

## **INTOXICATED PERSONS BILL, 1979**

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### **EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

This Bill is cognate with the Summary Offences (Repeal) Bill, 1979.

The following Bills are cognate with this Bill:—

Prisons (Intoxicated Persons) Amendment Bill, 1979;

Inebriates (Amendment) Bill, 1979;

Justices (Summary Offences) Amendment Bill, 1979.

The object of this Bill is to make provisions with respect to the care and detention of intoxicated persons.

The Bill contains the following provisions:—

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Interpretation.

Clause 4 excludes the application of the proposed Act in respect of a child or young person within the meaning of the Child Welfare Act, 1939.

Clause 5 enables a member of the police force or a person engaged in the conduct of a proclaimed place as defined in clause 3 to detain and take to a proclaimed place a person who is found intoxicated in a public place (including a school) if that person is—

- (a) behaving in a disorderly manner;
- (b) behaving in a manner likely to cause injury to himself or another person or damage to property; or
- (c) in need of physical protection because of his incapacity due to his being intoxicated

(Clause 5 (1)).

The clause also permits the transfer of an intoxicated person from one proclaimed place to another if it is in the interest of the intoxicated person to be transferred (clause 5 (1)).

The clause also requires the person in charge of the proclaimed place in which an intoxicated person is detained immediately to release the intoxicated person to the care of any responsible person who is willing to undertake the care of the intoxicated person (clause 5 (3)). If an intoxicated person is not released into the care of a responsible person, the keeper of the proclaimed place is required to release him immediately he ceases to be intoxicated or at the expiration of 8 hours, whichever first occurs (clause 5 (2)).

The clause also permits an intoxicated person who is detained in accordance with the proposed Act to be detained under such reasonable restraint as may be necessary to protect himself and other persons from injury or property from damage (clause 5 (4)).

Clause 6 enables certain persons to search intoxicated persons who have been detained under the proposed Act.

Clause 7 requires records to be made and kept by persons who will be authorised under the proposed Act to detain intoxicated persons.

Clause 8 exculpates certain persons from liability under the proposed Act when they are acting in good faith in the execution or purported execution of the proposed Act.

Clause 9 authorises regulations to be made for the purpose of the proposed Act.

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# INTOXICATED PERSONS BILL, 1979

No. , 1979.

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## A BILL FOR

An Act relating to the care and detention of intoxicated persons.

[MR F. J. WALKER—19 *April*, 1979.]

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See also Prisons (Intoxicated Persons) Amendment Bill, 1979; Inebriates (Amendment) Bill, 1979; Justices (Summary Offences) Amendment Bill, 1979.

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*Intoxicated Persons.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5   **1.** This Act may be cited as the "Intoxicated Persons Act, Short title. 1979".

**2.** (1) This section and section 1 shall commence on the date of assent to this Act. Commence-  
ment.

10       (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**3.** In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpre-  
tation.

15       "authorised person" means any person engaged in the conduct of a proclaimed place who, in accordance with the regulations, is appointed to be an authorised person for the purposes of this Act or who belongs to a class of persons designated by the regulations as a class of  
20       authorised persons for the purposes of this Act;

      "intoxicated" means seriously affected apparently by alcoholic liquor;

      "premises" includes any structure, building, vehicle, vessel or place, whether built upon or not, and any part thereof;

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*Intoxicated Persons.*

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5 “proclaimed place” means any place that is declared by the Governor, by proclamation published in the Gazette, to be a proclaimed place for the purposes of this Act, and any place belonging to a class of places that is so declared to be a class of proclaimed places;

“public place” means—

(a) a place (whether or not covered by water); or

(b) a part of premises,

10 that is open to the public, or is used by the public, whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used, and whether or not the public to whom it is open consists only of a limited class of persons, and includes a school;

15 “regulations” means regulations under this Act;

20 “school” means any land occupied or used in connection with a public school or a technical school and any land which belongs to and is occupied or used in connection with a school registered under the Bursary Endowment Act, 1912, or any certified school under the Public Instruction (Amendment) Act, 1916, and any building or structure erected on any such land but does not include any building or structure or any part of any building or structure that is occupied or used solely as a residence  
25 or any land, building or structure or any part of any land, building or structure that is for the time being occupied or used for a purpose unconnected with the conduct of the school.

4. This Act does not apply in respect of a child or young person within the meaning of the Child Welfare Act, 1939.

Applica-  
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Act.

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*Intoxicated Persons.*

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5. (1) A person—

Detention  
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persons.

(a) who is found intoxicated in a public place and is—

(i) behaving in a disorderly manner;

(ii) behaving in a manner likely to cause injury to himself or another person or damage to property; or

(iii) in need of physical protection because of his incapacity due to his being intoxicated,

may be detained and taken to a proclaimed place by a member of the police force or an authorised person; or

(b) who is detained and taken to a proclaimed place under paragraph (a) or is taken to a proclaimed place under this paragraph may, if the person for the time being in charge of that proclaimed place, or a person authorised for the purposes of this paragraph by the person for the time being in charge of that proclaimed place, is of the opinion that—

(i) there is inadequate accommodation in the proclaimed place for the intoxicated person; or

(ii) for any other reason it is in the interest of the intoxicated person to be taken to another proclaimed place,

be taken to another proclaimed place by a member of the police force or any person engaged in the conduct of the proclaimed place in which the intoxicated person is detained.

(2) Where a member of the police force, an authorised person or a person engaged in the conduct of a proclaimed place who takes an intoxicated person to a proclaimed place under subsection (1) delivers to the person for the time being in charge of the proclaimed place an instrument, in or to the effect of the

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*Intoxicated Persons.*

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prescribed form containing particulars with respect to the intoxicated person for which provision is made in the form, the intoxicated person may be detained in the proclaimed place until—

- (a) he ceases to be intoxicated; or
- 5 (b) the expiration of 8 hours after he is taken to a proclaimed place under subsection (1) (a) or is taken under subsection (1) (b) to the first proclaimed place referred to in subsection (1) (b),

whichever first occurs.

- 10 (3) Notwithstanding subsections (1) and (2), a member of the police force or an authorised person by whom an intoxicated person is detained under subsection (1) or the person for the time being in charge of the proclaimed place in which an intoxicated person, taken thereto under subsection (1), is detained  
15 under subsection (2) shall release the intoxicated person if it appears to the member of the police force, the authorised person or the person for the time being in charge of the proclaimed place, as the case may be, that a responsible person is willing immediately to undertake the care of the intoxicated person and that there is  
20 no sufficient reason for not releasing the intoxicated person to the care of that responsible person.

- (4) An intoxicated person detained under subsection (1) or (2) may be detained under such reasonable restraint as may be necessary to protect himself and other persons from injury or  
25 property from damage.

- (5) A person found intoxicated in a public place shall not be detained under subsection (1) by reason of his behaving in a manner referred to in subsection (1) (a) (i) or (ii) if that behaviour constitutes an offence under any law.

- 30 6. (1) The member of the police force or authorised person by whom an intoxicated person is detained under section 5 (1),  
the person for the time being in charge of the proclaimed place

Searching  
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*Intoxicated Persons.*

in which an intoxicated person, taken thereto under section 5 (1), is detained under section 5 (2) or a person authorised to do so by the person so in charge of that proclaimed place may search the intoxicated person and may take possession of any personal 5 belongings found in his possession.

(2) A person is entitled to the return of the personal belongings taken from him under subsection (1) when he ceases to be detained under section 5.

7. (1) It is the duty of—

Records.

- 10 (a) any person who, under section 5 (1) (a), detains an intoxicated person and takes him to a proclaimed place;
- (b) the person for the time being in charge of a proclaimed place when an intoxicated person is taken thereto under section 5 (1) to be detained under section 5 (2); or
- 15 (c) a person who, under section 6 (1), searches a detained person,

to make, in accordance with the regulations, the prescribed record with respect to the detained person and to keep it for a period of 3 years.

- 20 (2) A person who has the custody of a prescribed record made under subsection (1) shall, when required to do so by a person authorised by the Minister for the purposes of this subsection, make it available for inspection by that person.

8. No action lies against any member of the police force, any 25 authorised person, any person engaged in the conduct of a proclaimed place or any other person in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of this Act.

Members of the police force and others not liable for certain acts and omissions.



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*Intoxicated Persons.*

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9. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to  
5 this Act. <sup>Regula-  
tions.</sup>

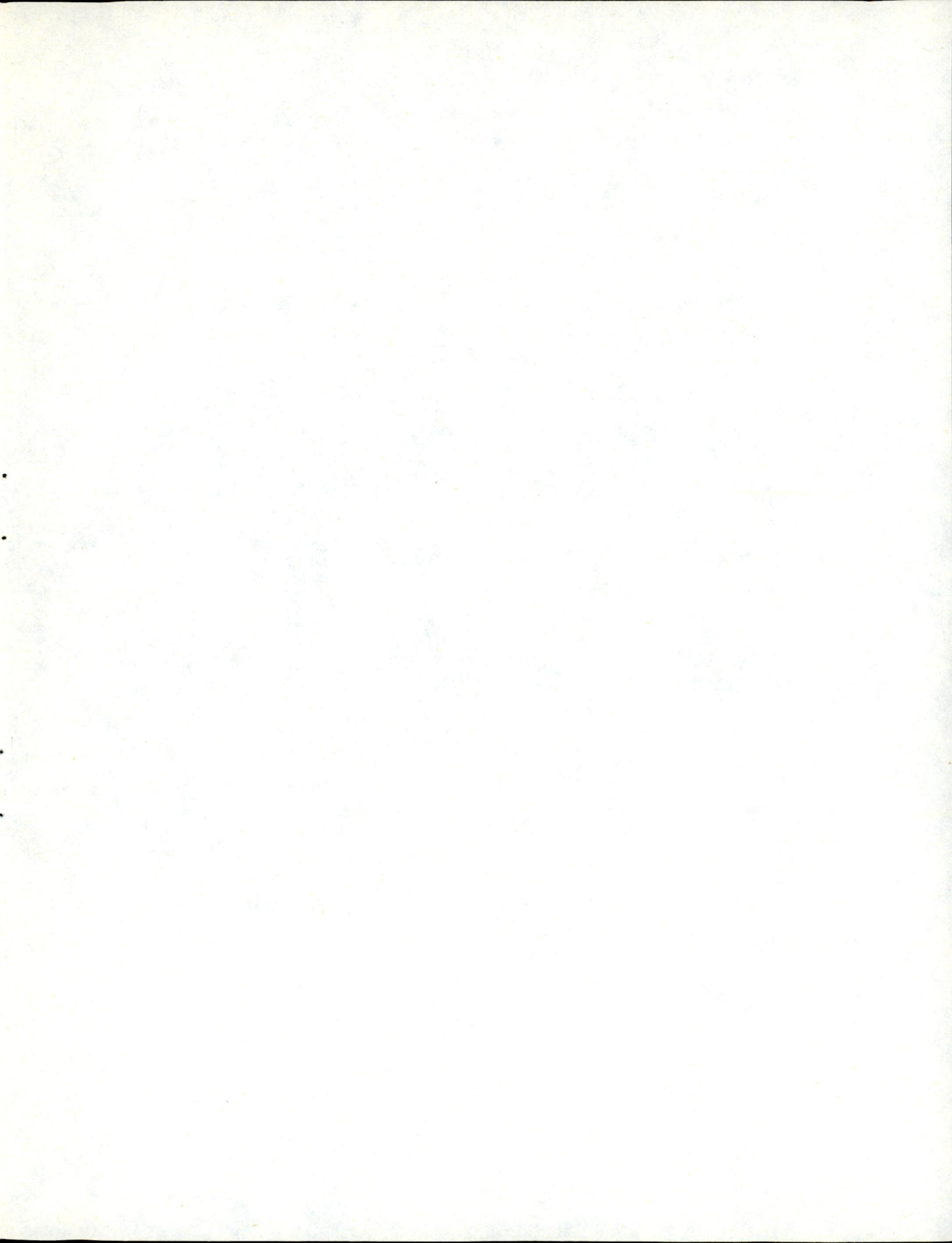
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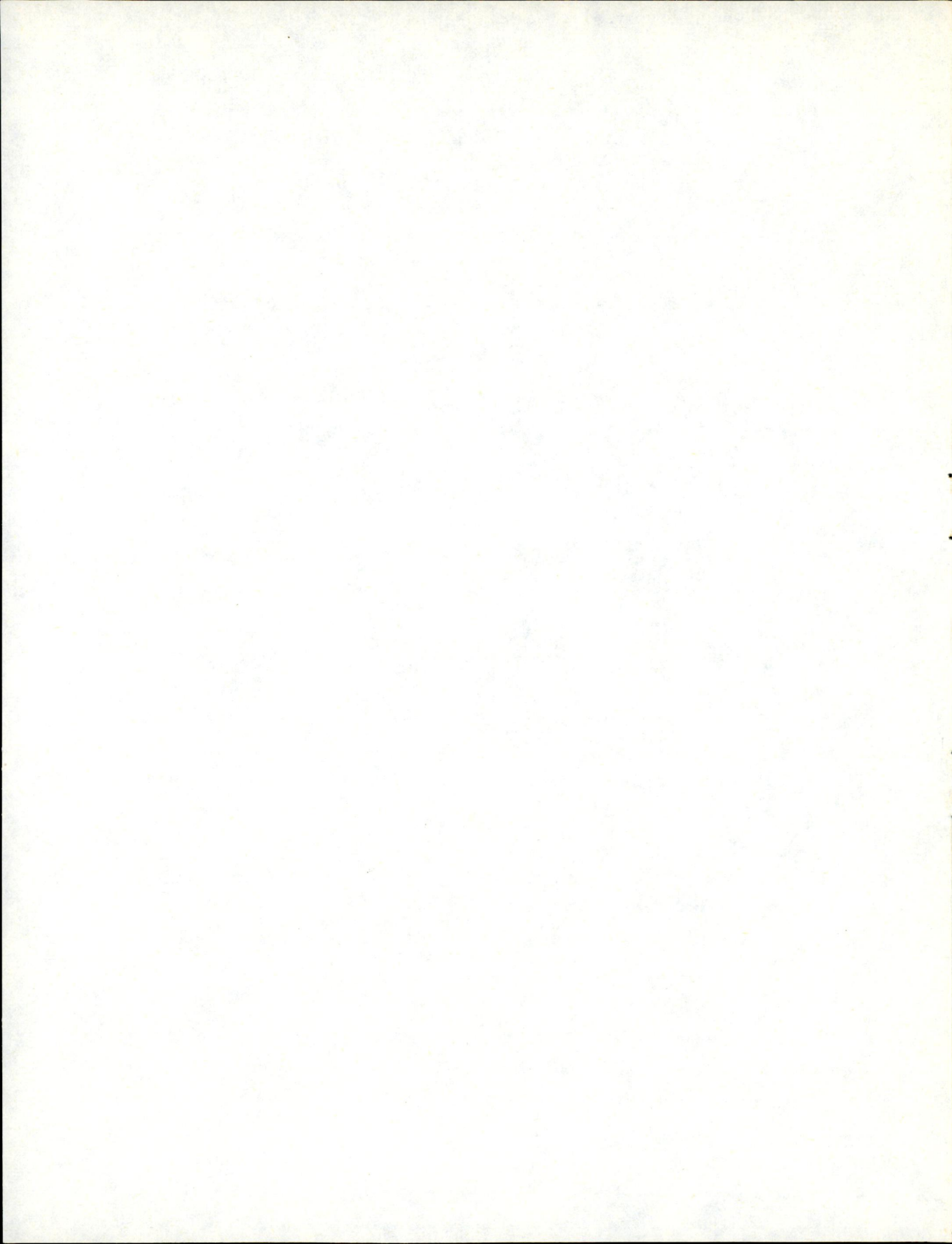
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**INTOXICATED PERSONS ACT, 1979, No. 67**

**New South Wales**



ANNO VICESIMO OCTAVO

**ELIZABETHÆ II REGINÆ**

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**Act No. 67, 1979.**

An Act relating to the care and detention of intoxicated persons.  
[Assented to, 11th May, 1979.]

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See also Prisons (Intoxicated Persons) Amendment Act, 1979; Inebriates (Amendment) Act, 1979; Justices (Summary Offences) Amendment Act, 1979.

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*Intoxicated Persons.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title.     **1.** This Act may be cited as the "Intoxicated Persons Act, 1979".

Commence-  
ment.           **2.** (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Interpre-  
tation.           **3.** In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“authorised person” means any person engaged in the conduct of a proclaimed place who, in accordance with the regulations, is appointed to be an authorised person for the purposes of this Act or who belongs to a class of persons designated by the regulations as a class of authorised persons for the purposes of this Act;

“intoxicated” means seriously affected apparently by alcoholic liquor;

“premises” includes any structure, building, vehicle, vessel or place, whether built upon or not, and any part thereof;

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*Intoxicated Persons.*

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“proclaimed place” means any place that is declared by the Governor, by proclamation published in the Gazette, to be a proclaimed place for the purposes of this Act, and any place belonging to a class of places that is so declared to be a class of proclaimed places;

“public place” means—

- (a) a place (whether or not covered by water); or
- (b) a part of premises,

that is open to the public, or is used by the public, whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used, and whether or not the public to whom it is open consists only of a limited class of persons, and includes a school;

“regulations” means regulations under this Act;

“school” means any land occupied or used in connection with a public school or a technical school and any land which belongs to and is occupied or used in connection with a school registered under the Bursary Endowment Act, 1912, or any certified school under the Public Instruction (Amendment) Act, 1916, and any building or structure erected on any such land but does not include any building or structure or any part of any building or structure that is occupied or used solely as a residence or any land, building or structure or any part of any land, building or structure that is for the time being occupied or used for a purpose unconnected with the conduct of the school.

4. This Act does not apply in respect of a child or young person within the meaning of the Child Welfare Act, 1939. Application of Act.

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*Intoxicated Persons.*

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cated  
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5. (1) A person—

(a) who is found intoxicated in a public place and is—

- (i) behaving in a disorderly manner;
- (ii) behaving in a manner likely to cause injury to himself or another person or damage to property;  
or
- (iii) in need of physical protection because of his incapacity due to his being intoxicated,

may be detained and taken to a proclaimed place by a member of the police force or an authorised person; or

(b) who is detained and taken to a proclaimed place under paragraph (a) or is taken to a proclaimed place under this paragraph may, if the person for the time being in charge of that proclaimed place, or a person authorised for the purposes of this paragraph by the person for the time being in charge of that proclaimed place, is of the opinion that—

- (i) there is inadequate accommodation in the proclaimed place for the intoxicated person; or
- (ii) for any other reason it is in the interest of the intoxicated person to be taken to another proclaimed place,

be taken to another proclaimed place by a member of the police force or any person engaged in the conduct of the proclaimed place in which the intoxicated person is detained.

(2) Where a member of the police force, an authorised person or a person engaged in the conduct of a proclaimed place who takes an intoxicated person to a proclaimed place under subsection (1) delivers to the person for the time being in charge of the proclaimed place an instrument, in or to the effect of the



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*Intoxicated Persons.*

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prescribed form containing particulars with respect to the intoxicated person for which provision is made in the form, the intoxicated person may be detained in the proclaimed place until—

- (a) he ceases to be intoxicated; or
- (b) the expiration of 8 hours after he is taken to a proclaimed place under subsection (1) (a) or is taken under subsection (1) (b) to the first proclaimed place referred to in subsection (1) (b),

whichever first occurs.

(3) Notwithstanding subsections (1) and (2), a member of the police force or an authorised person by whom an intoxicated person is detained under subsection (1) or the person for the time being in charge of the proclaimed place in which an intoxicated person, taken thereto under subsection (1), is detained under subsection (2) shall release the intoxicated person if it appears to the member of the police force, the authorised person or the person for the time being in charge of the proclaimed place, as the case may be, that a responsible person is willing immediately to undertake the care of the intoxicated person and that there is no sufficient reason for not releasing the intoxicated person to the care of that responsible person.

(4) An intoxicated person detained under subsection (1) or (2) may be detained under such reasonable restraint as may be necessary to protect himself and other persons from injury or property from damage.

(5) A person found intoxicated in a public place shall not be detained under subsection (1) by reason of his behaving in a manner referred to in subsection (1) (a) (i) or (ii) if that behaviour constitutes an offence under any law.

6. (1) The member of the police force or authorised person by whom an intoxicated person is detained under section 5 (1), the person for the time being in charge of the proclaimed place <sup>Searching  
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persons.</sup>

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*Intoxicated Persons.*


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in which an intoxicated person, taken thereto under section 5 (1), is detained under section 5 (2) or a person authorised to do so by the person so in charge of that proclaimed place may search the intoxicated person and may take possession of any personal belongings found in his possession.

(2) A person is entitled to the return of the personal belongings taken from him under subsection (1) when he ceases to be detained under section 5.

**Records.**

7. (1) It is the duty of—

- (a) any person who, under section 5 (1) (a), detains an intoxicated person and takes him to a proclaimed place;
- (b) the person for the time being in charge of a proclaimed place when an intoxicated person is taken thereto under section 5 (1) to be detained under section 5 (2); or
- (c) a person who, under section 6 (1), searches a detained person,

to make, in accordance with the regulations, the prescribed record with respect to the detained person and to keep it for a period of 3 years.

(2) A person who has the custody of a prescribed record made under subsection (1) shall, when required to do so by a person authorised by the Minister for the purposes of this subsection, make it available for inspection by that person.

Members  
of the  
police  
force and  
others not  
liable for  
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acts and  
omissions.

8. No action lies against any member of the police force, any authorised person, any person engaged in the conduct of a proclaimed place or any other person in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of this Act.

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*Intoxicated Persons.*

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9. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. <sup>Regulations.</sup>

*In the name and on behalf of Her Majesty I assent to this Act.*

A. R. CUTLER,  
*Governor.*

*Government House,  
Sydney, 11th May, 1979.*

