



AUSTRALIAN CAPITAL TERRITORY

Intoxicated Persons (Care and Protection) Act 1994

No. 85 of 1994

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AUSTRALIAN CAPITAL TERRITORY

Intoxicated Persons (Care and Protection) Act 1994

No. 85 of 1994

An Act to provide for the care and protection of intoxicated persons and for related purposes

[Notified in ACT Gazette S280: 15 December 1994]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Intoxicated Persons (Care and Protection) Act 1994*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If the provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

- “admission statement” means a statement provided in accordance with section 6;
- “carer” means a person employed at a licensed place to work with intoxicated persons;
- “caring service” means a service that provides immediate, short-term care for intoxicated persons but does not include a service provided at a hospital or other medical facility;
- “health practitioner” means a medical practitioner, nurse or paramedic;
- “inspector” means a public servant for the time being performing the functions of an inspector by virtue of section 27;
- “intoxicated” means apparently under the influence of alcohol, another drug, or a combination of drugs;
- “legal representative” means a person who is admitted to practise as a barrister and solicitor in the Territory and who holds a current practising certificate within the meaning of the *Legal Practitioners Act 1970*;
- “licensed place”, in relation to a licensee, means a place at which the licensee is licensed to provide a caring service;
- “licensee” means a person who holds a licence granted under section 16;
- “manager”, in relation to a licensed place, means the person in charge of the place for the time being;
- “office holder” means—
- (a) in relation to a corporation—an executive officer;
 - (b) in relation to an incorporated association—the president, secretary or public officer of the association; or
 - (c) in relation to a body established by or under a law of the Territory or elsewhere—any person with overall responsibility for the conduct of that body;
- “prescribed” includes prescribed by the standards;
- “public place” means any premises, street, road, public park, recreation reserve or other place which the public are entitled to use or which is open to, or used by, the public, whether on payment of money or otherwise, and includes a school;
- “responsible person”, in relation to an intoxicated person, includes—
- (a) a relative, guardian or friend of the intoxicated person who has attained the age of 18 years; or
 - (b) a legal representative acting on behalf of the intoxicated person;

“school” means—

- (a) any pre-school, primary school, high school or secondary college established and conducted in the Territory; or
- (b) any school or other educational or related institution approved by the Minister;

and includes any land or premises which belong to or are occupied or used in connection with a school;

“standard” means a standard made under section 31.

(2) A reference in this Act to the name and address of an applicant or person shall be read as a reference to the full name and business address of the applicant or person and, if the applicant or person is not a natural person, the full name and residential address of each office holder.

PART II—INTOXICATED PERSONS

Detention of intoxicated persons

4. (1) Where a police officer believes on reasonable grounds that a person in a public place is intoxicated and is, because of that intoxication—

- (a) behaving in a disorderly manner;
- (b) behaving in a manner likely to cause injury to himself, herself or another person, or damage to any property; or
- (c) incapable of protecting himself or herself from physical harm;

the officer may take the person into custody and detain him or her.

(2) A person detained under subsection (1) shall be released—

- (a) when he or she ceases to be intoxicated; or
- (b) at the expiration of the period of 8 hours after he or she is so detained;

whichever is earlier.

(3) A police officer shall not allow a person detained under subsection (1) to remain at a police station in which the person was detained for more than 12 hours after the person is first detained.

(4) Nothing in this section prevents a police officer from releasing a person detained under subsection (1) if, in the opinion of the police officer, it is reasonable to do so.

(5) For the purposes of subsection (4), a police officer shall be taken to have acted reasonably if the officer releases a person detained under subsection (1) into the care of the manager of a licensed place.

Search of persons in custody

5. (1) A member of the police force may search a person who is taken into custody under subsection 4 (1) and may take possession of any personal belongings found in his or her possession.

(2) A person is entitled to the return of any personal belongings taken from him or her under subsection (1) when he or she ceases to be detained under section 4.

(3) In subsection (1)—

“search” means a search of a person or of articles in the possession of a person that may include—

- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
- (b) an examination of those items.

Admission statement and other relevant information

6. (1) Where a police officer releases a person from custody under section 4 into the care of the manager of a licensed place and the person enters that place, the officer shall give the manager an admission statement relating to the intoxicated person.

(2) An admission statement shall be in writing and shall contain the following:

- (a) the name of the intoxicated person (if known);
- (b) the date of birth of the person (if known);
- (c) the time and date when the person was detained by the officer;
- (d) an itemised list of any belongings taken from the person under subsection 5 (1);
- (e) confirmation that the officer signing the statement has returned the belongings so listed to the person.

(3) An officer referred to in subsection (1) may release to the manager such further information relating to the intoxicated person as the officer believes on reasonable grounds will assist the manager in caring for the person.

Right to leave

7. A carer shall, on the admission of an intoxicated person to a licensed place, inform the person—

- (a) that he or she may leave the licensed place at any time; and
- (b) that he or she will be given access to facilities, and adequate opportunity, to contact a responsible person or other appropriate person.

Contacting other persons

8. A licensee shall ensure that an intoxicated person admitted to a licensed place has access to facilities, and adequate opportunity, to contact a responsible person or other appropriate person.

Leaving in a dangerous condition

9. If an intoxicated person who, in the opinion of a carer, is a danger to himself, herself, another person or property leaves, or is about to leave, the licensed place, a carer shall notify the police.

Transfer—medical treatment

10. If a carer at a licensed place is satisfied that an intoxicated person requires, or may require, medical treatment, the carer shall arrange for the intoxicated person to be transferred to the emergency department of a hospital.

Remaining at licensed place

11. A licensee shall not allow a person admitted to a licensed place to remain at the place for more than 12 hours.

Objection to care

12. Nothing in this Act shall be taken to authorise the provision of care to a person at a licensed place if the person objects to being provided with that care.

Protection of carers and licensee

13. No action, suit or proceeding lies against a person who is or has been a licensee or carer in relation to any act done or omitted to be done by that person as licensee or carer in good faith for the performance or exercise, or purported performance or exercise, of a function or power for the purposes of this Act or another law of the Territory.

PART III—LICENCES

Division 1—Approval

Provision of services

14. A person shall not provide a caring service unless licensed to do so.

Penalty:

- (a) in the case of a natural person—\$5,000 or imprisonment for 6 months, or both;
- (b) in the case of a body corporate—\$25,000.

Applications

15. (1) A person may apply for a licence to provide a caring service.

- (2) An application under subsection (1) shall—
- (a) be in writing signed by the applicant;
 - (b) specify the following:
 - (i) the name and address of the applicant;
 - (ii) the proposed name and address of each place at which the applicant proposes to provide a caring service;
 - (iii) particulars of any experience the applicant has in dealing with intoxicated persons or persons with problems related to alcohol or other drugs; and
 - (c) be accompanied by—
 - (i) if the applicant is a natural person—a written statement signed by the applicant stating that he or she has never been bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with creditors or made an assignment of remuneration for their benefit;
 - (ii) if the applicant is a corporation—a written statement signed on behalf of the corporation by an office holder stating that as at the date of the application—
 - (A) a liquidator, receiver, official manager or receiver and manager has not been appointed in relation to the corporation, any of its assets or any part of its affairs or undertaking;
 - (B) no compromise or arrangement of a kind specified in Part 5.1 of the Corporations Law has been entered into or is proposed; and
 - (C) the corporation is solvent; or
 - (iii) if the applicant is an incorporated association or a body established by or under a law of the Territory or elsewhere—a written statement signed on behalf of the association or body by an office holder stating that the association or body can meet its debts.

Grant

16. (1) On receiving an application in accordance with section 15 the Minister may grant the applicant a licence to provide a caring service if satisfied that—

- (a) the applicant has adequate experience in dealing with intoxicated persons or persons with problems related to alcohol or other drugs; and

- (b) the applicant will provide a caring service at each place specified in the application in accordance with the Act and any standards.
- (2) A licence shall specify—
 - (a) the name and address of the person to whom it is granted; and
 - (b) the location of each place at which a caring service may be provided under it.

Division 2—Conditions

Licence conditions

17. A licence is subject to the conditions imposed by or under this Division.

Employees

18. (1) A licensee shall ensure that every person employed by the licensee at a licensed place, including any volunteer, holds a current first aid certificate.

(2) In subsection (1)—

“first aid certificate” means a first aid certificate issued by a provider approved under section 37.

Insurance

19. A licensee shall maintain a prescribed policy or policies of insurance.

Annual reports

20. (1) A licensee shall give the Minister a written report in relation to each year, or part of such a year, in which the licensee provides a service.

(2) A report under subsection (1) shall be given to the Minister no later than 30 September immediately following the year to which the report relates.

(3) A report shall specify the following:

- (a) in respect of any caring service provided by the licensee—the number of persons admitted to the licensed place during the period to which the report relates, and the age and gender of each person so admitted (if known);
- (b) whether, in the opinion of the licensee, the licensee has complied with the Act and standards;
- (c) if the licensee has not so complied, the particulars of any failure to comply.

(4) In this section—

“year” means a period of 12 months ending on 30 June.

Further conditions

21. (1) The Minister may, by notice in writing, impose such further conditions on a licence as are necessary and reasonable for the care and protection of intoxicated persons.

(2) A condition under subsection (1) takes effect at the expiration of the period of 28 days after the date of the notice, or on such later date as is specified in the notice.

Division 3—Suspension and cancellation of licences**Emergency suspension and cancellation**

22. (1) Where the Minister believes on reasonable grounds that there is an immediate risk of danger to the health or safety of persons being cared for, or persons providing care, at a licensed place, he or she may suspend the licence in relation to that place.

(2) A suspension under subsection (1) takes effect from the time at which notice of the suspension is given to the licensee.

(3) A notice under subsection (2) shall—

- (a)** state the facts and circumstances on which the Minister's belief is based;
- (b)** specify the licensed places in relation to which the licence is suspended;
- (c)** state that, while the licence is suspended, the licensee may not provide caring services at the places so specified; and
- (d)** invite the licensee, within 28 days after the date of the notice, to show cause why the licence should not be cancelled in relation to the places so specified.

(4) After the expiration of the period of 28 days after the date of the notice, the Minister may cancel the licence in relation to any licensed place specified in the notice on the ground referred to in subsection (1).

(5) The cancellation of a licence under this section takes effect on—

- (a)** the date on which notice under subsection 34 (1) of the cancellation is given to the licensee; or
- (b)** if a later date is specified in that notice—on that later date.

Cancellation of licences

23. (1) The Minister may, subject to this section, cancel a licence in relation to a licensed place on any of the following grounds:

- (a)** if the licensee is a natural person—the licensee has become bankrupt, applied to take the benefit of any law for the relief of

bankrupt or insolvent debtors, compounded with creditors or made an assignment of remuneration for their benefit;

- (b) if the licensee is a corporation—
 - (i) a liquidator, receiver, official manager or receiver and manager has been appointed in relation to the corporation, any of its assets or any part of its affairs or undertaking;
 - (ii) a compromise or arrangement of a kind specified in Part 5.1 of the Corporations Law has been entered into or is proposed; or
 - (iii) the corporation is insolvent;
- (c) if the licensee is an incorporated association or a body established by or under a law of the Territory or elsewhere—that the association or body is unable to meet its debts;
- (d) the licensee is no longer providing a caring service at the licensed place;
- (e) the licensee has contravened this Act or the standards;
- (f) the licensee has breached a condition of the licence.

(2) The Minister shall not cancel a licence in relation to a licensed place unless he or she has given written notice to the licensee of the proposal to do so—

- (a) specifying the ground for the proposed cancellation;
- (b) setting out the facts and circumstances on which that ground is based;
- (c) specifying the licensed places in relation to which he or she proposes to cancel the licence; and
- (d) inviting the licensee, within 28 days after the date of the notice, to show cause why the licence should not be so cancelled.

(3) After the expiration of the period of 28 days after the date of the notice, the Minister may cancel the licence in relation to any licensed place specified in the notice on the ground specified in the notice.

- (4) The cancellation of a licence under this section takes effect on—
 - (a) the date on which notice under subsection 34 (1) of the cancellation is given to the licensee; or
 - (b) if a later date is specified in that notice—on that later date.

Requested cancellation

24. (1) A licensee may, by notice in writing, request the Minister to cancel the licensee's licence in relation to 1 or more licensed places.

(2) On receiving a notice under subsection (1), the Minister shall cancel the licence in accordance with the request and the cancellation shall take effect immediately or on such later day as is specified in the notice.

Amendment of licence

25. (1) A licensee shall, within 14 days after receiving notice under subsection 34 (1) of the cancellation of the licence in relation to a place specified in the licence, return the licence to the Minister.

Penalty: \$500.

(2) The Minister shall amend any licence returned under subsection (1) to reflect the cancellation and shall return the amended licence to the licensee.

Return of licence

26. A person whose licence has been cancelled in relation to all the places specified in the licence shall not, without reasonable excuse, fail to return the licence to the Minister.

Penalty: \$500.

PART IV—INSPECTION

Inspectors

27. (1) There shall be 1 or more inspectors for the purposes of this Act.

(2) An inspector shall perform such functions for the purposes of this Act as the Minister directs.

(3) The Minister may create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of an inspector.

(4) An inspector shall be any public servant for the time being performing the duties of a Government Service office referred to in subsection (3).

Inspectors—identity cards

28. (1) The Minister shall issue to an inspector an identity card that specifies the inspector's name and office, and on which appears a recent photograph of the inspector.

(2) On ceasing to occupy, or act in, an office of inspector, a person shall not, without reasonable excuse, fail to return his or her identity card to the Minister.

Penalty for contravention of subsection (2): \$100.

Powers of inspection

29. (1) An inspector may, at any reasonable time, enter a licensed place and—

- (a) inspect the place and any equipment used at the place in connection with the care of persons admitted to the place;
- (b) inspect any books, documents or other records that are in the possession of the licensee, or to which the licensee has access, relating to the conduct of the licensed place; and
- (c) require the licensee to furnish the inspector with any information, books, documents or other records that are in the possession of the licensee, or to which the licensee has access, relating to the conduct of the licensed place.

(2) An inspector who enters premises under subsection (1) is not authorised to remain on the premises if, when requested to do so by the licensee, the inspector does not show his or her identity card to the licensee.

(3) A person is not required to furnish material to an inspector under paragraph (1) (c) if, when requested to do so by the person, the inspector does not show his or her identity card to the person.

(4) Where an inspector enters premises under subsection (1), a reference in this section to the licensee shall include a reference to the manager.

Obstruction of inspectors

30. (1) A person shall not, without reasonable excuse, obstruct or hinder an inspector acting under section 29.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(2) A person shall not, without reasonable excuse, fail to comply with a requirement to furnish material under paragraph 29 (1) (c).

Penalty: \$5,000.

PART V—STANDARDS

Making standards

31. (1) The Minister may, by instrument, make standards, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the standards may make provision with respect to—

- (a) the condition and maintenance of premises used as licensed places;
- (b) the condition and maintenance of equipment used at licensed places;

- (c) the operation of caring services, including the conduct of persons providing care;
- (d) the training of persons working with intoxicated persons at licensed places;
- (e) the basic skills required by persons working with intoxicated persons at licensed places; and
- (f) the collection, use, storage and disclosure of information relating to the conduct of licensed places and persons admitted to them.

Disallowance

32. A standard made under section 31 is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Publication in newspaper

33. (1) The Minister shall cause to be published in the principal daily newspaper circulating in the Territory, on or before the date on which a standard is made under section 31, notice of the making of the standard—

- (a) specifying the date on which the standard takes effect;
- (b) specifying the place or places at which copies of the standard may be purchased;
- (c) containing a statement to the effect that a copy of the standard may be inspected by members of the public at the place or places specified in the notice; and
- (d) containing a statement to the effect that the standard is subject to disallowance by the Legislative Assembly under the *Subordinate Laws Act 1989*.

(2) The Minister shall ensure that—

- (a) a copy of the standard is made available for public inspection at the place or places so specified in the notice under subsection (1); and
- (b) copies of that standard are made available for purchase at the place or places so specified in the notice.

(3) In this section—

“standard” includes any document, or part of a document, the provisions of which are applied by a standard.

**PART VI—APPEALS TO ADMINISTRATIVE APPEALS
TRIBUNAL****Notice of decision**

34. (1) Where the Minister makes a decision—

- (a) under subsection 16 (1) that he or she is not satisfied in relation to paragraph (a) or (b) of that subsection in relation to an applicant;
- (b) under subsection 21 (1) to impose a further condition on a licence;
- (c) under subsection 22 (1) suspending a licence;
- (d) under subsection 22 (4) or 23 (1) cancelling a licence; or
- (e) under section 37 to refuse to approve a person or body as a provider of first aid courses;

the Minister shall give notice in writing of the decision to the relevant person.

(2) For the purposes of subsection (1), the relevant person is—

- (a) in relation to a decision referred to in paragraph (1) (a)—the applicant;
- (b) in relation to a decision referred to in paragraph (1) (e)—the person or body; or
- (c) in any other case—the licensee.

(3) A notice under subsection (1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

Review by Administrative Appeals Tribunal

35. Application may be made to the Administrative Appeals Tribunal for a review of a decision referred to in section 34.

PART VII—MISCELLANEOUS

Confidentiality

36. (1) A person shall not, otherwise than for the purposes of this Act or as required by law, make a record of or divulge or communicate to any person any information or document, being information or a document that the first-mentioned person acquired under or by virtue of this Act.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(2) This section does not affect the operation of any other law relating to the confidentiality of information or documents.

Approval of first aid providers

37. The Minister may, by instrument, approve a person or body as a provider of first aid courses for the purposes of this Act.

Regulations

38. The Executive may make regulations for the purposes of this Act.

[Presentation speech made in Assembly on 10 November 1994

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