

2004

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

**INTOXICATED PERSONS (CARE AND PROTECTION)
AMENDMENT BILL 2004**

EXPLANATORY STATEMENT

Circulated by authority of

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Minister for Health

EXPLANATORY STATEMENT

Outline

The purpose of the *Intoxicated Persons (Care and Protection) Amendment Bill 2004* is to expand the search and seizure powers of carers at a licensed sobering-up facility. The impetus to implement expanded search and seizure powers has arisen as a result of the probability of people having dangerous or illicit goods in their possession on presentation at such a facility, and the subsequent possible increased risk of harm to the person, staff, other clients and/or the building. The previous sobering-up facility was closed down in 1996 following the death of a client. Following a Coronial enquiry in to the death of the client at the previous facility, the Coroner recommended that ACT Health give consideration to whether searches should be conducted, either by police or sobering-up staff, prior to the intoxicated person being taken into care by a sobering-up place.

Prior to these amendments a search could only take place “where the carer believes on reasonable grounds that the intoxicated person does not object to the search”. In addition, goods could only be stored for safekeeping “where the carer believes on reasonable grounds that the intoxicated person does not object and it is necessary for the protection of the intoxicated person or other persons at the licensed place or the security of those articles”. Given the intoxicated condition of a client presenting at a sobering-up service it is unlikely that any person working in the facility would always be able to form such a ‘reasonable belief’. Without clear consent the search could be considered unlawful and could constitute a civil battery with both civil and criminal consequences.

The amendments will make an ‘frisk search’ of the intoxicated person by carers as currently outlined in S6C (2) of the amendment, and the safe storage of their possessions and return upon discharge conditions of entry to the facility. The person will not have access to their possessions during their stay. If the person declines either of these conditions of entry and/or are found to be in possession of prohibited substances they will be refused entry to the facility.

Revenue/Cost Implications

Recurrent funding of \$311,000 is available for the sobering-up facility in the 2004-05 budget.

Formal Clauses

Clause 1 – Name of Act – states that the title of the Act is the *Intoxicated Persons (Care and Protection) Amendment Act 2004*

Clause 2 – Commencement – states that the amendments are to commence on the day after the *Intoxicated Persons (Care and Protection) Amendment Act 2004* is notified.

Clause 3 – Legislation Amended – provides that this Act amends the *Intoxicated Persons (Care and Protection) Act 1994*

Clause 4 – Section 3 (1), new definition of prohibited substance – this adds a definition of a prohibited substance as found in part 3 (1) of the *Drugs of Dependence Act 1989*.

Clause 5 – Sections 6A to 8 – this removes the current provisions under these sections and replaces them with the following:

S6A – ‘Admission to licensed place’ - this replaces S6A ‘Power of carer to search intoxicated person’ and places this at 6C. This section now provides the conditions that must be met for entry to a licensed place. Namely, that the intoxicated person must agree to a search as outlined under S6C, must not be in possession of a prohibited substance, and must agree to give all possessions to a carer for safekeeping.

S6B – ‘Safekeeping of possessions’- this provision amends the title of the section from ‘Safekeeping of articles in possession’ to ‘Safekeeping of possessions’. This removes the requirement that the carer form a reasonable belief that the intoxicated person would not object or that it is necessary for the protection of the person or the safekeeping of those articles before taking the intoxicated person’s possessions. The provision now requires that the carer secure the clothing and other possessions of an intoxicated person who is admitted to a licensed place.

S6C – ‘Power of carer to search intoxicated person’ - this provision removes the section ‘List of articles’ and replaces it with ‘Power of carer to search intoxicated person’. It will no longer be a requirement for the carer to list and sign for all of the intoxicated person’s possessions. The new provision amends the original S6A search to replace an ‘ordinary search’ with a ‘frisk search’ and removes the requirement that carer form a reasonable belief that the person does not object. This provision also allows for the person being searched to request that a person of the same gender conduct the search and incorporates the search of transgender/intersex persons. A link to the definitions of transgender/intersex persons is provided.

S6D – this provision removes the section ‘Return of articles’ and replaces it with ‘Leaving licensed place’. The requirement that a person’s possessions must be returned to them when they leave a licensed place remains the same as the original SS6D. The requirement that when returning these possession that the list of these items be signed for by the carer and, if possible, the intoxicated person has been removed in line with the removal of the requirement to make such a list under S6C. This section also allows for the intoxicated person to leave a licensed place at any time and outlines the circumstances under which the person will be deemed to have left.

S7 – ‘Information to be given to intoxicated person’ - this amends the heading of the section from ‘Right to leave’ to ‘Information to be given to an intoxicated person’ and outlines the information that must be given to the client. The provision that the person may leave the licensed place at any times is the same as in the original act and the provision that the person will be deemed to have left the facility if they go outside unsupervised by a carer has been added. The requirement that the client has ‘access to the facilities and adequate opportunity to contact a responsible or other appropriate person’ when they leave has been removed and replaced with the requirement that staff inform the client that they will have adequate opportunity to contact a responsible or other appropriate person.

S8 – ‘Contacting other people’ – the title of this section ‘Contacting other persons’ has been removed and replaced with ‘Contacting other people’. This clause amends the section to require the licensee ensure that the client has adequate opportunity to

contact a responsible or other appropriate person when they leave and is in line with the amendment at S7.