

1998

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

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

**CARE AND PROTECTION OF INTOXICATED PERSONS STANDARD**

**EXPLANATORY STATEMENT**

**INSTRUMENT NO. 19 OF 1998**

A handwritten signature in black ink, appearing to read 'Kate Carnell', is centered on the page.

**(Circulated by authority of Kate Carnell MLA  
Minister for Health and Community Care)**

## **CARE AND PROTECTION OF INTOXICATED PERSONS STANDARD**

### **Background**

The *Intoxicated Persons (Care and Protection) Act 1994* (the Act) provides for the care and protection of intoxicated persons and was enacted following the decriminalisation of public intoxication in 1983 and moves by all jurisdictions to adopt a health and welfare oriented response to this issue.

The Act retains police powers to detain, under prescribed circumstances, a person who is found intoxicated in a public place. However, it also provides police with an alternative to detaining the person in a police cell and allows police to release the person into the care of the manager of a licensed (sobering up) place. The Act does not preclude other persons or agencies referring persons to a licensed place.

An establishment known as the “Sobering Up Place” previously operated in the ACT from August 1994 to July 1996.

Recent amendments to the Act to allow for searches to be conducted of intoxicated persons presenting at a licensed (sobering up) facility, prior to their admission to the place, were passed by the Legislative Assembly on 2 December 1997 and gazetted as law on 10 December 1997.

The impetus for these amendments arose as a result of a death which occurred at the previous sobering up establishment. The Coroner commented, in relation to the incident, that if the ACT was to continue to have such places, consideration must be given to clarifying the powers to search intoxicated persons. This comment was made in the context of the person having been found, after his death, to have on his person substances which, had they been found when he presented to the sobering up facility, would have resulted in medical treatment being sought for him.

### **Authority**

The Act provides that the Minister may make standards, not inconsistent with the Act, prescribing matters:

- required or permitted by this Act to be prescribed; or
- necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Standard is subject to disallowance by the Legislative Assembly.

### **Provisions**

The Care and Protection of Intoxicated Persons Standard establishes minimum requirements for the manner in which a person licensed to provide a caring service, pursuant to the Act shall provide that service.

The principal purpose of setting these minimum requirements is to maintain the dignity and privacy, and protect the health and safety, of persons who are admitted to a place licensed to provide a caring service.

The requirements are also intended to protect the health and safety of carers working in such places.

The Standard was last made in 1995 and has been reviewed and revised to reflect the legislative changes and, where necessary, to update or clarify the Standard. In addition to some minor drafting changes, the Standard has been revised to:

- meet the provisions of the current Smoke-free legislation;
- ensure that carers employed at a sobering up facility meet the National Competency Standards for Drug and Alcohol Workers;
- ensure that protocols of care and a Memorandum of Understanding with the Federal Police are in place; and
- clarify the level of insurance that must be held by a licensee of a sobering up facility.