

## Overview of Bill

The objects of this Bill are as follows:

(a) to amend the *Summary Offences Act 1988*:

(i) to make it an offence for a person who has been given a move on direction by a police officer for being intoxicated and disorderly in a public place to be intoxicated and disorderly in that or another public place at any time within 6 hours after the direction is given, and

(ii) to require the Ombudsman to prepare a report on the operation of, and the issue of any penalty notices in connection with, the offence after the offence has been in operation for 12 months,

(b) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to allow police to issue move on directions for disorderly behaviour and to detain an intoxicated person otherwise than for the purpose of taking proceedings for an offence,

(c) to amend the *Criminal Procedure Regulation 2010* to provide for the issuing of penalty notices in connection with the offence.

## Outline of provisions

**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.

## **Schedule 1 Amendment of Summary Offences Act 1988 No 25**

**Schedule 1 [2]** makes it an offence for a person who has been given a move on direction for being intoxicated and disorderly in a public place to be intoxicated and disorderly in the same or another public place at any time within 6 hours after the direction is given. A **move on direction** is a direction given to a person by a police officer to leave a public place and not return for a specified period under section 198 of the *Law Enforcement (Powers and Responsibilities) Act 2002*. Six hours is the maximum period for which a person can be directed under that Act to leave a public place and not return. The maximum penalty for the offence is 6 penalty units.

It is necessary to prove a move on direction was given within 6 hours before the person was found to be intoxicated and disorderly in a public place, but it is not necessary to prove that the person contravened the move on direction by being so intoxicated and disorderly in the public place at the time concerned. A person can be guilty of an offence under the new section if the conduct occurs after the move on direction lapses (that is, in a case where the move on direction has effect for less than 6 hours) or if the conduct occurs in a public place to which the direction does not apply. However, if a person is intoxicated and disorderly in a public place in contravention of a move on direction, the person cannot be proceeded against or convicted for both the new offence and the existing offence of failing to comply with a move on direction in relation to the same conduct.

It is a defence to a prosecution for the new offence if the defendant satisfies the court that the defendant had a reasonable excuse for conducting himself or herself in the manner alleged.

**Schedule 1 [3]** requires the Ombudsman to prepare a report on the operation of, and issue of penalty notices in respect of, the new offence under proposed section 9 after the offence has been in operation for 12 months. The Ombudsman must furnish a copy of the report to the Attorney General and the Commissioner of Police. The Attorney General must lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after receiving the report.

**Schedule 1 [1]** makes a minor amendment that is consequential to the addition of a note to the *Summary Offences Act 1988*.

**Schedule 1 [4]** enables savings and transitional regulations to be made as a consequence of the proposed Act.

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Explanatory note

**Schedule 2 Amendments to other legislation**

**Schedule 2.1** prescribes the new offence under proposed section 9 of the *Summary Offences Act 1988* as a penalty notice offence, with the amount of the penalty prescribed as \$200.

**Schedule 2.2** amends the *Law Enforcement (Powers and Responsibilities) Act 2002*. Currently, a police officer may make a move on direction only if the police officer reasonably believes that the person's behaviour is likely to either cause injury to any other person or damage to property or otherwise give rise to a public safety risk.

**Schedule 2.2 [1]** provides for an additional ground on which a police officer may make a move on direction, being if the police officer believes on reasonable grounds that the intoxicated person's behaviour is disorderly. Accordingly, in light of the new ground on which a move on direction may be made, **Schedule 2.2 [2]** requires that such a direction must be reasonable in the circumstances for the purpose of preventing the continuance of disorderly behaviour in a public place.

**Schedule 2.2 [3]** requires a police officer who gives a move on direction to a person on the grounds that the person is intoxicated and disorderly in a public place to warn the person that it is an offence to be intoxicated and disorderly in that or any other public place at any time within 6 hours after the direction is given. This requirement applies in addition to the other requirements of section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**Schedule 2.2 [4]** provides that a police officer may detain an intoxicated person under Part 16 of the *Law Enforcement (Powers and Responsibilities) Act 2002* even if behaviour constitutes an offence under proposed section 9 of the *Summary Offences Act 1988*, if the detention is not for the purpose of taking proceedings for the offence. This will ensure that police officers can continue to detain intoxicated persons under that Part for the purposes of their care and safety.