

2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Osborne)

Needle Exchange Bill 2000

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Needle Exchange Bill 2000

A BILL

FOR

**An Act to increase the number of needles used by
intravenous drug users being handed into official outlets and
to provide for reports to the community on the number of
needles distributed and returned**

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

PART 1—INTRODUCTORY

1 Name of Act

This Act is the *Needle Exchange Act 2000*.

2 Commencement

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

Note 1 The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

10 *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 *Interpretation Act 1967*, s 10C (1)).

Note 3 If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)).

15 3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act.

20 *Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Interpretation Act 1967*, ss 12 (1), (4) and (5) for the legal status of notes.

PART 2—GIVING NEEDLES

5 When is a needle given *without charge*?

For this Act, a needle is given *without charge* if the needle is free or the price of the needle is significantly less than the ordinary market price for needles.

6 Restriction on giving needles without charge

(1) A person may give someone (the *receiver*) a needle without charge only if the needle is given to the receiver at or from an approved needle exchange facility.

10 Maximum penalty: 50 penalty units.

(2) Subsection (1) does not apply if the person giving the needle (the *giver*) is—

- (a) a doctor; or
- (b) a member of the receiver's family; or
- 15 (c) employed at a hospital or other medical facility and the needle is given to the receiver as part of that employment; or
- (d) a pharmacist, or someone employed by a pharmacist, and the needle is given at a pharmacy; or
- (e) someone prescribed under the regulations.

PART 3—APPROVAL OF NEEDLE EXCHANGE FACILITIES

7 Approval of needle exchange facilities

- (1) The operator of a needle exchange facility may apply to the Minister for approval for the facility.
- 5 (2) On receiving an application, the Minister must, in writing, either approve or refuse to approve the facility.
- (3) In deciding whether to approve the facility, the Minister must consider whether the operator of the facility is likely to comply with this Act.

10 8 Action in relation to approval

- (1) This section applies to the approval of a needle exchange facility if—
- 15 (a) the approval was obtained by a false or misleading statement; or
- (b) the operator of the needle exchange facility contravenes this Act (whether or not the operator has been convicted of an offence).
- 15 (2) The Minister may—
- (a) cancel the approval and disqualify the operator from applying for approval for a needle exchange facility either completely or for a stated period; or
- 20 (b) suspend the approval for a stated period and, if the Minister considers appropriate, disqualify the operator from applying for approval for a needle exchange facility for not longer than the period of suspension.
- (3) If the Minister proposes to take action under subsection (2), the
- 25 Minister must give the operator written notice—
- (a) stating the proposed action, including any proposed suspension period and any proposed period of disqualification of the operator from applying for approval for a needle exchange facility; and
- (b) stating the grounds for the proposed action; and

- (c) inviting the operator to make written representations, within a stated period of at least 14 days after the operator is given the notice, why the proposed action should not be taken.
- (4) If, after considering any written representations made by the operator within the stated period, the Minister is satisfied on reasonable grounds that a ground mentioned in subsection (1) exists, the Minister may take the following action:
 - (a) if the proposed action included cancelling the facility's approval—either cancel the approval or suspend the approval;
 - (b) if the proposed action included suspending the approval for a stated period—suspend the approval for not longer than that period;
 - (c) if the proposed action included disqualifying the operator from applying for approval for a needle exchange facility for a stated period—disqualify the operator from applying for approval for a needle exchange facility for not longer than that period.
- (5) The Minister must give the operator written notice of the decision.
- (6) The cancellation or suspension of an approval, or disqualification of an operator, takes effect when notice of the cancellation is given to the operator, or, if the notice provides for a later day of effect, that day.
- (7) If the Minister suspends a facility's approval, the facility is, during the suspension, taken not to be an approved needle exchange facility.

PART 4—OBLIGATIONS OF OPERATORS AND FACILITY WORKERS

9 General operator obligations

- 5 (1) The operator of an approved needle exchange facility must ensure that each facility worker at the facility gives a needle to someone (the *receiver*) without charge only if the receiver gives the worker a needle in exchange.

Maximum penalty: 50 penalty units.

- 10 (2) The operator of an approved needle exchange facility must ensure that each facility worker at the facility does not exchange with a person more than 10 needles at one time.

Maximum penalty: 50 penalty units.

- 15 (3) The operator of an approved needle exchange facility must ensure that each facility worker at the facility does not give someone a syringe without charge unless the syringe is given with a needle that is supplied under this Act.

Maximum penalty: 50 penalty units.

- 20 (4) It is a defence to a prosecution for an offence against this section if the operator of the needle exchange facility establishes that the operator took reasonable steps to ensure that each facility worker at the approved needle exchange complied with section 10.

10 Facility worker obligations

- 25 (1) A facility worker at an approved needle exchange facility must not give a needle to someone (the *receiver*) without charge unless the receiver gives the worker a needle in exchange.

Maximum penalty: 50 penalty units.

- (2) A facility worker at an approved needle exchange facility must not exchange with a person more than 10 needles at one time.

Maximum penalty: 50 penalty units.

(3) A facility worker at an approved needle exchange facility must not give someone a syringe without charge unless the syringe is given with a needle that is supplied under this Act.

Maximum penalty: 50 penalty units.

5 **11 Operators to keep records**

The operator of an approved needle exchange facility must keep a record of each needle given without charge at or from the facility and of each needle collected at the facility.

Maximum penalty:

- 10 (a) for the operator's first offence—50 penalty units;
 (b) for the operator's second and subsequent offences—suspension of the operator's licence for—
 (i) the period prescribed under the regulations; or
 (ii) if no period is prescribed—2 years.

15 **12 Operators to report quarterly**

(1) The operator of an approved needle exchange facility must, within 7 days after the end of each quarter, give the Minister a quarterly notice for the quarter.

Maximum penalty:

- 20 (a) for the operator's first offence—50 penalty units;
 (b) for the operator's second and subsequent offences—suspension of the operator's licence for—
 (i) the period prescribed under the regulations; or
 (ii) if no period is prescribed—2 years.

25 (2) The quarterly notice must state—

- (a) the number of needles collected at the facility during the quarter;
 and
 (b) the number of needles given without charge at or from the facility during the quarter; and
30 (c) anything else required by the regulations to be included.

PART 5—RECORDS AND REPORTING

13 Register

- (1) The Minister must keep a register of approved needle exchange facilities.
- 5 (2) The register may be kept in electronic form.
- (3) The Minister may correct a mistake, error or omission in the register subject to the requirements (if any) of the regulations.

14 Contents of register

The register must contain—

- 10 (a) a description of each approved needle exchange facility that adequately identifies it; and
- (b) the name of the operator of each facility; and
- (c) anything else required to be kept in the register by the regulations.

15 Register to be public

- 15 The register may be inspected free of charge by the public at the office of the Minister any reasonable time.

16 Needle exchange records kept by operators

A record required to be kept under section 11 (Operators to keep records) may be in written or electronic form.

20 17 Inspectors

- (1) There may be 1 or more inspectors for this Act.
- (2) The chief executive may establish 1 or more positions in the public service the duties of which include exercising the functions of an inspector.
- (3) The following people are inspectors:
- 25 (a) any public servant for the time being exercising the duties of a public service position mentioned in subsection (2);
- (b) anyone else appointed in writing by the chief executive.

18 Identity cards

(1) The chief executive must issue an inspector with an identity card that states the person is an inspector for this Act, or stated provisions of this Act, and shows—

- 5 (a) a recent photograph of the person; and
- (b) the name of the person; and
- (c) the date of issue of the card; and
- (d) a date of expiry for the card; and
- (e) anything else prescribed under the regulations.

10 (2) A person who stops being an inspector must return his or her identity card to the chief executive as soon as practicable, but no later than 7 days after ceasing to occupy or act in that position.

Maximum penalty (subsection (2)): 1 penalty unit.

19 Powers of inspectors

15 (1) An inspector may, in writing, require an operator, or person the inspector reasonably suspects is an operator, to provide records or information within the reasonable time stated in the notice.

(2) The notice may only require an operator, or person the inspector reasonably suspects is an operator, to provide records that are in the
20 person's possession or are within the person's power to obtain lawfully.

(3) The inspector may take copies of any record provided in response to the notice.

(4) A record required by a notice must be provided in written form unless the notice provides otherwise.

25 (5) A person must not, without reasonable excuse, fail to comply with a notice given to the person under this section.

Maximum penalty: 20 penalty units.

20 Obligation of Minister

30 Within 5 sitting days after the end of each quarter the Minister must present to the Legislative Assembly—

- (a) a copy of the register; and
- (b) a statement that contains—
 - (i) the number of needles collected by approved needle exchange facilities during the quarter; and
 - (ii) the number of needles given without charge by approved needle exchange facilities during the quarter.

5

PART 6—MISCELLANEOUS

21 No obligation to exchange needles

5 This Act does not require a facility worker at an approved needle exchange facility to give a needle in exchange for a needle given to the worker.

22 Power to collect

This Act does not prevent the collection of needles or syringes at an approved needle exchange facility.

23 Regulation-making power

10 (1) The Executive may make regulations for this Act.

(2) The regulations may create offences and may prescribe a maximum penalty of not more than 10 penalty units for an offence against the regulations.

DICTIONARY

(See s 3)

approved needle exchange facility means a needle exchange facility approved under section 7.

5 **facility worker**, for a needle exchange facility, means a person who works at the facility, and includes a volunteer.

needle means a needle used to inject something into an individual.

needle exchange facility includes a mobile needle exchange facility and a proposed needle exchange facility.

10 **operator**, of a needle exchange facility, means the person with responsibility for the management or control of the facility, and includes a person who proposes to operate a needle exchange facility.

quarter means a quarter of the financial year.

register means the register under section 13.

15 **without charge**, for the giving of a needle—see section 5.

Endnote

Penalty units

Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.