

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

DRUGS OF DEPENDENCE (AMENDMENT) BILL (No. 2) 1998

EXPLANATORY MEMORANDUM

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Drugs of Dependence (Amendment) Bill (No. 2) 1998

Outline

This is an amending Bill. It amends the *Drugs of Dependence Act 1989* referred to in the amending Bill as the Principal Act.

The Principal Act prohibits and regulates the manufacture, sale, supply, possession, use and administration of certain drugs of dependence and other substances. The Principal Act also provides for the regulation of the supply of syringes.

The impetus for these amendments arose as a result of development work to undertake a scientific trial of a safe injecting place (SIP) in the ACT.

The amendments to the Principal Act will afford protection against acts of good faith or omission to the operators and staff of a SIP and immunity to the Territory in respect of drug related injuries or death of SIP users.

The proposed scientific trial would enable clients to access clean injecting equipment, to inject in a clean, supervised environment and to dispose of equipment safely. The facility will also provide emergency assistance in the case of an overdose. It would act as a point of referral to a range of related services such as health promotion, counselling, medical treatment, housing or sexual assault services. The facility could also act as an entry point for injecting drug users to access detoxification services or to be linked with Methadone or other treatment programs.

In the course of the development of the proposal for the scientific trial, a committee comprising representatives of the Department of Justice and Community Safety, the Director of Public Prosecutions and the Australian Federal Police was charged with considering the legal and law enforcement issues associated with the trial. This committee identified significant issues of civil liability that would arise.

The committee advised that the majority of these risks should be managed by legislation to afford SIP operators and staff protection for acts of good faith or omissions in the course of operating the SIP and to provide immunity to the Territory in respect of drug related injuries or death of SIP users. The *Intoxicated Persons (Care and Protection) Act 1994* currently provides protection for the operators and staff involved in the care of intoxicated persons.

Revenue/Cost implications

The Bill itself has no financial implications other than protection from potential claims.

Formal Clauses

Clauses 1, 2 and 3 are formal requirements. They refer to the short title of the Bill, commencement and definition of the Principal Act. The Bill commences on the date on which it is notified in the *Gazette*.

Declaration of places

The purpose of this clause is to ensure that the immunity against civil liability described above, is available only to facilities declared to be a SIP by the Minister for Health and Community Care and so notified in the *Gazette*.

In order to declare a facility a SIP, the Minister must be satisfied that the facility is a hygienic environment suitable for use as a place which will provide clean injecting equipment to enable a person to self administer a drug of dependence and to facilitate safe disposal of injecting equipment.

Legal Immunity

173C (1) gives immunity to the operators and staff of a SIP for acts of good faith or omissions in the course of operating the SIP, including claims by third parties

The purpose of 173C(2) is to ensure that, while 173C(1) protects operators and staff for an act of good faith or an omission, against claims by third parties, no such protection is afforded the Territory. The provision is intended to ensure that third parties, for example, someone who is injured in a car accident caused by an intoxicated person who has injected at the SIP, have recourse to a remedy. Implicit in this clause is the existence of sufficient nexus between the acts of the manager, operator or staff member of the SIP and the Territory to establish liability, for example, that the Territory is the operator of the SIP.

173C (3) affords the Territory immunity only in respect of claims by SIP users for self inflicted drug related injuries or death.

Both types of immunity in this Bill are being conferred on the basis that the activities conducted at the SIP will be technically illegal as well as high risk. The purpose of the SIP is to provide a clean environment for injecting drug users, not to regulate what is injected. The operators and staff of the facility will have no way of knowing what substances or combination of substances are being injected or the quantities injected. It will not be possible to know what other substances a person has consumed or their medical history. Because of the nature of the SIP, insurance will be virtually impossible to obtain for either the operator of the SIP or the Territory