



New South Wales

# Summary Offences Amendment (Intoxicated and Disorderly Conduct) Bill 2011

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## 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.

## **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.



First print



New South Wales

# Summary Offences Amendment (Intoxicated and Disorderly Conduct) Bill 2011

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New South Wales

# Summary Offences Amendment (Intoxicated and Disorderly Conduct) Bill 2011

No. , 2011

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## A Bill for

An Act to amend the *Summary Offences Act 1988* and other legislation with respect to intoxicated and disorderly conduct.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Summary Offences Amendment (Intoxicated and Disorderly Conduct) Act 2011</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6



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<b>Schedule 1</b>	<b>Amendment of Summary Offences Act 1988 No 25</b>	1 2
<b>[1] Section 3 Definitions</b>		3
Insert after section 3 (3):		4
(4) Notes included in this Act do not form part of this Act.		5
<b>[2] Section 9</b>		6
Insert after section 8A:		7
<b>9 Continuation of intoxicated and disorderly behaviour following         move on direction</b>		8 9
(1) A person who:		10
(a) is given a move on direction for being intoxicated and disorderly in a public place, and		11 12
(b) at any time within 6 hours after the move on direction is given, is intoxicated and disorderly in the same or another public place,		13 14 15
is guilty of an offence.		16
Maximum penalty: 6 penalty units.		17
(2) For the purposes of this section, a <i>move on direction</i> is a direction given to a person by a police officer, under section 198 of the <i>Law                 Enforcement (Powers and Responsibilities) Act 2002</i> , to leave a public place and not return for a specified period.		18 19 20 21
<b>Note.</b> The maximum period for which a person can be directed not to return to a public place is 6 hours.		22 23
It is a requirement under section 201 of the <i>Law Enforcement (Powers                 and Responsibilities) Act 2002</i> that the police officer warn a person given a move on direction for being intoxicated and disorderly in a public place 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 move on direction is given.		24 25 26 27 28 29
(3) In proceedings for an offence against this section, it is necessary to prove that 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.		30 31 32 33 34 35
(4) A person cannot be proceeded against or convicted for both an offence against this section and an offence against section 199 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (Failure to comply with direction) in relation to the same conduct.		36 37 38 39

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Schedule 1      Amendment of Summary Offences Act 1988 No 25

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(5)	It is sufficient defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant had a reasonable excuse for conducting himself or herself in the manner alleged in the information for the offence.	1 2 3 4
(6)	For the purposes of this section, a person is <i>intoxicated</i> if:	5
(a)	the person's speech, balance, co-ordination or behaviour is noticeably affected, and	6 7
(b)	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.	8 9 10
<b>[3] Section 36</b>		11
	Insert after section 35:	12
<b>36 Report by Ombudsman on section 9</b>		13
(1)	As soon as practicable after the end of the period of 12 months from the commencement of section 9 (as inserted by the <i>Summary Offences Amendment (Intoxicated and Disorderly Conduct) Act 2011</i> ), the Ombudsman must prepare a report on:	14 15 16 17
(a)	the operation of section 9, and	18
(b)	the issue of penalty notices in respect of offences against section 9.	19 20
(2)	For that purpose, the Commissioner of Police is to ensure that the Ombudsman is provided with information about:	21 22
(a)	any prosecutions brought under section 9, and	23
(b)	the issue of penalty notices in respect of offences against section 9.	24 25
(3)	The Ombudsman may at any time require the Commissioner of Police, or any public authority, to provide any information or further information the Ombudsman requires for the purposes of preparing the report under this section.	26 27 28 29
(4)	The Ombudsman must furnish a copy of the report to the Attorney General and to the Commissioner of Police.	30 31
(5)	The Attorney General is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Attorney General receives the report.	32 33 34
(6)	If a House of Parliament is not sitting when the Attorney General seeks to lay a report before it, the Attorney General may present copies of the report to the Clerk of the House concerned.	35 36 37

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(7) The report:	1
(a) is, on presentation and for all purposes, taken to have been laid before the House, and	2 3
(b) may be printed by authority of the Clerk of the House, and	4
(c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and	5 6
(d) is to be recorded:	7
(i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and	8 9
(ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,	10 11
on the first sitting day of the House after receipt of the report by the Clerk.	12 13
<b>[4] Schedule 2 Savings and transitional provisions</b>	14
Insert at the end of clause 1 (1):	15
<i>Summary Offences Amendment (Intoxicated and Disorderly         Conduct) Act 2011</i>	16 17

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<b>Schedule 2</b>	<b>Amendments to other legislation</b>	1
<b>2.1</b>	<b>Criminal Procedure Regulation 2010</b>	2
	<b>Schedule 3 Penalty notice offences</b>	3
	Insert in appropriate order in Columns 1 and 2 of Schedule 3, under the matter relating to the <i>Summary Offences Act 1988</i> :	4
	section 9	5
	\$200	
<b>2.2</b>	<b>Law Enforcement (Powers and Responsibilities) Act 2002 No 103</b>	6
		7
<b>[1]</b>	<b>Section 198 Move on directions to intoxicated persons in public places</b>	8
	Omit section 198 (1) (a) and (b). Insert instead:	9
	(a) is likely to cause injury to any other person or persons, damage to property or otherwise give rise to a risk to public safety, or	10
		11
		12
	(b) is disorderly.	13
<b>[2]</b>	<b>Section 198 (2)</b>	14
	Omit the subsection. Insert instead:	15
	(2) A direction given by a police officer under this section must be reasonable in the circumstances for the purpose of:	16
		17
	(a) preventing injury or damage or reducing or eliminating a risk to public safety, or	18
		19
	(b) preventing the continuance of disorderly behaviour in a public place.	20
		21
<b>[3]</b>	<b>Section 201 Supplying police officer's details and giving warnings</b>	22
	Insert after section 201 (2C):	23
	(2D) In addition, if a police officer exercises a power that involves the making of a direction under section 198 on the grounds that a person is intoxicated and disorderly in a public place, the police officer must provide the person the subject of the direction with a warning 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.	24
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		30
	<b>Note.</b> See section 9 of the <i>Summary Offences Act 1988</i> .	31

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<b>[4] Section 206 Detention of intoxicated persons</b>	1
Insert after section 206 (2):	2
(2A) However, a police officer may detain an intoxicated person under this section even if behaviour constitutes an offence under section 9 of the <i>Summary Offences Act 1988</i> if the detention is not for the purpose of taking proceedings for the offence.	3 4 5 6
<b>Note.</b> Section 9 of the <i>Summary Offences Act 1988</i> makes it an offence for a person who is the subject of a move on direction to be intoxicated and disorderly in a public place. Part 8 of this Act would apply to a person who is arrested for such an offence and detained for the purpose of taking proceedings for the offence.	7 8 9 10 11