

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CLINICAL WASTES BILL 1990

EXPLANATORY MEMORANDUM

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Minister for Finance and Urban Services
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CLINICAL WASTES BILL 1990

The Clinical Wastes Bill 1990 (the Bill) provides for the management of clinical waste by introducing a scheme for controlling the storage, transportation and disposal of clinical wastes within the Australian Capital Territory.

The Bill provides for the appointment of a Clinical Waste Controller who will be responsible, among other things, for the issuing of licences to transport clinical waste. Matters which the Controller will consider when deciding whether to grant the licence are specified in the Bill. It will be an offence for a person to carry on the business of transporting clinical waste unless licensed to do so.

The Bill provides that the Minister shall prepare and maintain a Clinical Waste Manual (the Manual) dealing with all matters relevant to the Bill including: the storage, treatment, transport and disposal of clinical waste.

The manual and any amendments thereto, are to be disallowable instruments for the purpose of section 10 of the Subordinate Laws Act 1989, and the Minister will be required to publish in the Gazette and in the press a notice of the preparation of the Manual and of each amendment.

The Minister may appoint inspectors for the purposes of the Act. Inspectors will be empowered to enter regulated premises (defined in the Bill) without the consent of the occupier and any other premises with the consent of the owner, if they believe, on reasonable grounds, that these premises are being used in connection with the storage, treatment, transportation or disposal of clinical waste. The inspectors will also be empowered, in certain circumstances, to examine, seize, inspect and photograph material which they believe, on reasonable grounds, is clinical waste, or is used in connection with clinical waste.

Under the 1989-90 Budget Initial Statement \$100,000 was allocated for the syringe collection service and the safe handling storage, collection and disposal of clinical waste. The total costs for administering the Bill will amount to \$38,500 in the first year and \$30,000 for each subsequent year which is available within the \$100,000 already appropriated.

Details of the Bill are included below.

Part 1 of the Bill consists of clauses 1 to 6 and deals with preliminary matters.

Clause 1 states that the Bill may be cited as the Clinical Waste Act 1990.

Clause 2 provides for the commencement of the Bill.

Subclause 2(1) provides that, subject to subclause 2(2), the Bill will commence on a day fixed by the Minister by notice in the Gazette;

Subclause 2(2) provides that if the Bill has not been commenced within 6 months of the date of notification in the Gazette, the Bill will automatically commence on the expiration of that 6 months period.

Clause 3 defines certain terms used in the Bill.

Clause 4 provides that the Crown in right of the Territory will be bound by the Bill.

Clause 5 provides that nothing in the Bill renders the Crown liable to prosecution for an offence under the Bill.

Clause 6 provides that the Bill does not cover radioactive material dealt with under the Radiation Act 1983.

Part 2 of the Bill consists of clauses 7 to 13 and deals with administrative matters.

Clause 7 provides for the appointment by the Minister of a Clinical Waste Controller.

Subclause 7(1) provides that the Minister may appoint a public servant to be the Clinical Waste Controller.

Subclause 7(2) provides that the Controller shall be deemed to be an inspector for the purposes of Part VI of the Bill which deals with enforcement matters, including powers of inspectors.

Clause 8, empowers the Controller of Clinical Waste to delegate to a public servant, in writing, all or any of his or her powers under the Bill.

Clause 9 deals with the appointment of clinical waste inspectors.

Subclause 9(1) empowers the Minister to appoint a public servant to be an inspector for the purposes of the Act.

Subclause 9(2) provides that the Minister will issue to each inspector an identity card that specifies the name and appointment of the inspector and on which there appears a recent photograph of the inspector.

Clause 10 provides that it is an offence, punishable by a fine of \$100, for an inspector to fail to return his or her identity card to the Minister upon ceasing to be an inspector.

Clause 11 provides that the Minister may, by notice in the Gazette declare a specified site to be a disposal site for clinical waste of a specified kind.

Clause 12 provides that the Minister may determine fees for the purposes of the Bill or of the regulations by notice in the Gazette.

Clause 13 requires the administrative head to furnish to the Minister for presentation to the Legislative Assembly a report relating to the operations of the Act during each financial year. Presentation of the report to the Assembly is covered by section 30A of the Interpretation Act 1967 which provides that where the enabling legislation does not specify the period in which the report is to be furnished, the report shall be presented to the Minister as soon as practicable after the end of the reporting period and must be presented within 6 months of that reporting period. The Minister is then required to table the report within 15 sitting days after the day on which he or she receives the report.

Part III of the Bill consists of clauses 14 to 18 and deals with the Clinical Wastes Manual.

Clause 14 deals with preparation of the Manual.

Subclause 14(1) provides that the Clinical Waste Manual shall be prepared and maintained by the Minister. The Manual shall deal with any matter relating to the Bill, whether it be required or permitted by the Bill or whether it is necessary or convenient for the carrying out or giving effect to the Bill.

Subclause 14(2) specifies certain matters which the Manual may or shall contain, but does not limit the generality of subclause 1. Those matters are:

- . the manner in which clinical waste may be stored, treated, transported or disposed of;
- . the kinds of containers in which clinical waste may be stored or transported; or
- . the labelling and marking of containers used for the storage and transport of clinical waste;

Subclause 14(2) also provides that the Manual shall contain:

- . a list of appropriate waste disposal sites; and
- . the form of an application for a licence.

Clause 15 empowers the Minister to amend the Manual.

Clause 16 relates to the publication of the Manual and any amendments thereto.

Subclause 16(1) requires that notices of the preparation of the Manual and amendments thereto shall be published in the Gazette and in a daily newspaper circulating in the Territory.

Subclause 16(2) provides that the Manual and any amendments shall take effect on the 15th day after notification in the Gazette or on a later date if specified in the Manual or in the amendment.

Clause 17 declares that the Manual and any amendments will be disallowable instruments for the purposes of section 10 of the Subordinate Laws Act 1989.

Clause 18 deals with inspection of the Manual.

Subclause 18(1) requires that a copy of the Manual be kept at the office of the Controller at all times.

Subclause 18(2) enables any person upon request to inspect the Manual at the office of the Controller during office hours.

Part IV of the Bill comprises clauses 19-27 and deals with licences to carry on the business of transporting clinical waste.

Clause 19 identifies the procedure for applying for a licence to transport clinical waste. The application is to be in the form set out in the Manual, executed by or on behalf of the applicant and lodged at the office of the Controller together with the determined licence fee.

Clause 20 deals with conditions relating to the grant or refusal of a licence.

Subclause 20(1) provides that upon receipt of an application the Controller shall either grant a licence subject to such conditions (if any) as are specified on the licence or refuse to grant the licence.

Subclause 20(2) lists matters to which the Controller must have regard when considering whether to grant or refuse an application for a licence. Those matters are:

- . the transport facilities which the applicant has or will have;
- . any contract in relation to the transport of clinical waste which the applicant has entered into or intends to enter into;
- . the volume and type of clinical waste that the applicant intends to transport;
- . the arrangements that the applicant has made or proposes to make for the safe handling of the waste;
- . whether the applicant is, or undertakes to be, insured by an authorised insurer for any liability that may result from any activity carried out under the licence and the adequacy of that insurance;

the degree of supervision which the applicant would exercise over persons in his or her employ;

whether the applicant has previously engaged in the business of transporting clinical waste in a manner that was not in accordance with the Bill or relevant legislation of a State or another Territory;

such other matters as the Controller reasonably believes to be relevant, such as the protection of public health, property or the environment.

Subclause 20(3) requires that the Controller give written notice of a decision to grant a licence subject to conditions or refuse to grant a licence to an applicant, within 29 days of making the decision.

Subclause 20(4) defines the term "authorised insurer" for the purposes of Subclause 20(2)(e) as meaning a body corporate authorised to carry on an insurance business under the Insurance Act 1973 (C'th).

Clause 21 deals with the duration of a licence.

Subclause 21(1) provides that the period for which a licence shall remain in force is to be 12 months commencing on the day on which the licence is granted.

Subclause 21(2) provides that a licence shall not be taken to be in force while it is suspended under clause 23 or 25.

Clause 22 provides that the Controller may, in the interests of public health or safety and subject to clauses 21, 23, 24 and 25, vary a licence by notice in writing given to the licensee. The variation may take the form of the variation or revocation of a condition to which the licence is subject or the imposition of a condition on the licence.

Clause 23 deals with the suspension or cancellation of a licence.

Subclause 23(1), empowers the Controller, provided the licensee has been given a notice under clause 24, to cancel a licence or suspend a licence for not more than 6 months, where the licensee has been found guilty of an offence under the Bill, has contravened the Manual or has contravened a condition to which the licence is subject. Before suspension or cancellation of a licence, the Controller must have satisfied himself or herself on reasonable grounds that it is necessary in the interests of public or occupational health or safety to do so.

Subclause 23(2) specifies the dates on which the variation, suspension or cancellation of a licence shall take effect. They are; the date on which notice of the variation, suspension or cancellation is given to the licensee or a later date if one is specified in the notice.

Clause 24 deals with notices to be given to a licensee by the Controller.

Subclause 24(1) provides that the Controller shall not vary, suspend or cancel a licence under clause 23 unless he or she has given to the licensee a notice in writing that specifies: the ground for the variation, suspension or cancellation of the licence; the facts and circumstances which in the Controller's opinion constitute that ground and that the licensee may reply in writing to these matters within 28 days after the date of the notice.

Subclause 24(2) requires that the Controller shall then have regard to any answers given by the licensee when deciding whether to vary, suspend or cancel a licence.

Clause 25 deals with situations where an emergency suspension of a licence may be warranted.

Subclause 25(1), provides that the Controller may by notice in writing suspend a licence for not more than 6 months where the licensee has been found guilty of an offence under the Bill, or has contravened the licence or a requirement contained in the Manual. Before doing so the Controller must believe on reasonable grounds that the suspension is necessary in order to prevent or remove an imminent risk of death, serious illness or serious injury to any person.

Subclause 25(2) provides that the date on which the notice of suspension is given to the licensee shall be the date on which the suspension shall take effect.

Subclause 25(3) requires that the notice specify the ground upon which the licence was suspended and the facts and circumstances that in the Controller's opinion constitute that ground.

Clause 26 requires that licences be returned to the Controller after any variation, suspension or cancellation of the licence.

Subclause 26(1) provides that it will be an offence, punishable by a fine of \$1000, for a person to fail to return a licence to the Controller within 7 days of the date on which a variation, suspension or cancellation takes effect.

Subclause 26(2) provides that in the case of a variation of a licence, the Controller shall, after the licence has been returned to him or her, make the appropriate endorsement on the licence and return it to the licensee.

Clause 27 provides for a merit review by the Australian Capital Territory Administrative Appeals Tribunal of decisions made by the Controller.

Subclause 27(1) provides that a person may apply to the ACT Administrative Appeals Tribunal for the review of a decision by the Controller to grant a licence subject to conditions, to refuse to grant a licence, to vary a licence or to suspend or cancel a licence.

Subclause 27(2) provides that any notice given by the Controller under subclause 20(3) or clauses 22, 23 or 25 shall include a statement informing the licensee of his or her right to appeal to the Administrative Appeals Tribunal and that the licensee may request a statement of reasons for the decision of the Administrative Appeals Tribunal (except where subsection 26(11) of the Administrative Appeals Tribunal Act 1989 applies).

Subclause 27(3) provides that failure to comply with subclause 27(2) does not affect the validity of a decision made under clauses 20, 22, 23 or 25.

Part V of the Bill comprises clauses 28 to 30 and deals with offences.

Clause 28 provides that it will be an offence, punishable by a fine of \$5000 or imprisonment for 2 years or both in the case of a natural person and \$25,000 in the case of a body corporate, for a person, without reasonable excuse, to store, transport or dispose of clinical waste in a manner likely to cause injury or disease to a person lawfully dealing with that waste.

Clause 29 provides that it will be an offence, punishable by a fine of \$5000 or imprisonment for 2 years or both in the case of a natural person and \$25,000 in the case of a body corporate, for a person, without reasonable excuse, to store, transport or dispose of clinical waste derived from regulated premises otherwise than in accordance with the Manual.

Clause 30 provides that it will be an offence, punishable by a fine of \$1000 for a natural person and \$5000 in the case of a body corporate, for a person to conduct the business of transporting clinical waste without a licence to do so.

Part VI of the Bill comprises clauses 31 to 38 and deals with the enforcement of provisions of the Bill.

Clause 31 defines certain terms and phrases used in Part VI of the Bill.

Clause 32 provides the circumstances under which an inspector may enter premises.

Subclause 32(1) provides that an inspector may, without a warrant, enter regulated premises at any reasonable time and may enter any other premises at any time with the occupier's consent, if the inspector believes on reasonable grounds that the premises are being used in connection with the storage, treatment, transportation or disposal of clinical waste.

Subclause 32(2) provides that such an inspector will not be entitled to remain on the premises if he or she fails to produce his or her identity card at the request of the occupier.

Clause 33 deals with the rights of person in relation to consenting to allow inspectors to enter their premises.

Subclause 33(1) provides that where an inspector obtains the consent of a person to enter premises, the inspector must inform that person that he or she may refuse to give consent.

Subclause 33(2) provides that where an inspector obtains the consent of a person to enter premises, the inspector must ask the person to sign a written acknowledgement that he or she has been informed of the right to refuse consent, that he or she has actually consented and the time and day on which he or she consented.

Subclause 33(3) provides that where such a written acknowledgement is not produced in evidence in any court proceedings in which the court is to satisfy itself that a person has consented to an inspector entering premises, it shall be presumed that the person did not so consent, unless the contrary is established.

Clause 34 lists the powers of an inspector who is entitled under clause 32 to remain on premises. The inspector may:

- inspect, examine, take measurements of, or conduct tests concerning, the premises or any system of work, plant, substance or thing at the premises;
- inspect and test any container or equipment on the premises that the inspector believes on reasonable grounds to be used for the treatment, storage, transportation or disposal of clinical waste;
- inspect and test any material or substance on the premises that the inspector believes on reasonable grounds to be clinical waste, and take samples of any such material or substance;
- take such photographs, video recordings or films in connection with the inspection as the inspector believes on reasonable grounds to be necessary;

seize anything that the inspector believes on reasonable grounds to be connected with an offence against this Bill;

inspect any document on the premises relating to the treatment, storage, transportation or disposal of clinical waste;

make copies of, or take extracts from, any such document;

require any person on the premises to make available to the inspector any document relating to the use of the premises in connection with the treatment, storage, transportation or disposal of clinical waste;

require any person on the premises to answer questions relating to the use of those premises in connection with the treatment, storage, transportation or disposal of clinical waste; and

require any person on the premises to give the inspector such assistance as is necessary or reasonable to enable the inspector to exercise any of the powers in this clause.

Clause 35 deals with procedures for the taking of samples by inspectors.

Subclause 35(1) provides that where an inspector takes a sample under paragraph 34(c), he or she must give a receipt for the sample to the occupier of the premises from which the sample was taken.

Subclause 35(2) provides that the inspector shall, if requested by the occupier of premises, put part of the sample taken into a container, seal the container and affix to it a label bearing the inspector's signature and particulars of the place, date and time where and when the sample was taken. The inspector shall then give the container to the occupier.

Subclause 35(3) provides that an occupier must make such a request for a sealed sample in writing within 14 days after the day on which the sample has been taken.

Clause 36, deals with the disposal of seized items under paragraph 34(e) that the inspector believes on reasonable grounds to be connected with an offence against the Bill.

Subclause 36(1) provides that where a thing has been seized from premises under paragraph 34(e) and criminal proceedings under the Bill have not been commenced within 90 days of the seizure, or where, subject to subclause 36(2), a person has been charged but not convicted of an offence, the Controller shall take all reasonable steps to return the thing to the person whom the inspector reasonably believes to be entitled to it.

Subclause 36(2) provides that the court may order that anything seized under paragraph 34(e) may be given to the person who appears to be entitled to it, or be forfeited to the Territory where a person is convicted of an offence against the Bill or is dealt with under section 556A of the Crimes Act in respect of an offence against the Bill.

Clause 37 sets out the circumstances in which a search warrant may be issued by a magistrate for the purpose of searching premises.

Subclause 37(1) provides that a magistrate may issue a search warrant authorising an inspector to enter and search premises and exercise any powers under clause 34 provided information on oath is laid before the magistrate alleging that there are reasonable grounds for suspecting that there may be something on any premises connected with a particular offence against the Bill or regulations.

Subclause 37(2) provides that such a warrant shall not be issued unless the informant or some other person has given the magistrate any further information concerning the grounds for issuing a warrant which the magistrate requests, and the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

Subclause 37(3) provides that a warrant shall:

- . state the purpose for which it is issued;
- . specify the nature of the offence in relation to which the warrant is issued;
- . specify particular hours during which the entry is authorised or state that the entry is authorised at any time of the day or night;
- . include a description of the kinds of things in relation to which the powers under section 34 may be exercised; and
- . specify a day not later than one month after its issue on which the warrant ceases to have effect.

Clause 38 provides that it will be an offence, punishable by a fine of \$1,000 or imprisonment for 6 months or both in the case of a natural person and \$5,000 in the case of a body corporate, for a person to obstruct or hinder an inspector in the exercise of his or her powers under Part VI or to contravene a requirement of an inspector under clause 34.

Part VII of the Bill comprises clauses 39 and 40 and deals with miscellaneous matters.

Clause 39 deals with the conduct of directors, servants and agents for the purposes of the Act.

Subclause 39(1) provides that where it is necessary to establish the state of mind of a body corporate or a natural person for the purposes of a prosecution for an offence under the Bill, it will be sufficient to show that a director, servant or agent of the body, or a servant or agent of the person had that state of mind and that the director, servant or agent acted within the scope of his or her actual or apparent authority.

Subclause 39(2) expands upon the notion of the state of mind of a body or person for the purposes of subclause 39(1). It should be read as including a reference to: the knowledge, intention, opinion, belief or purpose of the body or person and the reasons for that intention, opinion, belief or purpose.

Subclause 39(3) provides that, for the purpose of a prosecution for an offence against the Bill, any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent, shall be imputed to the body corporate or the person unless either can establish that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

Subclause 39(4) provides that where a natural person is convicted of an offence against the Bill, and would not have been convicted had subclauses 39(1) and 39(3) had not been enacted; the person is not liable to be imprisoned for that offence.

Subclause 39(5) provides that a reference, in clause 39 to a director of a body corporate will include a reference to a body corporate incorporated for a public purpose by any law both inside and outside of the ACT.

Subclause 39(6) provides that a reference in clause 39 to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

Clause 40 provides for the making of regulations.

Subclause 40(1) empowers the Executive to make regulations, not inconsistent with the Bill, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the Act.

Subclause 40(2) provides that, in respect of offences against the regulations or the Manual, the regulations may prescribe penalties not exceeding \$1000 if the offender is a natural person or \$5000 if the offender is a body corporate.