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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Berry)

**Intoxicated Persons (Care and Detention)
Bill 1991**

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**Intoxicated Persons (Care and Detention)
Bill 1991**

A BILL

FOR

**An Act relating to the care and detention of
intoxicated persons**

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

Short title

1. This Act may be cited as the *Intoxicated Persons (Care and Detention) Act 1991*.

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, or respective days, fixed by the Minister by notice in the *Gazette*.

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

Interpretation

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

“authorised person” means a person appointed under section 5 to be an authorised person for the purposes of this Act;

“detainee” means a person detained under section 6;

“intoxicated” means apparently seriously affected by alcohol;

“premises” includes—

- (a) a structure, building, vehicle or vessel;
- (b) a place, whether enclosed or built on, or not; and
- (c) a part of premises;

“prescribed place” means a place declared under section 4;

“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;

“school” has the same meaning as in the *Schools Authority Act 1976*, and includes any land or premises which belong to or are occupied or used in connection with a school.

Prescribed place

4. (1) The Minister may, by instrument published—

- (a) in the *Gazette*; and
- (b) in the principal daily newspaper circulating in the Territory;

declare a place to be a prescribed place for the purposes of this Act.

(2) A place shall not be declared under subsection (1) unless the Minister is satisfied that the place is equipped with facilities suitable for the care and detention of intoxicated persons.

(3) A police station may be declared under subsection (1).

Authorised person

5. The Minister may appoint a person who is engaged in managing or controlling, or assists in the management or control, of a prescribed place to be an authorised person for the purposes of this Act.

Detention of intoxicated person

6. (1) Where a person is found intoxicated in a public place and is—

- (a) behaving in a disorderly manner;
- (b) behaving in a manner likely to cause injury to himself or herself, injury to another person or damage to property; or
- (c) in need of protection because of incapacity due to intoxication;

a police officer or an authorised person may detain the person and take the person to a prescribed place.

(2) If an authorised person believes on reasonable grounds that—

- (a) there is inadequate accommodation in the place for a detainee;
- (b) the behaviour of a detainee warrants his or her removal from the place; or
- (c) the interests of a detainee would be better served by being taken to another prescribed place;

a police officer or an authorised person may take the detainee to another prescribed place.

(3) Where a police officer or an authorised person—

- (a) takes a detainee to a prescribed place; and
- (b) delivers to the person for the time being in charge of the prescribed place an instrument, in the prescribed form, containing particulars with respect to the detainee;

the detainee may be detained in the prescribed place until—

- (c) the detainee ceases to be intoxicated; or

- (d) 8 hours has expired since the detainee was taken to the prescribed place, or first taken to a prescribed place, as the case may be;

whichever occurs first.

Behaviour constituting offence

7. A person found intoxicated in a public place shall not be detained under section 6 if that person's behaviour constitutes an offence under any law.

Detention at police station

8. (1) A detainee shall not be taken to a police station under section 6—

(a) unless—

- (i) no other prescribed place with adequate facilities is within reasonable proximity or the detainee has been refused entry to a prescribed place within the previous 4 hours; and
- (ii) it is impracticable to take the detainee home because of distance, the unavailability of resources or any other reason; or

(b) unless the behaviour of the detainee has become so violent, or there is a likelihood that it will become so violent, as to warrant not taking the detainee home or to another prescribed place.

(2) Nothing in this section prevents a detainee from being taken to a police station temporarily for the purpose of ascertaining whether another prescribed place is available for the care and detention of that detainee.

Restraint of intoxicated person

9. A person may be detained under section 6 under such reasonable restraint as may be necessary to protect the detainee and other persons from injury or property from damage.

Searching detained person

10. (1) A detainee may be searched and have his or her personal belongings taken by a police officer or an authorised person.

(2) The person for the time being in charge of a prescribed place shall ensure that any belongings taken from a detainee pursuant to subsection (1) are returned when the detainee is released from detention.

Records

11. (1) It is the duty of—

- (a) any person who detains and takes a person to a prescribed place;

- (b) the person who is for the time being in charge of the prescribed place when a detainee arrives; and
- (c) a person who searches a detainee;

to make a prescribed record with respect to the detainee.

(2) Each prescribed record with respect to a detainee shall be retained by the person for the time being in charge of the relevant prescribed place for at least 3 years.

(3) A person for the time being in charge of the prescribed place shall, on request by a person authorised by the Minister for the purpose, make available for inspection by that person any records retained by him or her under subsection (2).

Release of intoxicated person

12. (1) The person for the time being in charge of a prescribed place shall ensure that—

- (a) a detainee is, as soon as practicable, informed that a responsible person who is willing immediately to undertake the care of the detainee may secure his or her release; and
- (b) the detainee is given a reasonable opportunity to contact a friend or relative for the purpose of securing his or her release into the care of a responsible person.

(2) Subject to subsection (3), the person in charge of a prescribed place shall release a detainee into the care of a responsible person who is willing immediately to undertake the care of the detainee.

(3) Where—

- (a) a responsible person—
 - (i) by reason of an incapacity is unable to immediately undertake the care of a detainee; or
 - (ii) by reason of the violent behaviour of a detainee, is incapable of immediately undertaking the care of, or controlling the detainee; or
- (b) a detainee is unwilling to be released into a responsible person's care;

the detainee shall not be released into the responsible person's care.

Police officers and others not liable for certain acts and omissions

13. No action lies against any person who is or was—

- (a) a police officer, or
- (b) an authorised person;

in respect of anything done or omitted to be done in good faith in the purported exercise of powers or performance of duties under this Act.

Regulations

14. The Executive may make regulations, 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.