

Intoxicated Persons (Sobering Up Centres Trial) Bill 2013

Explanatory note

Overview of Bill

The object of this Bill is to facilitate a trial of a scheme for the temporary detention or care (or both) of certain intoxicated persons to enable those persons to sober up.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the object of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act. For the purposes of the proposed Act, a person is an *intoxicated person* if:

- (a) the person is of or above 18 years of age, and
- (b) the person's speech, balance, co-ordination or behaviour is noticeably affected, and
- (c) it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of alcohol or any drug.

Other words and expressions defined in the provision include the following:

sobering up centre means premises used for the purposes of the proposed Act as a place of detention or care or both for a temporary period to enable intoxicated persons to return to a state of sobriety.

authorised sobering up centre means:

- (a) the Sydney City sobering up centre, or
- (b) an accredited sobering up centre.

accredited sobering up centre means a sobering up centre identified in an accreditation granted under Part 3 of the proposed Act.

Sydney City sobering up centre means the sobering up centre operated by the NSW Police Force located at the Central Local Court cell complex or such other place as may be prescribed by the regulations.

catchment area, for an authorised sobering up centre, means the geographical area specified for the sobering up centre in the regulations.

health assessment officer means a person engaged at an authorised sobering up centre who is:

- (a) a registered medical practitioner, or
- (b) a registered nurse, or
- (c) in relation to the Sydney City sobering up centre, a registered health practitioner (within the meaning of the *Health Practitioner Regulation National Law*) of a class prescribed by the regulations, or
- (d) in relation to an accredited sobering up centre, a person with first aid, drug and alcohol treatment or health skills or qualifications of a class prescribed by the regulations.

Part 2 Detention and transport of intoxicated persons to sobering up centres

Division 1 Detention in catchment area

The proposed Division provides for the detention of intoxicated persons found in a public place in the catchment area for an authorised sobering up centre and their

transport to the relevant centre. Under the scheme of the proposed Act, there are to be two types of authorised sobering up centre—the Sydney City sobering up centre and accredited sobering up centres. Each sobering up centre will have a catchment area prescribed by the regulations. Different provisions will govern the operation of the proposed Act with respect to the different types of centre.

Clause 5 provides that a police officer may detain an intoxicated person found in a public place in a catchment area for the Sydney City sobering up centre:

- (a) if the person:
 - (i) has refused or failed to comply with a move on direction, and
 - (ii) persists in engaging in the relevant conduct that gave rise to the direction or any other relevant conduct, or
- (b) if the person is:
 - (i) behaving in a disorderly manner or in a manner likely to cause injury to the person or another person or damage to property, or
 - (ii) in need of physical protection because the person is intoxicated.

The intoxicated person detained by a police officer under the proposed section is to be taken directly to the Sydney City sobering up centre.

Clause 6 provides that a police officer may detain an intoxicated person found in a public place in a catchment area for an accredited sobering up centre:

- (a) if the police officer believes that the person is a public nuisance, or
- (b) if the person is in need of physical protection because the person is intoxicated, or
- (c) in such other circumstances as may be prescribed by the regulations.

A person is a **public nuisance** for the purposes of the provision if the person is behaving in an offensive or disorderly manner and the person's behaviour is interfering, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.

The intoxicated person detained by a police officer under the proposed section is to be taken directly to the accredited sobering up centre for the catchment area.

Clause 7 provides that a police officer is not to detain a person under the proposed Division because of behaviour that constitutes an offence under any law, other than if the behaviour constitutes an offence under:

- (a) proposed section 8 relating to a failure or refusal to disclose a person's identity to a police officer, or
- (b) section 9 (Continuation of intoxicated and disorderly behaviour following move on direction) of the *Summary Offences Act 1988*, or
- (c) section 199 (Failure to comply with direction) of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Clause 8 provides that a police officer may require a person detained under the proposed Division to disclose his or her identity. It will be an offence to fail or refuse, without a reasonable excuse, to comply with the requirement or to give a name that is false in a material particular or give an address other than the person's full and correct address.

A police officer may also request a person who is required under this proposed section to disclose his or her identity to provide proof of that identity. It will not be an offence to fail to comply with any such request.

Clause 9 provides that an intoxicated person detained under the proposed Division may be detained under such reasonable restraint as is necessary to protect the intoxicated person and other persons from injury and property from damage.

Clause 10 provides that certain safeguard provisions contained in section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002* extend to the power under proposed sections 5 and 6 to detain a person and the power under proposed section 8 to request a person to disclose his or her identity.

Division 2 Admission to sobering up centre

Clause 11 contains provisions governing the admission of intoxicated persons to authorised sobering up centres.

As soon as is practicable after arriving at an authorised sobering up centre, an intoxicated person must be informed of certain matters relating to his or her detention or care in the centre.

Before being admitted to an authorised sobering up centre, an intoxicated person must:

- (a) in relation to an accredited sobering up centre—consent to being assessed by a health assessment officer and to being monitored by the staff of the centre, and
- (b) be assessed by a health assessment officer to determine whether there are any apparent health reasons to refuse admission to the centre, and
- (c) be searched.

If the health assessment officer determines that there are health reasons to refuse the intoxicated person admission to the centre, the person must not be admitted to the centre.

The person in charge of an accredited sobering up centre is to refuse admission of an intoxicated person for the following reasons:

- (a) the capacity of the centre under its accreditation has been reached,
- (b) the intoxicated person is behaving or is likely to behave so violently that the staff of the centre would not be capable of taking care of and controlling the intoxicated person,
- (c) any other reason prescribed by the regulations.

Clauses 12 and 13 deal with detention in and release from the Sydney City sobering up centre.

Clause 12 provides that a person who has been admitted to the Sydney City sobering up centre may be detained there by an authorised officer. The person:

- (a) must be given a reasonable opportunity by the person in charge of that centre to contact a responsible person, and
- (b) must, as far as is reasonably practicable, be kept separately from any person detained at that centre in connection with the commission or alleged commission of an offence, and
- (c) must be provided with food, drink, bedding and blankets appropriate to the person's needs.

The person may be detained by an authorised officer under such reasonable restraint as is necessary to protect the person and other persons from injury and property from damage.

Clause 13 provides that a person who has been admitted to the Sydney City sobering up centre is to be released from the centre if:

- (a) the person in charge of the centre is satisfied that the person has ceased to be an intoxicated person, or
- (b) a responsible person present at the centre is willing to accept the care of the intoxicated person and take the person to a residence or other safe place.

The person in charge of the Sydney City sobering up centre, as soon as is practicable after a period of 4 hours has elapsed since a person was admitted to the centre, must:

- (a) arrange for the person to be assessed by a health assessment officer, and
- (b) consult with that health assessment officer regarding that assessment, and
- (c) release the person unless the person in charge believes that it is not safe to do so for health reasons or any other reason.

The person in charge of the Sydney City sobering up centre is not to permit a person admitted to the centre to remain in the centre for a period that exceeds 8 hours.

Clauses 14 and 15 deal with the care of persons in and departure from accredited sobering up centres.

Clause 14 provides that an intoxicated person who is admitted to an accredited sobering up centre:

- (a) must be given a reasonable opportunity by the person in charge of that centre to contact a responsible person, and
- (b) must be provided with food, drink, bedding and blankets appropriate to the person's needs.

Clause 15 provides that a person who has been admitted to an accredited sobering up centre may leave the accredited sobering up centre at any time.

The person in charge of an accredited sobering up centre must use his or her best endeavours to ensure that a person admitted to the centre is assessed by a health assessment officer before leaving the centre.

The person in charge of an accredited sobering up centre must, as soon as is practicable after a period of 4 hours has elapsed since a person was admitted to the centre, arrange for the person to be assessed by a health assessment officer.

The person in charge of an accredited sobering up centre is not to permit a person admitted to the centre to remain in the centre for a period that exceeds 8 hours.

Clause 16 provides that the person in charge of an authorised sobering up centre must ensure that each person admitted to the centre is regularly monitored.

If, at any time, the person in charge of an authorised sobering up centre, a health assessment officer or an authorised officer believes that a person who has been taken to an authorised sobering up centre by a police officer or who has been admitted to a centre is in need of urgent medical treatment, the person in charge, health assessment officer or authorised officer is to make arrangements to transport the person to a hospital.

Division 3 Cost recovery charge

Clause 17 provides that a person who has been admitted to the Sydney City sobering up centre must pay a cost recovery charge.

Clause 18 provides for the enforcement of the cost recovery charge under the *Fines Act 1996* as if the charge was a fine imposed by a court. However, Divisions 3 (Driver licence or vehicle registration suspension or cancellation) and 6 (Imprisonment) of Part 4 of that Act will not apply in relation to the enforcement of the cost recovery charge.

Clause 19 enables a person to apply to the Local Court to have a cost recovery charge waived or reduced. The Local Court, in determining the application, is to have regard to the following:

- (a) the applicant's remorse (if any),
- (b) the hardship that payment of the cost recovery charge would impose on the applicant (if any),
- (c) any attendance by the applicant at a drug or alcohol treatment program, (d) any other matter as may be prescribed by the regulations.

Part 3 Accreditation of sobering up centres

Part 3 of the proposed Act deals with the accreditation of persons to operate a sobering up centre.

Clause 20 deals with applications for accreditation.

Clause 21 deals with the determination of such applications by grant or refusal. If granted, an accreditation may be unconditional or subject to conditions.

Clause 22 provides for the variation of conditions of accreditation.

Clause 23 deals with the suspension or cancellation of accreditation.

Part 4 Miscellaneous

Clause 24 provides that development for the purposes of the first 2 accredited sobering up centres accredited under the proposed Act does not require development consent and is not subject to Part 5 of the *Environmental Planning and Assessment Act 1979*.

Clause 25 provides that no action lies against any police officer, any authorised officer, any health assessment officer or any other person in respect of anything done or omitted to be done by the police officer, authorised officer, health assessment officer or any such other person in good faith in the execution or purported execution of the proposed Act.

Clause 26 provides for certain information sharing arrangements between relevant agencies for the purposes of the proposed Act.

Clause 27 makes it clear that nothing in the proposed Act limits a police officer from detaining an intoxicated person under section 206 of the *Law Enforcement (Powers and Responsibilities) Act 2002* and dealing with the person in accordance with that Act.

Clause 28 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 29 provides that proceedings for an offence under the proposed Act may be dealt with summarily before the Local Court.

Clause 30 provides that the proposed Act is repealed on 1 July 2014 or such later date as is prescribed by the regulations.

Clause 31 provides for a review of the proposed Act as soon as possible after 1 July 2016 if the proposed Act has not been repealed before then.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.