

## Explanatory Memorandum

### *Supervised Injecting Place Trial Bill 1999*

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#### INTRODUCTION

The overall purpose of this Bill is to permit and facilitate the running of a research trial examining the effects of operating a supervised injecting place.

Such a facility would, but for legislation, raise numerous law enforcement and private law issues. This Bill aims to make appropriate provisions to address those issues.

#### DETAIL OF CLAUSES

##### Part 1 – INTRODUCTORY

##### Clauses 1 and 2

These clauses are standard.

##### Clause 3 – Definitions

Notable issues in the definitions clause include:

- “*facility*” and “*operator*” are specified by the effect of **clause 5**. These terms are then used throughout the Bill to simplify the language used.
- “*substance*” is used in the Bill as a single expression to cover the two kinds of drug substances defined in the *Drugs of Dependence Act 1989*, namely “drugs of dependence” and “prohibited substances”.
- “*supervised injecting place*” is defined to specify the kind of facility that the Bill allows, by listing what may be done in it. The facility that is declared must not go beyond this description (**clause 5**), and a person involved in its operation who acts beyond its scope loses his or her legal protection (**clause 6**).

#### **Clause 4 – Object**

The Object clause indicates that the overall purpose of this Bill is to permit an independently evaluated treatment facility. This idea of “allowing” the facility is important because the project would encompass activities that are unlawful under current legislation.

The Object clause identifies that the trial is temporary in nature.

### **Part 2 – OPERATION OF THE FACILITY**

#### **Clause 5 – Declaration of facility and operators**

This clause enables the Minister to declare a place to be the facility and declare a person (including an incorporated body or other legal entity) to be the operator of facility.

This capacity provides three important results:

- it ensures that the identity of the facility and its operator will be certain and would be subject to government approval;
- it places a requirement on the Minister to consider the suitability of premises prior their selection as a ‘supervised injecting place’ (**paragraph (2)(a)**), and also note the words in the definitions of ‘supervised injecting place’; and
- it requires that the directions to the DPP are in place prior to declaration of the facility (**paragraph (2)(b)**).

#### **Clause 6 – Exemption of staff and other persons from certain criminal proceedings**

This clause aims to ensure that there is no doubt that the Territory, the public service or the operator and staff of the facility are acting lawfully when they engage in the ordinary course of their roles in the establishment and operation of the facility.

The clause extends this protection widely to cover public servants concerned in the project, up to and including the Minister, staff of the facility (which is broadly defined in the Definitions clause), and the owner and occupier of premises if they are leased (see **subclause (1)**).

**Subclause (2)** is expressed generally to protect staff from all accusations of criminality in regard to their work, including aiding and abetting charges.

Finally, the clause provides for two forms of restriction on the protection, which are:

- a requirement for good faith on the part of the protected person (**paragraph (2)(a)**); and
- a capacity to provide additional requirements by regulations(**paragraph (2)(c)**).

#### **Clause 7 – Exemption of persons from certain civil proceedings**

This section aims to prevent civil actions arising from any harm clients may suffer through their use of drugs in the supervised injecting place.

The clause would thus disturb the right of action of injecting drug user clients to seek to hold operators and staff liable for contributing to the harms arising from their self-administration.

The Territory and operator would have defences to such actions in any case, but this provision avoids any doubt and minimises risk and expense in the operation of the facility.

Note that this provision does not disturb the legal rights of people other than clients of the facility to bring any action against any person for damage they may claim to have suffered.

#### **Clause 8 – Directions to the DPP**

This provision draws upon the existing power under the *DPP Act 1990* for the Government (through the Attorney-General) to make general directions to the Director of Public Prosecutions about the circumstances in which prosecutions will occur.

The Government is required to make the necessary directions – they are not optional. By means of this clause the Assembly would clearly indicate the intended legal response to the criminal actions of clients of the supervised injecting place.

Note also that a facility cannot be declared under **clause 5** until these directions have been given.

The nature of the directions is indicated in **subclause (1)**, so as to disclose the purpose being served.

**Subclause (2)** specifically indicates that restraint of prosecution of relevant offences under the *Drugs of Dependence Act 1989* is contemplated. The sections referred to provide the offences of possession and administration (ie: use) of drugs of dependence and prohibited substances.

#### **Clause 9 – Excluding persons from the facility**

The effective operation of this facility will require strong operational control.

This will include the power to exclude or remove trespassers and possibly individual clients from the facility.

To support this power with legally enforceable penalties, it is necessary to state this power in the Bill.

### **Part 3 – MISCELLANEOUS**

#### **Clause 10 – Regulation-making power**

The Bill includes a standard regulation-making power to facilitate the administration of the Act.

Note also that in addition to the general power, the Bill provides a specific reference (in **clause 6(2)(c)**) to regulations which may set conditions on the criminal liability exemptions for operators and staff of the facility.

#### **Clause 11 – Expiry**

The legislation would lapse 24 months after the trial facility is first declared by the Minister under **clause 5**.

Circulated by  
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