

1994

**LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL TERRITORY**

**INTOXICATED PERSONS  
(CARE AND PROTECTION)  
BILL 1994**

**EXPLANATORY MEMORANDUM**

**Circulated by the authority of Terry Connolly MLA  
Minister for Health**

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## **Intoxicated Persons (Care and Protection) Bill 1994**

### **Summary**

This Bill provides a legislative framework for the care and protection of persons found intoxicated in a public place.

### **The Bill:**

- . provides police the power to take into custody a person who is found intoxicated in a public place and who is:
  - . behaving in a disorderly manner;
  - . behaving in a manner likely to cause injury to himself, herself or to another person or damage to property; or
  - . incapable of protecting himself or herself from physical harm.
- . provides police the power to search the intoxicated person once they are in custody;
- . gives the police the power to detain an intoxicated person until that person is no longer intoxicated or up to eight hours whichever ever comes first;
- . requires that the intoxicated person must leave the police station within 12 hours of detention;
- . provides a police officer the discretion to release a person detained, including release to a licensed place;
- . provides admission for an intoxicated person on a voluntary basis to a place where they can sober-up in a safe environment;
- . allows the manager of a licensed place to take necessary action to care for an intoxicated person to the extent that the intoxicated person does not object to such care;
- . gives the Minister for Health the power to provide licenses to persons to provide care for intoxicated persons in places specified in the license;
- . gives the Minister the power to appoint inspectors and specifies the powers of inspectors;
- . gives the Minister the power to make standards;
- . gives the Minister the power to suspend and cancel licenses; and
- . provides that licensees can apply to the Administrative Appeals Tribunal for review of a decision to suspend or cancel a license.

The powers provided to police reflect those they currently hold under section 351(1) of the *Crimes Act 1900*. The *Intoxicated Persons (Consequential Amendments) Bill 1994* will repeal provisions in the *Crimes Act 1900*.

### **Financial Implications**

In the 1994 Budget, the Government allocated \$0.1m per annum for the 1994-95 financial year and beyond to fund the operations of sobering-up places (referred to in the Bill as licensed places). Inspectors will be appointed from within Department of Health resources.

**Intoxicated Persons (Care and Protection) Bill 1994****PART I—PRELIMINARY****1. Short title**

Clause 1: provides that the Act can be known as the *Intoxicated Persons (Care and Protection) Act 1994*.

**2. Commencement**

Clause 2: provides for commencement of section 1 and section 2 on the date of notification in the *Gazette* and the commencement of the rest of the Act on a date fixed by the Minister by notice in the *Gazette*. The Act will commence after 6 months if it has not been notified by the Minister.

**3. Interpretation**

Clause 3 (1): provides definitions used within the Act. Major definitions are those of:

"caring service" means a service which provides immediate, short term care for intoxicated persons, but does not include a service provided by a hospital or other medical facility. In the Bill, a caring service is provided at a place licensed to provide such a service and is referred to as a licensed place.

"intoxicated" which means that the person is apparently under the influence of alcohol or another drug or a combination of drugs;

"licensed place" being a place at which a person has been licensed to provide a caring service.

"public place" includes a wide range of public places, including those open for use though payment of a fee (such as show grounds and at sporting events) and includes schools.

Clause 3(2) provides additional clarification on the name and address of applicants or persons who seek to conduct a place licensed to provide a caring service for intoxicated persons.

**PART II—INTOXICATED PERSONS****4. Detention of intoxicated persons**

Clauses 4: largely replicates the current provisions within section 351 of the *Crimes Act 1900*, which are repealed through the *Intoxicated Person's (Consequential Amendments) Bill 1994*.

**Clause 4(1):** provides powers for the police to take an intoxicated person found in a public place into custody and detain him or her. The police officer must have a reasonable belief that the intoxication has led to that person:

- . behaving in a disorderly manner;
- . behaving in a manner likely to cause injury to himself, herself or another person, or damage to property; or
- . being incapable of protecting himself or herself from physical harm.

**Clause 4(2):** limits the time a person can be detained, being till the person is no longer intoxicated or at the expiration of eight hours after he or she was first detained, whichever comes first.

**Clause 4(3):** requires that a police officer shall not permit a person detained to remain in the police station for longer than 12 hours after the person was initially detained. This may occur when the person has been released from detention after eight hours however chooses to stay at the police station till transport is available or awaiting the arrival of another person. The clause limits the time a person can stay at the police station.

**Clause 4(4):** provides for a police officer to release a person detained under subsection (1) if he or she believes it is reasonable to do so. This may occur when a responsible person arrives to take care of the intoxicated person or there are other arrangements for care of the person, such as admission to a licensed place.

**Clause 4(5):** states that a police officer will have acted reasonably if he or she has released an intoxicated person detained under subsection (1) into the care of a manager of a licensed place.

## **5. Search of people in custody**

**Clause 5:** provides the power for a member of the police force to search a person taken into custody under subsection (1) and to take into possession any personal items found on that person. A person is entitled to the return of their possessions when no longer detained under section 4. Subsection (3) defines the limitations of search which can be undertaken to the removal of specified outer garments and examination of those items.

## **6. Admission statement and other relevant information**

**Clause 6(1):** provides a requirement that, where a police officer takes an intoxicated person to a licensed place and the person agrees to enter that place, the police officer shall give an admission statement relating to that person to the manager of the licensed place.

**Clause 6(2):** describes the admission statement as being in writing and containing the name and date of birth of the intoxicated person (if known), the time and date the person was detained by the police officer and an itemised list of any items taken from the intoxicated person under subsection 5(1). The admission statement must also provide confirmation that the police officer who signs the statement has returned the belongings to the intoxicated person.

Clause 6(3): provides for the police officer to release any additional information about the intoxicated person which the officer believes may assist the manager in caring for that person. This may include the location and circumstances of where the intoxicated person was found, if these issues are relevant to providing care for that person.

**7. Right to leave**

Clause 7: requires that a carer at the licensed place must inform the intoxicated person that he or she can leave at any time and that he or she will be given access to facilities and given opportunity to contact a responsible person or other appropriate persons.

**8. Contacting other persons**

Clause 8: requires that the licensee ensures that an intoxicated person admitted to the licensed place has access to facilities and is given opportunities to contact a responsible person or other appropriate persons.

**9. Leaving in a dangerous condition**

Clause 9: requires that a carer at a licensed place notifies the police if he or she is of the opinion that an intoxicated person leaving or about to leave the licensed place is a danger to himself, herself or others or to property,

**10. Transfer—medical treatment**

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

**11. Remaining at a licensed place**

Clause 11: requires that the licensee shall not allow a person admitted to the licensed place to stay for longer than 12 hours.

**12. Objection to care**

Clause 12: states that the Act does not authorise the provision of care if the intoxicated person objects to that care. The converse is that where a person does not object to the care, the manager and carer can provide necessary care to that person

**13. Protection of carers and licensee**

Clause 13: provides that no action, suit or proceedings lies against a person who is, or has been, a licensee or carer for actions taken or not taken in good faith when that person is or was a licensee or carer providing care for the intoxicated person at the licensed place.

**PART III—LICENSES*****Division 1—Approval*****14. Provision of services**

Clause 14: requires that a person does not provide a caring service within the meaning of the Act unless licensed to do so. The penalty, in the case of a natural person, is \$5,000 or six months imprisonment, or both, and in the case of a body corporate, \$25,000.

**15. Applications**

Clause 15(1): permits persons to apply to operate a caring service.

Clause 15(2): requires that a person applying to conduct a caring service shall apply in writing, stating name and address, the name and address of each place at which it is proposed to operate a caring service and information about experience the applicant has in caring for intoxicated persons or persons with alcohol and other drug related problems. The application must be signed by the applicant.

The applicant must provide statements which attest to their financial viability, including issues relating to lack of bankruptcy, solvency and a capacity to meet debts.

**16. Grant**

Clause 16(1): provides that the Minister may grant a license if he or she is satisfied that:

- the applicant has adequate experience in dealing with intoxicated persons or people with alcohol and other drug related problems;
- the applicant will provide a caring service at each place specified in accordance with the Act and with any standards prescribed under the Act;

Clause 16(2): requires that the license specifies the name and address of the person granted the license and the name and address of each place where the caring service may be provided.

***Division 2—Conditions*****17. License conditions**

Clause 17: provides that a license is subject to various conditions under this division of the Act.

**18. Employees**

Clause 18: requires that the licensee ensures that every person employed at a licensed place, including any volunteer, has a current first aid certificate and defines such a certificate as issued by a provider approved under section 37.

**19. Insurance**

Clause 19: requires that the licensee maintains prescribed insurance policies.

**20. Annual reports**

Clause 20: requires that the licensees provide an annual report to the Minister by 30 September each year relating to the number, age and gender (if known) of people admitted during the previous financial year, whether the licensee, in his or her opinion, has complied with the Act and standards, and if the licensee has failed to comply, the particulars of this failure. The reporting period is 1 July to 30 June of the following year.

**21. Further conditions**

Clause 21: permits the Minister to impose further licence conditions, in writing, as are necessary and reasonable for the care and protection of intoxicated persons. Such conditions take effect 28 days after the date of the written notice or on a later date to be specified in the notice.

***Division 3—Suspension and cancellation of licenses*****22. Emergency suspension and cancellation**

Clause 22(1): provides a power for the Minister to suspend the license where he or she believes, on reasonable grounds, that there is an immediate risk of danger to the health or safety of people being provided care, or of people providing that care.

Clause 22(2): states that the suspension takes effect from the time at which the notice is given to the licensee.

Clause 22(3): requires that the notice of suspension states the facts and circumstances on which the Minister's belief is based, specifies the licensed places in relation to which the license is suspended, states that caring services may not be provided at places specified and invite the licensee to show cause as to why the license should not be cancelled after 28 days.

Clause 22(4): provides a power for the Minister to cancel the license, in regard to specified licensed places, after 28 days of a notice issued under subsection (1).

Clause 22(5): provides that the cancellation occurs either at the time a notice under subsection 34(1) is given to the licensee or at a later date specified in that notice.

### **23. Cancellation of licenses**

Clause 23(1): provides specific situations under which the Minister can cancel a license:

- . lack of financial viability;
- . that a caring service is no longer being provided at the licensed place;
- . the licensee has contravened the Act or standards;
- . the licensee has breached a condition of the license.

Clause 23(2): requires that the Minister shall not cancel a license unless he or she has given the licensee a written notice, specifying the grounds for the proposed cancellation, including the facts and circumstances on which those grounds are based, specifies the licensed places in relation to which the license is suspended, and inviting the licensee to show cause as to why the license should not be cancelled after 28 days.

Clause 23(3): provides a power for the Minister to cancel the license on the grounds specified in the notice after a period of 28 days has expired.

Clause 23(4): provides that the cancellation occurs either at the time a notice under subsection 34(1) is given to the licensee or at a later date specified in that notice.

### **24. Requested cancellation**

Clause 24: provides that a licensee may request in writing that the Minister cancels the licensee's license in relation to one or more licensed places and that, on receipt of such a request, the Minister shall cancel the license to take effect immediately or on a date specified in the notice.

### **25. Amendment of the Licence**

Clause 25(1): requires that, within 14 days, the licensee, on receiving a notice under subsection 34(1) of the cancellation of the license in relation to a place or places specified in the license, shall return the license to the Minister. Penalty for failure to do so is \$500.

Clause 25(2): requires the Minister to amend the license and return it to the licensee.

### **26. Return of licence**

Clause 26: requires a person, whose license for all caring services specified on that licence, has been cancelled, to return the license to the Minister. Penalty for failure to do so, without reasonable excuse, is \$500.



**PART IV—INSPECTION****27. Inspectors .**

**Clause 27:** requires that there will be one or more inspectors, who perform such functions for the purposes of the Act as the Minister directs. The Minister may create one or more offices within the Government Service, the duties of which include being an inspector and that inspectors shall be public servants performing the duties of such offices.

**28. Inspectors—identity cards**

**Clause 28:** requires the Minister to issue an inspector an identity card that specifies the inspector's name and office and contains a recent photograph of that person. The person shall return the card when ceasing to be an inspector. Penalty for failure to do so, without reasonable excuse is \$100.

**29. Powers of inspection**

**Clause 29(1):** provides the power for an inspector to enter, at any reasonable time, a licensed place and:

- inspect the place and equipment used in connection with the care of intoxicated persons admitted to the place;
- inspect documents and records in the possession of the licensee, or to which the licensee has access, relating to the conduct of the licensed place; and
- require the licensee to furnish information, books, documents and other records that are in possession of the licensee or that he or she has access to, relating to the conduct of the licensed place.

**Clause 29(2):** provides that the inspector must leave the premises if, on request, he or she does not show his or her identity card.

**Clause 29(3):** provides that a person is not required to provide information specified in subsection (1)(c), if, on request, the inspector does not show his or her identity card.

**Clause 29(4):** the manager, being the person in charge of the licensed place is included in the references to a licensee in subsection (1).

**30. Obstruction of inspectors**

**Clause 30(1)** requires that a person shall not hinder or obstruct an inspector acting under section 29. Penalty is \$5,000 or 6 months imprisonment or both. **Clause 30(2)** requires that a person shall not fail to comply with a request to furnish material requested in paragraph 29(1)(c). Penalty is \$5,000.

**PART V—STANDARDS****31. Making standards**

Clause 31(1): provides the power for the Minister to make standards required or permitted by the Act and necessary or convenient to be prescribed.

Clause 31(2): describes the range of matters about which standards may be made, including:

- . the condition and maintenance of the premises;
- . the condition and maintenance of equipment used at the licensed place;
- . the operation of the service, including conduct of people providing care;
- . training and basic skills of people providing care;
- . records and documents required to be kept for purposes of the Act, storage of records and documents and disclosure of information obtained under the Act.

**32. Disallowance**

Clause 32: provides that a standard made under section 31 is a disallowable instrument under section 10 of the *Subordinate Laws Act 1989*.

**33. Publication in a newspaper**

Clause 33(1): requires that, before a standard made under section 31 comes into effect, the Minister shall arrange a notice in the principal daily newspaper, which:

- . specifies the date the standard comes into effect;
- . specifies where copies of the standard may be purchased;
- . invites the public to inspect the standard at places specified; and
- . informs the public that the standard is a disallowable instrument;

Clause 33(2): requires that the Minister ensures that copies of the standard are available for public inspection and for purchase at places specified in the notice in subsection (1).

Clause 33(3): describes "standard" as including any document which is applied by the standard.

**PART VI—APPEALS TO THE ADMINISTRATIVE APPEALS TRIBUNAL**

**34. Notice of decision**

Clause 34(1): requires that where the Minister makes decisions under specified parts of the Act, he or she must give notice in writing to the relevant person.

Clause 34(2): Specifies the relevant people to whom a notice in writing must be provided of the various decisions made by the Minister.

Clause 34(3): requires that a notice under subsection (1) shall be in accordance with the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*.

**35. Review by Tribunal**

Clause 35: provides that application can be made to the Tribunal for review of decisions notified under section 34.

**PART VII—MISCELLANEOUS**

**36. Confidentiality**

Clause 36: requires that a person shall not divulge information acquired under or by this Act to any other person, except as required by the Act or by law. Penalty is \$5,000 or 6 months imprisonment or both. This section does not override any other law relating to confidentiality of information or documents.

**37. Approval of first aid providers**

Clause 37: provides for the Minister to approve first aid course providers for purposes of the Act.

**38. Regulations**

Clause 38: provides a power for the Executive to make regulations for the purposes of the Act.