

2004

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

**DRUGS OF DEPENDENCE (SYRINGE VENDING MACHINES)
AMENDMENT BILL 2004**

EXPLANATORY STATEMENT

Circulated by authority of

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Minister for Health

EXPLANATORY STATEMENT

Outline

The purpose of the *Drugs of Dependence (Syringe Vending Machines) Amendment Bill 2004* is to provide a legislative base for the distribution of needles and syringes via a vending machine and to protect those who are approved to distribute syringes in this manner from prosecution under the *Criminal Code 2002*.

Approval to distribute syringes in the ACT is required under part 7 of the *Drugs of Dependence Act 1989*. This approval is conditional on the Chief Health Officer being satisfied that the person seeking approval meets a number of conditions. Previous to these amendments approval to distribute syringes in the ACT could only be afforded to a medical practitioners, pharmacist, nurse or health worker. Approval could not be afforded to a person/persons nominated by an organisation either to distribute syringes via a vending machine or otherwise. In addition, even if approved to distribute the syringes they would be unable to meet the conditions necessary to be immune from prosecution under the *Crimes Act 1900* as all other approved persons are. At present, the legislation requires that the approved person hold a reasonable belief that the supply of syringe is for the administration of a drug of dependence and that the supply might assist in preventing the spread of disease.

Without the legislative authority to distribute syringes via a vending machine there will continue to be limited access to clean injecting equipment outside working hours in the ACT. The ACT is currently without 24-hour access to clean syringes with large parts of Tuggeranong, Gungahlin and inner Belconnen having no after hours access and limited access on weekends. If injecting drug users are unable to access clean injecting equipment they may be more likely to share needles and be at greater risk of contracting blood borne viruses such as Hepatitis C.

The amendments will allow an 'approved person' (either a corporation or an individual) to seek approval from the Chief Health Officer to distribute syringes via a vending machine. The amendments will also confer immunity from prosecution for ancillary offences under part 2.4 of the *Criminal Code 2002* to approved persons and persons acting for the approved person.

Revenue/Cost Implications

Recurrent funding of \$60,000 is available for the trial of syringe vending machines in the 2004-05 budget.

Formal Clauses

Clause 1 – Name of Act – states that the title of the Act is the *Drugs of Dependence Amendment Act 2004*.

Clause 2 – Commencement – states that the amendments are to commence on the day after the *Drugs of Dependence Amendment Act 2004* is notified.

Clause 3 – Legislation Amended – provides that this Act amends the *Drugs of Dependence Act 1989*.

Clause 4 – New division 7.1 heading – this allows for the heading ‘Division 7.1 Supply of syringes by approved people’ to be inserted at the beginning of Part 7.

Clause 5 – Section 85 heading – this allows the S85 heading ‘Definitions for part 7’ to be replaced with ‘Definitions for division 7.1’. There is no change to the contents of S85.

Clause 6 - Section 93 heading - the current S93 heading ‘Offences against Crimes Act 1900’ will be replaced with ‘Approval—no liability for ancillary offences’.

Clause 7 - Section 93 – this removes the words ‘... a provision in the Crimes Act 1900, part 9 ...’ and replaces it with ‘... a provision in the Criminal Code, part 2.4 (Extensions of criminal responsibility)’.

Clause 8 - New division 7.2 - this allows for the insertion of Division 7.2 ‘Supply of syringes by vending machine’ after S94.

S94A ‘Definitions for div 7.2’ - provides the definitions of vending machine, vending machine approval and approved person.

S94B ‘Application for vending machine approval’ - allows for a person to seek approval to supply syringes by vending machine and advises that if a form is approved under S205 for this provision, this form must be used.

S94C ‘Further information for vending machine approval application’ - provides that the Chief Health Officer may, by written notice, request further information or a document from the applicant that they reasonably need to decide the application. The Chief Health Officer may refuse to consider the application if the applicant does not comply with this requirement.

S94D ‘Decision about vending machine approval application’

- (1) Provides that the Chief Health Officer must make a decision regarding the application.
- 2 Requires that the Chief Health Officer consider the ‘public interest, including the desirability of preventing the spread of disease and the existing availability of syringes’ when deciding an application.
- 3 Provides that the matters the Chief Health Officer must consider when deciding an application are not limited to those in S94(D)(2).
- 4 Lists information the Chief Health Officer must include in the written approval including the period for which the approval is given.

S94E ‘Vending machine approval—conditions’

- (1) Provides for the approval to be subject to the conditions stated in the approval
- (2) Lists that the number of syringe vending machines that are installed and their location, the type of syringes that may be supplied from the machine, and the maintenance of the machine as conditions that must be included in the approval including.
- (3) Provides that the conditions the Chief Health Officer places on the approval are not limited to those in S94(E)(2).

S94F ‘Vending machine approval surrender’ - provides that an approved person may surrender their vending machine approval by written notice to the Chief Health Officer and that the surrender will take effect immediately. The approved person is required to return the approval with the notice.

S94G ‘Vending machine approval—cancellation’ - provides that the Chief Health Officer may cancel a person’s vending machine approval if believed that the person has contravened a condition of the approval.

S94H ‘Vending machine approval—return on surrender or cancellation’ – provides that a person commits an offence if they surrender or have their vending machine approval cancelled and they fail to take all reasonable steps to return the approval to the chief health officer as soon as practicable and within 7 days of when the surrender or cancellation takes effect.

S94I ‘No liability for ancillary offences’ - provides that a person approved to supply syringes by vending machine, or someone acting for the approved person will be exempt from prosecution under the Criminal Code, part 2.4 (Extensions of criminal responsibility) where they supply syringes by way of a vending machine in accordance with the conditions of the approval. This exemption and its conditions also apply to the printing or publishing of notices, announcements and advertisements in any form about the supply of syringes via vending machine.

Clause 9 - Part 12 of the Act currently only permits AAT review of decisions made by the minister. These amendments have updated Part 12 of the Act to allow for eligible persons to apply to the AAT for review of reviewable decisions made by a *decision-maker*.

A decision maker is a person who makes a reviewable decision.

Clause 10 – Schedule 6 ‘Reviewable decisions’ – lists the reviewable decision and the eligible person to whom written notice must be provided for that decision.

Clause 11 – ‘Schedules Renumbering’ – provides that the schedules must be renumbered when the Act is next republished under the *Legislation Act*.