for an order for the retention of a quantity of the cannabis no less than the traffickable quantity.

“(3) On application under subsection (2), the Magistrate shall, subject to subsection (4), order the Government Analyst to—

- (a) cause to be retained a quantity of the seized cannabis no less than that applied for; and
- (b) if all the cannabis is not to be retained—cause to be disposed of the balance of the seized cannabis.

“(4) A Magistrate shall, under subsection (3), order the disposal of all the seized cannabis in excess of the quantity applied to be retained by the Director of Public Prosecutions—

- (a) where the accused is legally represented and no party objects to that disposal; or
- (b) in any other case—unless he or she is satisfied, in consideration of matters including those referred to in subsection (5), that a greater quantity than that applied for should be retained.

“(5) In the circumstances referred to in paragraph (4) (b), the Magistrate shall have regard to matters including the following:

- (a) the matters referred to in the relevant certificate under section 192;
- (b) the likely period of retention of the cannabis;
- (c) facilities for the secure retention of the cannabis during that period;
- (d) the number of persons charged with offences in relation to the cannabis;
- (e) the likelihood of the arrest of any further persons for the commission of any offences in relation to the cannabis;
- (f) the likely time at which the hearing will take place of any charges in relation to the cannabis;
- (g) the interests of justice.

“(6) The Government Analyst shall comply with an order of the Magistrate under subsection (3).

Disposal of cannabis on order of Magistrate—application by Government Analyst

“193E. (1) Where a Magistrate makes an order under paragraph 193D (3) (a) for the retention of an excess quantity of seized cannabis, the Government Analyst may apply to a Magistrate in accordance with section 194A for an order for the disposal of part or all of that excess.

“(2) On application under subsection (1), a Magistrate may order the disposal of a quantity of seized cannabis no greater than the excess quantity.

“(3) A Magistrate shall, under subsection (2), order the disposal of all of the excess quantity of cannabis—

- (a) where the accused is legally represented and no party objects to that disposal; or
- (b) in any other case—unless he or she is satisfied, in consideration of matters including those referred to in subsection (4), that a part or all of the excess quantity should be retained.

“(4) In the circumstances referred to in paragraph (3) (b), the Magistrate shall have regard to matters including the following:

- (a) the matters referred to in the relevant certificate under section 192;
- (b) the likely period of retention of the cannabis;
- (c) facilities for the secure retention of the cannabis during that period;
- (d) the number of persons charged with offences in relation to the cannabis;
- (e) the likelihood of the arrest of any further persons for the commission of any offences in relation to the cannabis;
- (f) the likely time at which the hearing will take place of any charges in relation to the cannabis;
- (g) the interests of justice.

“(5) The Government Analyst shall comply with an order of the Magistrate under subsection (2).

“(6) In this section—

‘excess quantity’ means a quantity of seized cannabis in excess of that applied to be retained by the Director of Public Prosecutions under subsection 193D (2).”.

Disposal of seized substances other than cannabis on order of Magistrate

7. Section 194 of the Principal Act is amended—

- (a) by omitting subsections (1) and (2) and substituting the following subsection:

“(1) This section does not apply to seized cannabis.”;

- (b) by omitting from subsection (3) “subsection (2)” and substituting “section 193B”;

- (c) by inserting in subsection (3) “in accordance with section 194A” after “Magistrate”;

- (d) by omitting subsection (5);

- (e) by omitting from subsection (7) all the words after “order” and substituting “the Government Analyst to cause to be disposed of the quantity of the seized substance specified in the application”;
- and

- (f) by omitting subsection (8) and substituting the following subsection:

“(8) The Government Analyst shall comply with an order of the Magistrate under subsection (7).”.

Insertion

8. After section 194 of the Principal Act, the following section is inserted:

Applications under this Division

“194A. An application under subsection 193D (2), 193E (1) or 194 (3) in relation to a seized substance shall—

- (a) state the circumstances in which the substance was seized;
- (b) specify the quantity of the substance to be retained or disposed of, as the case requires;
- (c) in the case of an application under subsection 194 (3)—specify the quantity of the substance sufficient to enable it to be analysed twice;
- (d) include any further information relevant to the application, including information about facilities for the secure retention of the substance; and
- (e) be accompanied by a certificate under section 192 in relation to the substance.”.

Final disposal of seized substances

9. Section 195 of the Principal Act is amended by omitting all the words from and including “Where” to and including “Health” and substituting “Where an analyst has identified a seized substance as being or containing a drug of dependence or a prohibited substance, the Government Analyst”.

Compensation for seizure

10. Section 196 of the Principal Act is amended by omitting all the words from and including “Where” to and including “section 195; and” and substituting—

“Where, after the relevant period referred to in section 195—

- (a) a seized substance referred to in that section has been completely disposed of; and”.

Seized property

11. Section 197 of the Principal Act is amended by omitting from subsection (1) “this Division” and substituting “Division 3”.

NOTE

1. Ordinance No. 11, 1989 as amended by No. 38, 1989; Act No. 63, 1990; Nos. 5 and 44, 1991; Nos. 52, 61 and 62, 1992.

[Presentation speech made in Assembly on 17 December 1992]