

1992

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**DRUGS OF DEPENDENCE (AMENDMENT) BILL (NO.4) 1992**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of the Minister for Health  
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## DRUGS OF DEPENDENCE (AMENDMENT) BILL (NO.4) 1992

### EXPLANATORY MEMORANDUM

#### Outline

The Drugs of Dependence (Amendment) Bill (No.4) 1992 ("the Bill") amends the *Drugs of Dependence Act 1989* ("the Act") to facilitate the disposal of cannabis which is seized and forfeited to the Territory.

#### *The Drugs of Dependence Act 1989*

The Act regulates the possession and use of particular drugs and substances. Cannabis is a prohibited substance under the Act and, under the enforcement provisions of Part XI of the Act, may be seized and forfeited to the Territory. Cannabis which has been forfeited to the Territory is retained until an order for the disposal of an amount, surplus to any requirements for evidentiary purposes, is made upon an application for the order by the Director of Public Prosecutions ("the DPP").

However the circumstances under which cannabis, surplus to requirements for evidentiary purposes, may be disposed of upon an application of the DPP are complicated by virtue of the operation of subsections 194(6) and (7) of the Act.

Subsection 194(6) requires that the DPP provide a copy of his or her application for the disposal of an amount of a seized substance to the person from whom the substance was seized, any person with an interest in the substance prior to its seizure and to each defendant in proceedings for an offence in relation to the substance, or their legal representative.

Paragraph 194(7) requires that a Magistrate, in considering an application from the DPP for an order for the disposal of the substance, must be satisfied that no person notified of the application disputes the total weight of the seized substance as stated in the application. This provision enables persons, including defendants, to unreasonably delay proceedings by contesting the weight of the substance. In many cases a defendant may perceive it to be to his

or her advantage to protract proceedings by disputing the weight of an amount of seized cannabis.

Because of the potential for these provisions to unreasonably delay proceedings they are not utilised with the result that seized cannabis remains in storage where, as the volume retained continues to grow, it poses a potential storage and security problem for the authorities charged with responsibility for its secure storage.

*The Drugs of Dependence (Amendment) Bill(No.4) 1992*

The Bill amends the Act by inserting new provisions for the disposal of cannabis which will facilitate the disposal of cannabis which is surplus to the DPP's evidentiary requirements provided the interests of any defendant in relation to the cannabis are adequately protected.

**Financial implications**

The Bill will result in a reduction on demand for storage space and will avoid the need to fund additional storage for seized cannabis.

**MAIN AMENDMENTS**

*Clause 5 - Government Analyst*

**New section 183A** enables the Minister to appoint, by instrument, an analyst to be the Government Analyst.

**New section 183B** further enables the Minister to appoint, by instrument, an analyst to act as the Government Analyst.

Seized cannabis is retained by the Government Analyst at the Government Analytical Laboratory and the Government Analyst, in accordance with these amendments, will be responsible for ensuring the retention or disposal of cannabis which has been forfeited to the Territory.

***Clause 6 - Disposal of seized substances, compensation for disposal and recovery of seized goods***

**Clause 6** creates a new **Division 4** in Part XI of the Act dealing with the disposal of seized substances, compensation for disposal and recovery of seized substances.

The clause also inserts new sections **193A, 193B, 193C, 193D and 193E**.

**New section 193A** is an interpretation provision which defines the terms "seized cannabis", "seized substance" and "traffickable quantity" for the purposes of new **Division 4**.

**New section 193B** requires that an analyst who, after weighing and identifying a seized substance, believes the substance to contain a drug of dependence or prohibited substance the amount of which is greater than the traffickable quantity, notify the DPP of this fact within 24 hours of identifying the substance.

**New section 193C** deals with disposal of cannabis by the Government Analyst before any charges have been laid in relation to the cannabis. This provision is intended to facilitate the disposal of vast crops of cannabis which might otherwise require storage.

**New subsection 193C(1)** enables the Government Analyst to dispose of a disposable quantity of seized cannabis prior to the charging of any person with an offence in respect of the cannabis provided -

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

A "disposable quantity" of cannabis is defined in **new subsection 193C(2)** to mean a quantity of cannabis no greater than that by which the total quantity of cannabis seized exceeds the traffickable quantity.

**Section 193C** will, therefore, operate to ensure that the Government Analyst always retains, at least a traffickable quantity of seized cannabis. The retention of this amount may assist the DPP should a person subsequently be charged in relation to the seized cannabis. The retention of a traffickable quantity of cannabis will also enable subsequent analyses of the substance should this be required for evidentiary purposes.

The certificate required to be prepared by an analyst in accordance with section 192 relates to matters including the valid appointment of the analyst, when and from whom the cannabis was received, the weight of the cannabis received, the conduct and results of any analysis and how the cannabis was dealt with after handling by the analyst, including measures taken to secure any quantity of the cannabis retained by the analyst.

**New section 193D** deals with the disposal of cannabis on an order of a Magistrate where an application is made by the Director of Public Prosecutions. The section applies where, at the time a person is charged before a Magistrate with an offence in relation to seized cannabis, there remains a quantity of the cannabis greater than the traffickable quantity.

**New subsection 193D(2)** requires that at that time the DPP apply to the Magistrate in accordance with the requirements of **new section 194A**, for an order for the retention of a quantity of the cannabis no less than the traffickable quantity.

**New subsection 193D(3)** requires the Magistrate to, subject to the provisions of **new subsection 193D(4)**, order the Government Analyst to -

- . retain a quantity of the cannabis no less than that applied for; and
- . if all the cannabis is not to be retained - dispose of the balance of the seized cannabis.

**New subsection 193D(4)** requires the Magistrate to order the disposal of the cannabis in excess of the quantity applied to be retained by the DPP -

- . where the accused person is legally represented and no party to proceedings objects to disposal of the excess; or
- . in any other case - unless the Magistrate is satisfied that in consideration of the matters referred to in **new subsection 193D(5)**, a greater quantity than that applied for should be retained.

**New subsection 193D(5)** requires a Magistrate who, in circumstances other than where the accused is represented and no party objects to the disposal of the cannabis in excess of the quantity applied to be retained, is considering whether to order the disposal of that cannabis to have regard to matters including the following -

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

**New subsection 193D(6)** requires the Government Analyst to comply with an order of a Magistrate, in accordance with **new subsection 193D(3)**, to retain or dispose of cannabis.

**New section 193E** deals with the disposal of cannabis on the order of a Magistrate where an application is made by the Government Analyst.

**New subsection 193E(1)** enables the Government Analyst, where a Magistrate has ordered the retention of an excess quantity of seized cannabis in accordance with **new section 193D**, to apply to a Magistrate for an order for disposal of part of or all the excess cannabis. The Government Analyst's application must comply with the requirements of **new section 194A**.

The term "excess quantity" is defined in **new subsection 193E(6)** to mean a quantity of seized cannabis in excess of that applied to be retained by the DPP under **new subsection 193D(2)**.

It is intended that an application for the disposal of an excess quantity of cannabis will be made by the Government Analyst where there has been a change in circumstances in relation to the matters to which the Magistrate is required to have regard under **new subsection 193D(5)**, which change is

relevant for the purposes of reconsidering whether an order for the disposal of the excess quantity of cannabis should be made.

**New subsection 193E(2)** enables the Magistrate to order the disposal a quantity of the seized cannabis no greater than the excess quantity.

**New subsection 193E(3)** requires the Magistrate to order the disposal of all of the excess quantity of cannabis -

- where the accused person is legally represented and no party to proceedings objects to disposal of the excess; or
- in any other case - unless the Magistrate is satisfied that in consideration of the matters referred to in subsection 193E(4), a part or all of the excess should be retained.

**New subsection 193E(4)** requires a Magistrate, who in circumstances other than where the accused is represented and no party objects to the disposal of an excess quantity of cannabis, is considering whether to order the disposal of that excess quantity of cannabis, to have regard to the same matters as are specified in **new subsection 193D(5)**.

**New subsection 193E(5)** requires the Government Analyst to comply with an order of a Magistrate, in accordance with **new subsection 193E(2)**, to dispose of an excess quantity of cannabis.

***Clause 7 - disposal of seized substances other than cannabis on order of a Magistrate***

**Clause 7** amends section 194 of the Act dealing with disposal of drugs and substances consequentially upon the insertion of the new provisions dealing with the retention and disposal of cannabis.

Specifically -

- paragraph 7(a) omits subsections 194(1) and (2) as their provisions are replaced by, respectively, the provisions of new sections 193A and 193B. New subsection 194(1) is inserted to limit the application of the section to seized substances other than cannabis;

- paragraphs 7(c) and (d) amend the section to refer to the requirements of new section 194A in relation to an application to a Magistrate for the disposal of cannabis which replace the requirements of omitted section 194(5); and
- paragraphs 7(e) and (f) amend the section to provide that orders for the disposal of cannabis be directed to the Government Analyst, instead of the Medical Officer of Health.

***Clause 8 - Applications for retention or disposal of cannabis***

New section 194A requires that where an application is made for the retention or disposal of an amount of cannabis under, respectively, **new subsections 193D(2) or 193E(1)** or the disposal of an amount of a seized substance under subsection 194(3), the application shall -

- state the circumstances of the seizure;
- specify the quantity of the substance to be retained or disposed of as the case requires;
- in the case of an application in respect of a seized substance, other than cannabis, specify the quantity of the substance sufficient to enable it to be analysed twice;
- include other relevant information including information about facilities for the secure retention of the substance; and
- be accompanied by a certificate under section 192 in relation to the substance.

***Clause 9 - final disposal of seized substances***

***Clause 9*** amends section 195 of the Act which provides for the final disposal of drugs and substances, where no proceedings for an offence in relation to the substances are instituted within three months of the seizure of the substance, or where such proceedings are instituted within 3 months of seizure of the substance, those proceedings are complete.

The provision is amended consequentially upon the amendments effected by the Bill and to impose the responsibility for final disposal of seized substances upon the Government Analyst instead of the Medical Officer of Health.



***Clause 10 - compensation for seizure***

***Clause 10*** amends section 196 which provides for the compensation of persons in respect of a substance which is disposed of in accordance with section 195 where no offence in relation to the substance has been found proved. The amendment makes it clear that a person who was entitled to legal possession of an amount of a substance immediately prior to its seizure is, where a quantity of that amount is disposed of under section 195, entitled to compensation in respect of the entire amount of the substance which has been disposed of.

**OTHER AMENDMENTS*****Clauses 1, 2, 3 and 4 - formal amendments***

***Clauses 1, 2, 3 and 4*** are formal amendments providing for the short title and commencement of the Act and the interpretation of terms used in the Act.

***Clause 11- consequential amendment***

***Clause 11*** amends section 197 of the Act so that it refers to property seized under "Division 3" of Part XI of the Act, rather than property seized under "this Division". This amendment is necessary as the Bill has the effect of including section 197 in new Division 4 of Part XI, rather than in Division 3.