

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

DRUGS OF DEPENDENCE AMENDMENT BILL 2002

A BILL TO AMEND THE DRUGS OF DEPENDENCE ACT 1989

EXPLANATORY MEMORANDUM

Circulated by authority of the Minister for Health

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2002

DRUGS OF DEPENDENCE AMENDMENT BILL 2002**EXPLANATORY MEMORANDUM****OUTLINE**

This Bill amends the *Drugs of Dependence Act 1989* (the Act).

The Bill is primarily intended to correct deficiencies in subsections 58(4) and 68(1) of Part 6 of the Act. In addition, the Bill-

- simplifies section 58 of the Act so that it is more easily understood;
- updates medical terminology and current prescribing practice with respect to hyperkinetic syndrome;
- validates approvals that have been issued by the Chief Health Officer since 1989 to medical practitioners to prescribe drugs of dependence for their patients; and
- brings fines into line with those applying under other Territory legislation.

The Act was developed as model legislation following the Special Premiers Conference on Drugs Strategy in 1985 and represented a major reform in the Territory's drug laws. It was developed following extensive consultation within the community and was drafted to meet the practical requirements of those who would enforce and work with the Act.

The Act controls the manufacture, sale and supply of drugs of dependence. Drugs of dependence have a legitimate medical purpose, but are illegal for recreational use and have a high potential for addiction, abuse and misuse.

Part 6 of the Act establishes procedures to regulate the prescription, requisition, supply and administration of drugs of dependence.

The primary reason for amending the Act is because it has recently come to light that there are some deficiencies regarding the prescribing of amphetamines (subsection 58(4)) and the current and longstanding administrative practices regarding the prescription of all drugs of dependence (subsection 68(1)).

The original policy regarding the prescribing of amphetamines is that a medical practitioner can prescribe an amphetamine for a period of two months without prior approval of the Chief Health Officer for a person who is suffering from narcolepsy, or is under the age of 19 years and suffering from hyperkinetic syndrome. The aim of the two month period is to enable the medical practitioner to trial an amphetamine in a patient to determine its effectiveness and dosage regime. Continuation of treatment beyond the two month period, and in all other cases where medication with an

amphetamine is needed, requires approval from the Chief Health Officer before medical practitioners can prescribe an amphetamine for their patients.

While this has been and is the basis of the current administrative practices, advice is that subsection 58(4) is defective because it currently allows amphetamines to be prescribed without the necessary controls.

The Bill amends the Act to accurately reflect the original policy and the current and longstanding practices regarding the prescribing of amphetamines. This policy is well understood and practised by all medical practitioners and specialist medical practitioners in the Territory. Similar practices are in force in all other states in Australia.

Because of the complexity of section 58 it is considered that the best way to amend subsection 58(4) is to rewrite section 58 of the Act and, in the process, simplify it.

The Bill amends subsection 68(1) so that it is linked to Division 6.2, which is the only division containing relevant applications for approval. This ensures that the Act reflects the current and longstanding administrative practices regarding the prescription of all drugs of dependence.

The Bill also validates approvals that have been issued by the Chief Health Officer since 1989 to medical practitioners to prescribe drugs of dependence to their patients. This is necessary because whilst approvals have been sought and given under the Act in good faith since 1989, this may have been without the full cover of the law.

In addition, the opportunity is being taken to update the Act to reflect current medical terminology and practice:

- the term “hyperkinetic syndrome” will be replaced by “attention deficit hyperactivity disorder”, which is used internationally and in the Commonwealth Government’s Schedule of Pharmaceutical Benefits; and
- the phrase “under the age of 19 years” will be deleted with respect to prescribing amphetamines for the treatment of attention deficit hyperactivity disorder. This reflects current prescribing practice which recognises that some adults suffer from attention deficit hyperactivity disorder and may benefit from the prescription of amphetamines, and ensures that persons who commenced beneficial therapy whilst children are not disadvantaged when adulthood is reached. It should be noted that guidelines are in place to assist the Chief Health Officer in assessing applications from medical practitioners to prescribe amphetamines for persons in all age groups with attention deficit hyperactivity disorder. These guidelines have been ratified by the Drugs Advisory Committee, a statutory committee appointed by the Minister for Health under provisions in the Act, following consultation with experts in the treatment of attention deficit hyperactivity disorder.

It is also timely to bring fines under the Act into line with those applying under other Territory legislation so that maximum fines for bodies corporate will be five times as great as those for which individuals are liable. This is being done by expressing fines in terms of penalty units rather than dollars. In this way the operation of section 133 of the *Legislation Act 2001* is attracted.

FINANCIAL CONSIDERATIONS

This Bill has no revenue or cost implications.

CLAUSE NOTES

Formal Clauses

Clauses 1, 2 and 3 are formal requirements. They refer to the title and commencement of the *Drugs of Dependence Amendment Act 2002*, and the definition of the principal Act. The principal Act is the *Drugs of Dependence Act 1989*. The amending Act commences the day after its notification.

Clause 4 - Section 58 Prescribing drugs of dependence

This clause substitutes a new section 58 and in effect rewrites Section 58 as well as amending subsection 58(4) in the principal Act.

Subsection 58(4) in the principal Act would become subsections 58(5) and 58(6) in the amended Act. The amendments ensure that a medical practitioner can prescribe an amphetamine for a period of two months without prior approval of the Chief Health Officer for a person who is suffering from narcolepsy or attention deficit hyperactivity disorder. Continuation of treatment beyond the two month period, and in all other cases where medication with an amphetamine is needed, requires approval from the Chief Health Officer before medical practitioners can prescribe an amphetamine for their patients.

The rewriting of section 58 simplifies the language of the law so that it is more easily understood.

Clause 5 - Section 68(1) Application for approval

This clause amends subsection 68(1) so that it is linked to Division 6.2, which is the only division containing relevant applications for approval.

This ensures that medical practitioners provide the Chief Health Officer with the required information in their applications for approval to prescribe drugs of dependence for their patients.

Clause 6 – Section 69(2) Powers of chief health officer

This clause amends the reference to subsection 58(2) to that of subsection 58(3) in subsection 69(2) in the principal Act. This is a technical amendment only because section 58 has been rewritten and the subsections renumbered.

Clause 7 – New section 75A, Division 6.4**Validation of Chief Health Officer's approvals**

This clause inserts a new validating provision, section 75A, in the principal Act.

Subsection 75A(1) validates all approvals granted in good faith by the Chief Health Officer, since the commencement of the principal Act, to medical practitioners to prescribe drugs of dependence for their patients.

Subsection 75A(2) states that the new validating section 75A expires on the day it commences. On the basis of the *Legislation Act 2001*, validating provisions are expressed to lapse as soon as possible. Under sections 82 and 88 of the *Legislation Act 2001*, the validating provision achieves its effect immediately on commencement and the effect continues indefinitely regardless of the repeal or expiry of the provision.

Clause 8 - Conversion of fines to penalty units

This clause changes the fines in the Act from dollar amounts to their equivalent in penalty units. This brings the fines under the principal Act into line with those applying under other Territory legislation so that maximum fines for bodies corporate will be five times as great as those for which individuals are liable. In this way the operation of section 133, which provides that the value of a penalty unit is \$100 for individuals and \$500 for bodies corporate, of the *Legislation Act 2001* is attracted.