

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY

**Intoxicated Persons (Care and Protection)  
(Amendment) Bill 1997**

**EXPLANATORY MEMORANDUM**

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### Intoxicated Persons (Care and Protection) (Amendment) Bill 1997

#### Outline

This is an amending Bill. It amends the *Intoxicated Persons (Care and Protection) Act 1994* referred to in the amending Bill as the Principal Act.

The Principal 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 Principal 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 Principal 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.

Amendments to the Principal 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, will facilitate the re-establishment of such a place in the ACT.

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.

#### Revenue/Cost implications

A recurrent commitment of \$0.1m was made in the 1997-98 Budget for the re-establishment of the sobering up facility, however, the Bill itself has no financial implications.

## **DETAIL OF THE BILL**

### **Formal Clauses**

Clauses 1, 2 and 3 are formal requirements. They refer to the short title of the Bill, commencement and definition of the Principal Act. The Bill commences on the date on which it is notified in the *Gazette*.

### **Interpretation**

Clause 4, amends subsection 3 (1) of the Principal Act and expands the definition of “carer”. “Carer” means a person who works with intoxicated people at a licensed place, which covers people employed to work with intoxicated people, volunteers and “hands-on” managers and licensees. Only people who actually work with intoxicated people will have the power to search them. In addition, volunteers that fall into the definition of “carer” working at a licensed place will have the same powers and protection as people employed at licensed places. Clause 4 also amends the definition of “licensed place” by removing the words “in relation to a licensee” to reflect the fact that the term “licensed place” is used in its own right in the Principal Act (for example, section 7).

### **Search of persons in custody**

Clause 5 amends section 5 of the Principal Act. 5(a) and 5(b) replace the words “personal belongings” with the word “articles” to cover circumstances where an intoxicated person may allege that an article in his or her possession does not actually belong to them, that they are holding it for a friend, and therefore the police have no right to take possession of an article which is not a personal belonging. 5(c) includes “socks” in the list of items which may be required to be removed for the purposes of a search conducted by the police. This will bring the provision into line with search provisions in the *Crimes Act 1900* and also with search powers afforded carers in proposed section 6A(2) of the Bill.

### **Admission Statement and other relevant information**

Clause 6 amends section 6 of the Principal Act by replacing the word “belongings” with the word “articles” to cover the same circumstances described in clauses 5(a) and 5(b).

### **Power of carer to search intoxicated person**

Proposed section 6A is inserted by clause 7 of the Bill. 6A(1) provides that a carer can search an intoxicated person presenting at a licensed place where the carer believes, on reasonable grounds, that the intoxicated person does not object to the search. The reason for giving carers the power to search intoxicated persons is dealt with in the outline of the Bill.

6A(2) defines the term “search” as including a requirement for a intoxicated person to remove outer garments including overcoat, coat, jacket, gloves, shoes, socks and hat and the examination of those items of clothing. This provision will also allow for a carer to conduct a search of items in the possession of an intoxicated person such as handbags, carry bags and the like.

**Safekeeping of articles in possession**

Proposed section 6B is inserted by clause 7 of the Bill and entitles a carer to take possession of any articles found in the possession of an intoxicated person for safekeeping. 6B (a) ensures that a carer cannot take possession of property unless satisfied that the intoxicated person does not object. 6B (b) sets out the justification which a carer must satisfy in order to take possession of articles in possession of an intoxicated person, specifically that safekeeping of the articles is necessary for the protection of the intoxicated person or other persons at the licensed place or the security of those articles. A carer cannot take articles in the possession of an intoxicated person for safekeeping without being satisfied as to paragraphs 6B(a) and (b).

**List of articles**

Proposed section 6C is inserted by clause 7 of the Bill and provides that lists must be kept of items taken from intoxicated persons for safekeeping and provides that each item must be signed for when it is taken. The list must be signed for by the carer who conducted the search and the intoxicated person or, if the intoxicated person is unable or unwilling to sign, another carer if practicable.

**Return of articles**

Proposed section 6D(1) is inserted by clause 7 of the Bill and entitles intoxicated persons from whom articles have been taken under section 6B, to have those articles returned when the intoxicated person leaves the licensed place. Clause 6D (2) provides that the carer who returned the articles must note its return on the list made under clause 6C(1). Clause 6D(3) provides that each returned article must be signed for by the carer who returned the articles and the intoxicated person or, if the intoxicated person is unable or unwilling to sign, another carer if practicable.

**Right to leave**

Clause 8 amends section 7 of Principal Act to place the obligation on the carer who admits the intoxicated person to inform that person that they may leave at any time and that they will be given access to facilities and adequate time to contact a responsible person or other appropriate person. The intention of this amendment is to ensure that the statutory obligations in section 7 are placed on an identifiable person.

**Leaving in a dangerous condition**

Clause 9 amends section 9 of the Principal Act by substituting the words “the carer” for the words “a carer” (last occurring) to ensure that the statutory obligation in section 9 is placed on an identifiable person.

**Protection of carers, managers and licensee**

Clause 10 amends section 13 of the Principal Act by extending the legal immunity afforded carers and licensees to the managers of licensed places. Immunity is available only for acts done in good faith for the performance or exercise, or purported performance or exercise of a function or power under this or another law of the Territory.