

**SUMMARY OFFENCES AMENDMENT (INTOXICATED AND DISORDERLY
CONDUCT) BILL 2011**

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Bill received from the Legislative Assembly, and read a first time and ordered to be printed on motion by the Hon. Michael Gallacher.

Motion by the Hon. Michael Gallacher agreed to:

That standing orders be suspended to allow the passing of the bill through all its remaining stages during the present or any one sitting of the House.

Second Reading

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [12.33 p.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Summary Offences Amendment (Intoxicated and Disorderly Conduct) Bill 2011. The first stage of the Government's election commitment to address alcohol-related violence and antisocial behaviour by extending police move on powers to intoxicated individuals is now available to police as a low-cost and effective enforcement tool. This bill represents the implementation of the second stage of the Making Our Streets Safe Again policy. It provides that intoxicated individuals who engage in disorderly conduct in any public place after being given a move on direction will be committing an offence.

We have said that people are entitled to enjoy a night out without fear of having their evening ruined by drunken and violent hooligans. This bill maintains the commitments we made in the lead-up to the election earlier this year. Police in New South Wales conducted Operation Unite on the weekend of 14 and 15 May 2011. In their crackdown on alcohol-fuelled crime and antisocial behaviour, police arrested 563 people and charged them with a total of 830 offences. It is clear that more needs to be done to make the streets of New South Wales safe again. Sadly, there are individuals who are determined to drink to excess or party hard on their drug of choice and then choose not to obey reasonable directions given by police to go home before trouble starts.

At the outset I indicate that this policy is not about targeting the homeless, the mentally ill, the Aboriginal community or the disadvantaged in our society. It is to manage the excessive intoxicated behaviour seen in entertainment districts on weekends. People are entitled to have fun, but not to the detriment of other people's night out. Those people are the reason that police need additional enforcement tools in the form of the new intoxicated and disorderly conduct offence. This State bears the cost of that type of behaviour every day through a burden on the health system. Every weekend emergency departments across New South Wales see the impact of intoxicated and disorderly behaviour, and the cost of dealing with the resulting injuries represents a burden to the State for which taxpayers should not have to pay.

Let me make it clear that this bill provides police with further tools to give a measured but escalating response to intoxicated and disorderly conduct. As a result of measures introduced to Parliament by this Government, the police may now issue move on directions to individuals and will be able to prosecute, should the offending behaviour continue in any public place. If a person is given a move on direction for intoxicated and disorderly conduct, they will be committing an offence if they resume or continue in that disorderly conduct while intoxicated and within six hours of the move on direction being given. The offence will

not be limited to the area that is subject to the move on direction, but will apply to any public place in which disorderly conduct takes place. I now turn to the details of the bill.

In schedule 1 item [2] to the bill, new section 9 (1), which will be inserted into the Summary Offences Act, provides that a person who is given a move on direction for intoxicated and disorderly conduct in a public place and, at any time within six hours after the move on direction is given, is intoxicated and disorderly in the same or another public place has committed an offence. The maximum penalty applicable to the new offence is six penalty units, which is equivalent to \$660. There is no definition of "disorderly" in the bill. The intention of the Government is to impose sanctions against behaviour that contravenes community standards to the extent that it warrants the intervention of the criminal law.

Disorderly behaviour can vary according to time, place and the context in which it is conducted. Behaviour that may not disturb or annoy others in one instance could amount to a criminal offence in another. For example, an intoxicated individual who is yelling loudly and persistently to the extent that it annoys others, and who does not cease his or her behaviour when asked to move on by police, could be committing an offence of intoxicated and disorderly conduct. It will be for police to determine the appropriate response according to the context in which the behaviour occurs.

New section 9 (2) provides that a move on direction is a direction given to a person by a police officer under section 198 of the Law Enforcement (Powers and Responsibilities) Act 2002. The bill also amends section 198 of that Act to allow a move on direction to be given for intoxicated and disorderly behaviour. I will deal with that amendment shortly. The bill provides that the maximum period for which a person can be directed not to return to a public place is six hours. New section 9 (3) states that in proceedings for an offence against that section, it is necessary to prove that a person was given a move on direction within six hours before a person is found to be intoxicated and disorderly in a public place.

However, it makes it clear that it is not necessary to prove that the person contravened the move on direction by being so intoxicated and disorderly in a public place that was the subject of the move on direction at the time concerned. In other words, it will not be necessary to prove either, first, that the person was subsequently intoxicated and disorderly in the same place as the place from where the person was directed to leave or, secondly, that the initial move on direction was for a maximum of six hours. This means that police will have the tools to respond in any public place within six hours of an intoxicated and disorderly move on direction having been made.

An example is police identifying an intoxicated person who is behaving in a disorderly manner at Circular Quay. The person is given an intoxicated and disorderly move on direction. The person might comply with the direction and walk to Town Hall. However, if the person is still intoxicated and disorderly or resumes such behaviour in that new place within six hours he or she will be liable to prosecution. Similarly, if a person is given a move on direction for a period of an hour and returns to the same spot and is again intoxicated and disorderly two hours later that person will be guilty of an offence. Police are sick of repeatedly dealing with drunks on city streets. Giving a person one opportunity to behave should be enough.

Currently, if an intoxicated person does not comply with the move on direction he or she can be charged with failing to comply with the direction under section 199 of the Law Enforcement (Powers and Responsibilities) Act 2002. A person can still be charged with failing to comply. However, new section 9 (4) provides that a person cannot be proceeded

against or convicted for both an offence under new section 9 that will be inserted into the Summary Offences Act and under section 199 of the Law Enforcement (Powers and Responsibilities) Act 2002 in relation to the same conduct. This allows police to make decisions in the field about how to respond appropriately when confronted with that behaviour.

New section 9 (5) provides a defence to prosecution for the new offence if the defendant satisfies the court that the defendant had reasonable excuse for conducting himself or herself in the manner alleged. It may be that the person's behaviour is the result of an unanticipated side effect of legally prescribed drugs. In such circumstances people should be able to defend themselves against the possibility of prosecution. To ensure consistency with section 198 of the Law Enforcement (Powers and Responsibilities) Act 2002, the definition of "intoxicated" contained in that section is replicated in new section 9 (6). For the purpose of new section 9, a person is intoxicated if:

- (a) the person's speech, balance, co-ordination or behaviour is noticeably affected, and
- (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.

Police will be able to respond by issuing a criminal infringement notice, which we have referred to as an on-the-spot fine. The notice will carry a \$200 fine that can be paid by the individual without the need to go to court. Of course, if that person believes that he or she is not guilty and wishes to contest the matter, he or she will always have the right to take the matter to court and defend it. On the one hand, by paying the fine as prescribed in the penalty notice, that person does not need to get further caught up in the criminal justice system. On the other hand, if the disorderly conduct is of sufficient seriousness that police believe the matter cannot adequately be dealt with by a penalty notice, the police can issue a court attendance notice.

Police will develop comprehensive standard operating procedures to guide them in whether to deal with matters by an on-the-spot fine or court attendance notice and will retain discretion to deal with situations involving intoxicated individuals as they see fit. To facilitate the operation of move on directions for the new offence, section 198 of the Law Enforcement (Powers and Responsibilities) Act 2002 will be amended to ensure that police will be able to issue a move on direction to intoxicated people conducting themselves in a disorderly manner. Section 198 currently covers behaviour that is likely to cause injury to any other person or persons, damage to property, or otherwise give rise to a risk to public safety.

Directions given by police officers under the section for disorderly conduct must be reasonable in the circumstances for the purpose of preventing the continuance of the disorderly behaviour. New section 201 (2D) will be inserted into in the Law Enforcement (Powers and Responsibilities) Act 2002 to provide that if a police officer issues a move on direction order under section 198 on the grounds that a person is intoxicated and disorderly in a public place the police officer must provide the person who is 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 six hours after the direction is given. As a result, those who become subject to the offence will be given clear warning that their behaviour must change or they will face serious sanction.

Police retain their ability to use part 16 of the Law Enforcement (Powers and Responsibilities) Act to detain an intoxicated person behaving in a disorderly manner for

their own protection and release them into the care of a responsible person if willing and available. In its current form, this power is not available if the behaviour constitutes the commission of an offence. To preserve the power of detention, section 206 (2A) will be amended to allow a police officer to detain an intoxicated person even if the behaviour constitutes an offence under new section 9 of the Summary Offences Act if the detention is not for the purpose of taking proceedings for an offence. In other words, if police detain an intoxicated individual according to their powers in part 16, they detain them for the purpose of making sure they are safe and not for the purpose of charging them with the offence.

These amendments reflect that when police are charged with keeping the streets of New South Wales safe, they will face a myriad of different circumstances. This bill gives police the maximum flexibility to allow the nature and gravity of the behaviour to guide and determine the appropriate process for dealing with intoxicated and disorderly behaviour. In addition to the safeguards built into this legislation, new section 36 (1) of the Summary Offences Act provides that as soon as practicable after the end of 12 months from the date of commencement of the new offence the Ombudsman must prepare a report on the operation of section 9 and the issue of penalty notices in relation to it. This will ensure that the powers are being used appropriately and consistently with the Government's commitment to address problem social drinking and not the homeless and disadvantaged in our society.

To facilitate the preparation of the report, section 36 (2) provides that the Commissioner of Police is to ensure that that Ombudsman is provided with information about any prosecutions brought under section 9 and the issue of penalty notices in respect of offences against section 9. Section 36 (3) provides that 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. The report must be given to the Attorney General and the Commissioner of Police, and the Attorney General must lay, or cause to be laid, the report before both Houses of Parliament.

This bill represents the next step towards making the streets of New South Wales safe again. Police will be able to make sure that intoxicated persons are told in no uncertain terms that their behaviour is unacceptable and that they are to move on before trouble starts. In giving those move on directions to intoxicated individuals police are making it clear that there will be sanctions for continuing with disorderly, antisocial behaviour. This bill gives a clear signal to the people of New South Wales that this Government remains committed to ensuring that intoxicated and disorderly behaviour on our streets will not be tolerated. I commend the bill to the House.