

PARLIAMENT OF VICTORIA

**Drugs, Poisons and Controlled Substances
Amendment (Pilot Medically Supervised Injecting
Centre) Bill 2017**

TABLE OF PROVISIONS

<i>Clause</i>	<i>Page</i>
Part 1—Preliminary	1
1 Purpose	1
2 Commencement	2
3 Principal Act	2
Part 2—Amendment of the Drugs, Poisons and Controlled Substances Act 1981	3
4 New Part VIAB inserted	3
<hr/> <hr/>	
Endnotes	18
1 General information	18

PARLIAMENT OF VICTORIA

Introduced in the Council by Fiona Patten

Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill 2017

A Bill for an Act to amend the **Drugs, Poisons and Controlled Substances Act 1981** to provide for the licencing and operation of a medically supervised injecting centre for a trial period of 18 months.

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purpose

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The purpose of this Bill is to amend the **Drug, Poisons and Controlled Substances Act 1981** to enable the licencing and operation of a medically supervised injecting centre for a trial period of 18 months.

Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill 2017

Part 1—Preliminary

2 Commencement

This Bill comes into operation on the day it receives Royal Assent.

3 Principal Act

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In this Bill, the **Drugs, Poisons and Controlled Substances Act 1981** is called the Principal Act.

Part 2—Amendment of the Drugs, Poisons and Controlled Substances Act 1981

4 New Part VIAB inserted

After Part VIA of the Principal Act insert—

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"Division 1—Preliminary

98A Definition

In this Part—

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director, in relation to a licensed injecting centre, means a medical practitioner appointed as director of the centre, and includes any other medical practitioner appointed to act as director of the centre during the illness or absence of the director or during a vacancy in the office of the director;

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internal management protocols, in relation to a licensed injecting centre, means the protocols finalised for the centre as referred to in section 98G or, if the protocols are amended or replaced as referred to in section 98M, the protocols as so amended or replaced;

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licence means a licence in force under this Part;

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licensed injecting centre means the premises that are the subject of a licence;

responsible authority means the Secretary and the Chief Commissioner of Police;

staff, in relation to a licensed injecting centre, includes—

- 5
- (a) all persons engaged to provide services at the centre, whether under a contract of employment or otherwise; and
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- (b) all persons authorised to provide voluntary assistance at the centre in accordance with the centre's licence conditions and internal management protocols.

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The employer of a person referred to in paragraph (a) or (b) is the person by or on whose behalf the person so referred to is engaged to provide services or authorised to provide voluntary assistance, as the case requires;

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supervisor, in relation to a licensed injecting centre, means the director of the centre or a registered medical practitioner nominated by the director to supervise the centre;

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trial period means the trial period of 18 months from a date to be fixed by proclamation as the commencement.

98B Limited operation of Part VIAB

- 30
- (1) This Part operates to allow the responsible authority to issue only one licence, in respect of only one premises, to have effect only during a trial period of 18 months starting on a day to be fixed by proclamation as the start of the trial period.

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- (2) However, nothing in this Part prevents the responsible authority—
- (a) from issuing a further licence to a person other than the holder of an earlier licence; or
 - (b) from issuing a further licence in respect of premises other than those specified in an earlier licence, so long as the earlier licence has been revoked or has otherwise ceased to have effect.
- (3) A licence must not be issued after the end of the trial period.

98C Objects of this Part

The objects of this Part are as follows—

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- (a) to reduce the number of deaths from drug overdoses;
 - (b) to provide a gateway to health and social assistance for clients of the licensed injecting centre, including drug treatment, health care and counselling;
 - (c) to reduce drug overdose related ambulance attendances;
 - (d) to reduce the number of discarded needles and syringes and the incidence of drug injecting in public places;
 - (e) to improve the amenity of the neighbourhood for residents and traders in the vicinity of the licensed injecting centre;
 - (f) to assist in reducing the spread of blood-borne diseases, including but not limited to HIV infection or Hepatitis C.

98D Data collection and review during trial period

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- (1) The responsible authority is to arrange for the ongoing or periodical review of—
- (a) the operation and use of the licensed injecting centre during the trial period; and
- (b) the extent to which the objects of this Part are advanced; and
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- (c) the provisions of this Part and of any regulations made for the purposes of this Part, in order to ascertain whether the provisions of this Part or the regulations made thereunder should
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- be amended.
- (2) The review is to commence as soon as practicable after the expiration of six months from the commencement of the trial period, but may be completed during or after the
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- trial period.
- (3) A report of the conclusions and recommendations of the review is to be tabled in each House of Parliament as soon as practicable after its completion.
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- (4) The responsible authority is to arrange for the collection of all data sufficient for the conduct of the review.

98E Expiry of Part

- 30
- (1) This Part (except for this section), and any licence issued under this Part, expire at the end of the trial period.

- (2) The expiry of this Part does not affect the operation of Division 4 in relation to matters arising before this Part expired.

Division 2—Licensing of injecting centres

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98F Licence

- (1) The responsible authority may issue a licence authorising the holder of the licence to conduct specified premises as an injecting centre.
- (2) Nothing in this Part entitles a person to be issued with a licence, and the responsible authority may refuse an application for a licence if the requirements of section 98G are not satisfied, or for any other reason.

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98G Restrictions on issue of licence

- (1) A licence for the conduct of premises as an injecting centre must not be issued unless the responsible authority is of the opinion—
- (a) that the internal management protocols for the proposed centre have been finalised and are of a satisfactory standard; and
- (b) that the premises are suitable for use as an injecting centre, having regard to all relevant matters including the following—
- (i) public health and safety;
- (ii) any matters required by the regulations for the purposes of this section.

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- (2) Without limiting subsection (1), a licence for the conduct of premises as an injecting centre must not be issued unless the responsible authority is of the opinion—
- (a) that any building work that is carried out for the purposes of the centre will be carried out in accordance with the Building Code of Australia; and
- 10 (b) that any building that is used for the purposes of the centre will comply with the Building Code of Australia.
- (3) In subsection (2), *building*, *Building Code of Australia* and *building work* have the same meanings as they have in the **Building Act 1993**.
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98H Duration of licence

- (1) Unless sooner surrendered or revoked, a licence has effect for the period specified in it.
- 20 (2) The holder of a licence may, after consultation with the responsible authority, surrender the licence.

98I Conditions of licences generally

- 25 (1) A licence is subject to such conditions as may be imposed from time to time by the responsible authority, either in the licence or in a separate order in writing served on the holder of the licence.
- 30 (2) Conditions of the kind referred to in subsection (1) may not be imposed without prior consultation with the holder or proposed holder of the licence.

98J Statutory conditions of licences

The following provisions are to be necessary conditions of any licence of an injecting centre—

- 5 (a) no child is to be admitted to that part of the centre that is used for the purpose of the administration of any drug of dependence;
- 10 (b) the centre's internal management protocols are to be observed at all times.

98K Contraventions

- 15 (1) A contravention of this Part or the regulations in relation to a licensed injecting centre, or of the licence conditions for a licensed injecting centre, may be dealt with—
- (a) by one or more of the following—
- 20 (i) a warning or reprimand administered in writing by the responsible authority;
- 25 (ii) a fine (not exceeding an amount equal to 100 penalty units) imposed by the responsible authority;
- (iii) suspension of the licence by the responsible authority;
- (b) by revocation of the licence by the responsible authority.
- 30 (2) If the contravention constitutes an offence under this Act—
- (a) the fact that action has been taken under this section in relation to the contravention does not prevent a

- penalty from being imposed for that offence; and
- 5 (b) the fact that a penalty has been imposed for the offence does not prevent action from being taken under this section in relation to the contravention.
- 10 (3) A fine imposed under this section is payable within the period specified by the responsible authority, and is to be paid into the Consolidated Fund.
- (4) If a licensee fails to pay a fine imposed under this section (in whole or in part), the responsible authority may suspend or revoke the licence.
- 15 (5) Nothing in this section prevents the responsible authority from amending or imposing a condition as a consequence of a contravention referred to in subsection (1).
- 20 (6) The responsible authority is authorised to suspend or revoke a licence for the purposes of this section.
- (7) A contravention referred to in subsection (1)—
- 25 (a) does not limit the operation of section 98O, except to the extent that the contravention gives rise to an offence under the regulations made for the purposes of this Part; and
- 30 (b) does not limit the operation of section 98P.
- (8) A contravention relating to the admission of a child to that part of the centre that is used for the purpose of the administration of any drug of dependence is not committed if the licensee establishes that, having regard to the
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relevant provisions of the centre's internal management protocols, it was not apparent to the centre's staff that the person concerned was a child.

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Division 3—Internal management protocols

98L Matters for consideration in relation to internal management protocols

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(1) In considering the internal management protocols for a proposed injecting centre for the purposes of section 98G, the responsible authority must have regard to whether provision needs to be made to ensure that any or all of the following requirements are met—

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(a) the centre must be under the supervision of a supervisor;

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(b) the supervisor must have a general overseeing role of the centre's clinical operations and responsibility for ensuring the adequacy of the clinical procedures used in the centre. This paragraph does not prevent the supervisor from being personally involved in clinical activities in the centre;

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(c) the centre must, if reasonably practicable, facilitate access or referral to—

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(i) primary health care services, including but not limited to mental health services, medical consultation and medical assessment services; and

Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill 2017

Part 2—Amendment of the Drugs, Poisons and Controlled Substances Act 1981

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- (ii) drug and alcohol counselling services; and
- (iii) health education services; and
- (iv) drug and alcohol detoxification and rehabilitation services; and
- (v) the services of an opioid substitution treatment provider; and
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- (vi) services for testing for blood-borne and sexually transmissible diseases; and
- (vii) services involving a needle and syringe exchange program.
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- (d) procedures are to be established to enable staff to ascertain in appropriate cases whether a person seeking admission to the centre is a child;
- 20
- (e) the health and safety of staff and users of the centre are to be protected, having regard to the design and services of the centre;
- 25
- (f) services are to be available and procedures established to ensure compliance or ability to comply, at or in connection with the centre, with the relevant requirements of—
- (i) this Part; and
- (ii) the regulations; and
- 30
- (iii) the centre's licence conditions; and

- (iv) any other provisions of the centre's internal management protocols; and
- 5 (g) any requirements prescribed by the regulations for the purposes of this section.

98M Amendment and replacement of internal management protocols

10 A licensed injecting centre's internal management protocols may be amended or replaced, subject to the regulations and the centre's licence conditions.

Division 4—Exemptions from liability

15 **98N Exemption from criminal liability for users of licensed injecting centre**

- (1) In this section—
- exempt quantity*, in relation to a drug of dependence, means, in the case of a drug of dependence, a small quantity.
- 20 (2) Despite any other provision of this Act or of any other Act or law (other than a provision prescribed by the regulations)—
- (a) it is not unlawful for a person at a licensed injecting centre—
- 25 (i) to be in possession of (otherwise than for supply) no more than an exempt quantity of a drug of dependence; or
- 30 (ii) to use, or attempt to use no more than an exempt quantity of a drug of dependence; and

- 5
- (b) in particular, a person at a licensed injecting centre—
- (i) who has in his or her possession (otherwise than for supply) no more than an exempt quantity of a drug of dependence; or
- (ii) who uses, or attempts to use no more than an exempt quantity of a drug of dependence—
- 10 does not commit an offence under section 73 or 75 of the Principal Act, or any other offence prescribed by the regulation, just because of that fact.
- 15 (3) Subsection (2) does not affect the operation of—
- (a) the conditions of any sentence to which a person is subject (whether under the **Sentencing Act 1991** or otherwise); or
- 20 (b) any conditions of parole to which a person is subject under the **Corrections Act 1986**; or
- (c) any conditions of bail to which a person is subject under the **Bail Act 1977**.
- 25 (4) Nothing in this section prevents a police officer from exercising a discretion not to charge a person with an offence under section 73 of the Principle Act, in respect of the possession of a drug of dependence (otherwise than for supply), while the person
- 30 is travelling to or from, or is in the vicinity of, a licensed injecting centre for the purpose of attendance at a licensed injecting centre.

- 5 (5) The reference in subsection (4) to a discretion includes a reference to a discretion referred to in any policy, guidelines or manual applicable to police discretions.

98O Exemption from criminal liability for persons engaged in conduct of licensed injecting centre

10 Despite any other provision of this Act or of any other Act or law (other than a provision prescribed by the regulations)—

- 15 (a) it is not unlawful for a person to engage, participate or otherwise be involved in the conduct of a licensed injecting centre; and
- (b) in particular, a person who is engaged, participates or is otherwise involved in the conduct of a licensed injecting centre does not commit an offence under section 181, 323 or 324 of the **Crimes Act 1958**, just because of that fact.

25 **98P Exemption from civil liability in connection with conduct of licensed injecting centre**

- (1) Anything done or omitted to be done in connection with the conduct of a licensed injecting centre does not subject—
- 30 (a) the person by whom that thing was done or omitted; or

- (b) any other person (including the responsible authority, licensee, the State and any Minister of the Crown in right of the State)—
- 5 to any action, liability, claim or demand if the thing was done or omitted to be done in good faith for the purpose of executing this Part, and was not done or omitted to be done in a reckless or grossly negligent manner.
- 10 (2) This section does not affect any rights or obligations as between a member of the staff of a licensed injecting centre and his or her employer.

Division 5—Miscellaneous

15 **98Q Application of Planning and Environment Act 1987**

20 Nothing in any planning scheme or amendment shall require a planning permit for the use of land for the duration of the trial period, where the land is used as a licenced injecting centre in a manner in accordance with this Act and authorised by the responsible authority.

98R Certificate of evidence

25 In any legal proceedings under this Act, a certificate purporting to be signed by the responsible authority—

- 30 (a) that premises specified in the certificate were or were not, on a date so specified, a licensed injecting centre; or

(b) that a person specified in the certificate was or was not, on a date so specified, engaged in the conduct of a licensed injecting centre—

5 is prima facie evidence of the fact stated in the certificate without proof of the signature or of the official character of the person purporting to have signed the certificate.

98S Regulations

10 Without limiting Part XI of the Principal Act, the regulations may make provision, for the purposes of this Division, or with respect to any of the following matters—

- 15 (a) the standards for a licensed injecting centre, including the elaboration of internal management protocols for a licensed injecting centre;
- (b) the provisions to be observed in the operation of a licensed injecting centre;
- 20 (c) the rules of conduct to be observed by persons using a licensed injecting centre;
- (d) the qualifications of persons engaged in the conduct of a licensed injecting centre; and
- 25 (e) the functions of persons engaged in the conduct of a licensed injecting centre."
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Drugs, Poisons and Controlled Substances Amendment (Pilot Medically
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Endnotes

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

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