



Full Day Hansard Transcript (Legislative Council, 19 March 2013, Proof)

Proof

Extract from NSW Legislative Council Hansard and Papers Tuesday, 19 March 2013 (Proof).

INTOXICATED PERSONS (SOBERING UP CENTRES TRIAL) BILL 2013

Bill introduced, and read a first time and ordered to be printed on motion by the Hon Michael Gallacher.

Second Reading

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [3.10 p.m.]: I move:

That this bill be now read a second time.

This bill supports a key initiative of the Government's plans to address alcohol-related violence and antisocial behaviour in public places. Through the trial of three sobering up centres it is the Government's intention to test whether providing safe environments for individuals who are noticeably intoxicated to sober up has a positive flow-on effect for public amenity and public safety.

As members may be aware, sobering up centres are not a new phenomenon in Australia and are already operating in a number of locations. For instance, in developing the model for the New South Wales trial, the Government has considered in some detail the operation of Canberra's sobering up shelter as well as the legislation which supports it. I think we would all agree that people have the right to go out at night and enjoy a few drinks—no question about it—but it is the Government's view that similarly people have the right to enjoy a night out without the intrusion and safety concerns caused by rowdy, violent drunks. The trial of sobering up centres will test two different approaches: mandatory and non-mandatory.

I will now provide some detail as to the plans for the centres. The centres will operate on Friday and Saturday nights with the flexibility of including other nights of the week where major events might warrant this. The mandatory centre referred to in the bill as the Sydney city centre will be operated by the New South Wales Police Force and will be located in Sydney's central business district. The two non-mandatory centres referred to in the bill as accredited centres will be located within the eastern beaches and Wollongong local area commands and will be operated by non-government providers under contract to and accredited by the Department of Family and Community Services. I understand a procurement process to locate an operator or operators for these centres is currently underway.

The key difference between the two approaches will be that with the accredited centres intoxicated persons will be referred to the centre by police but may choose to leave at any time. However, should they still be considered to pose a risk to either themselves or the public police will be notified and may take further steps to ensure their safety. With the mandatory centre intoxicated persons will be required to remain at the centre either until they are no longer assessed as being intoxicated or they arrange for a responsible person to come to the centre to take responsibility for them. Intoxicated persons detained at the mandatory centre will also be liable for a cost recovery fee in addition to any penalty notice they may receive.

The service model for both types of centre will also provide for health checks, regular monitoring and the provision of food and drink whilst either detained or housed. This highlights that the safety and security of intoxicated persons admitted or detained at the centres has been a central consideration in the planning and design of the trial. The eligibility criteria for entry into the Sydney city sobering up centre will be threefold. Either an intoxicated person must have refused or failed to comply with a move-on direction and persist in engaging in the relevant conduct that gave rise to the direction or any relevant conduct or be found by police to be behaving in a disorderly manner or a manner likely to cause injury to the person or another person or damage to property or be considered to be in need of physical protection because of their intoxication, as is currently provided for under existing legislation.

In the case of the two accredited centres entry is to be via police referral and where either of the following criteria is met: a police officer believes the intoxicated person is a public nuisance as defined in the Act or the intoxicated person is in need of physical protection because of their level of intoxication. The bill provides for additional entry criteria for the accredited centres to be prescribed via regulation. To be clear, vulnerable groups such as Aboriginal people and what are commonly known as rough sleepers will not be targeted under this trial. Intoxicated juveniles under the age of 18 years will be ineligible for admission to a sobering up centre. Police

officers will continue to exercise discretion in such matters and already have power under the Law Enforcement (Powers and Responsibilities) Act to detain intoxicated persons.

The definition of "intoxicated" provided in section 198 of the Law Enforcement (Powers and Responsibilities) Act will be used to determine eligibility for entry into the sobering up centres. This provides that a person is intoxicated if the person's speech, balance, coordination or behaviour is noticeably affected and it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of alcohol or any drug. This definition will apply to those individuals detained following a refusal or failure to comply with a move-on direction. Part 16 of the Law Enforcement (Powers and Responsibilities) Act provides for a separate definition of "intoxicated" and that definition will apply for assessing detention under that part.

I will now turn to the bill provisions in detail. Part 1 of the bill outlines the objects of the Act and defines key terms. Part 2 sets out the circumstances under which intoxicated persons may be detained and transported to sobering up centres. Proposed section 7, for example, makes it clear that if an intoxicated person has committed an offence other than those listed as exceptions in this provision they are not to be detained for transport to a sobering up centre but instead dealt with for the offence as would normally be the case. Proposed section 8 provides that a police officer may require a person detained for the purpose of being transported to a sobering up centre to disclose his or her identity.

Offences and penalties are also provided for failure or refusal to comply with such a request without reasonable excuse and providing a false name or address to a police officer. This is important. Police officers need to be able to establish identity in a timely manner when someone is in their custody, particularly so where an individual may be in a vulnerable state or be in need of medical treatment. Proposed section 10 outlines the information which must be conveyed to an intoxicated person who is either being detained or admitted to a sobering up centre. This includes, for example, in the case of the Sydney city sobering up centre that admission is compulsory, that they will be searched on entry, and the conditions and statutory time frames for detention. In the case of the accredited centres intoxicated persons are informed that admission is voluntary but should they wish to seek admission they must consent to being assessed by a health practitioner, being monitored by staff at the centre and having their person and belongings searched.

Again the health and safety of intoxicated persons is of paramount concern in the design and conduct of this trial. Searching intoxicated persons being admitted to a centre will help minimise the risk of anyone overdosing whilst there or bringing in weapons. It is also important to note that where an intoxicated person is deemed medically unfit to enter or remain at a sobering up centre, arrangements will be made to transport them to an emergency department or other arrangements will be made as appropriate. Also, where an intoxicated person is deemed violent or likely to become violent, such behaviour will render them ineligible for admission to an accredited sobering up centre. Instead, intoxicated persons exhibiting such behaviour will be managed by police as would normally be the case under existing legislation. Proposed section 12 outlines the procedures and conditions for release from a sobering up centre.

<6>

It provides that in the case of all three centres an intoxicated person is not to remain admitted or detained for longer than eight hours. Should an intoxicated person be able to quickly find a responsible person able and willing to come and take responsibility for them they could spend very little time at all at a centre. But if they are later found by police to have resumed their prior behaviour—for example, being rowdy and violent in a public place due to intoxication—they may find themselves back for a repeat visit to a sobering up centre. In the case of the Sydney city centre that could end up being very costly indeed as they may receive both a penalty notice and a notice to pay a cost recovery charge each time, not to mention perhaps a bill for an ambulance ride to the emergency department in a hospital.

Prior to an intoxicated person exiting a sobering up centre, efforts will be made by health assessment officers to discuss their drinking habits with them and they will provide advice and referral information to treatment services if requested. Division 3 of part 2 of the bill makes provision for an escalating cost recovery charge to be levied on intoxicated persons detained in the Sydney city sobering up centre. The fee schedule, prescribed manner and time frame for payment of the cost recovery charge will be included in a supporting regulation that will be in place prior to the commencement of the trial on 1 July 2013.

Proposed section 17 deals with the application of the Fines Act 1996 to this scheme, including the processes for enforcement of unpaid cost recovery charges. Section 18 outlines the prescribed arrangements for applying to the Local Court to have a cost recovery charge waived or reduced, including the factors the Local Court is to take note of when considering such an application. These include any attendance by the applicant at a drug or alcohol treatment program.

Part 3 of the bill provides for an accreditation scheme for accredited sobering up centres. Proposed section 22 provides, for example, that the Director General of the Department of Family and Community Services may suspend or cancel a centre's accreditation, and the section sets out the conditions under which this can occur. This will help to ensure that the centres continue to be operated as they were intended and to a high standard.

Turning to part 4 of the bill, proposed section 23 exempts the first two accredited sobering up centres from certain requirements under the Environmental Planning and Assessment Act 1979, including the need to obtain development consent. This is necessary to ensure that the two accredited centres are able to be established and ready for operation by the start of the trial period on 1 July 2013. Proposed section 24 exempts police officers, authorised officers, health practitioners or any other person from liability in respect of anything done or omitted to be done in good faith in the execution or purported execution of the legislation. It also provides that both health assessments and searches of intoxicated persons and their belongings undertaken under the provisions of this Act are deemed to have occurred with the consent of the person. This is necessary given that individuals in such circumstances will be intoxicated and may be unable to give informed consent. Not assessing their physical state or checking them for drugs, weapons or anything else may expose them, as well as those around them, to further risk.

Proposed section 25 ensures that agencies involved with the trial as well as a body accredited to operate a sobering up centre may exchange information collected during the trial, but only for defined purposes and provided that this is supported by a formal arrangement negotiated between the agencies. Proposed sections 29 and 30 provide for repeal and review of the legislation. Proposed section 29 provides that the Act is repealed on 1 July 2014 or a later date prescribed by regulation. Proposed section 30 provides that if repeal of the Act is postponed to a date after 1 July 2016, a ministerial review must take place to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

The trial of three sobering up centres is further evidence of the Government's ongoing commitment to addressing alcohol-related violence and antisocial behaviour on our streets. The trial has been designed to provide benefits for intoxicated persons—by removing them from harm, for example—as well as for the general public by helping to make public spaces safer and more welcoming at night. At the conclusion of the trial a substantive evaluation will be conducted to analyse the outcomes of the two different approaches and a decision on the future of the centres will be made at that time. I commend the bill to the House.