

## INTOXICATED PERSONS (AMENDMENT) BILL 1985

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### EXPLANATORY NOTE

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

The object of this Bill is to amend the Intoxicated Persons Act 1979 to make further provision as to the detention and care of intoxicated persons.

Clause 1 specifies the short title of the proposed Act.

Clause 2 is a formal provision that gives effect to the Schedule of amendments.

Schedule 1 (1) provides that the Governor may, by proclamation, vary or revoke a proclamation previously made for the purposes of proclaiming a place to be a place of detention under the Principal Act.

Schedule 1 (2) (a) effects a consequential amendment.

Schedule 1 (2) (b) provides that where an intoxicated person behaves in a violent manner while being detained at a proclaimed place, other than a police station, the intoxicated person may be transferred to a police station for the remainder of the period of detention.

Schedule 1 (2) (c) introduces a provision designed to encourage the use of non-police or "civilian" proclaimed places for the purpose of detaining intoxicated persons. The provision is to the effect that an intoxicated person may only be taken to a police station—

- (a) where no civilian proclaimed place which has facilities adequate for the detention of the intoxicated person is close by;
- (b) where it is impracticable because of distance or the unavailability of necessary resources to take the intoxicated person home;
- (c) where the intoxicated person has been refused entry into a civilian proclaimed place; or
- (d) where it is otherwise impracticable for a reason similar to a reason specified above to take the intoxicated person to a proclaimed place, other than a police station.

Schedule 1 (2) (c) also provides that the Principal Act does not prevent an intoxicated person being taken to a police station temporarily for the purpose of ascertaining whether another proclaimed place in which the intoxicated person may be detained is available.

Schedule 1 (2) (d) makes further provision for the release of an intoxicated person into the immediate care of a responsible person. The amendment provides that when an intoxicated person is detained, the police or an authorised person must inform the intoxicated person that a responsible person may secure his or her release. The intoxicated person must also be given a reasonable opportunity to contact a friend or a relative for this purpose. The intoxicated person shall be released into the care of the responsible person if the person is willing and capable of immediately caring for the intoxicated person and the intoxicated person is willing to be released into that person's care.

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# **INTOXICATED PERSONS (AMENDMENT) BILL 1985**

No. , 1985

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## **A BILL FOR**

An Act to amend the Intoxicated Persons Act 1979 in relation to the proclamation of places for the purposes of that Act and other matters concerning the detention and care of intoxicated persons.

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*Intoxicated Persons (Amendment) 1985*

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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 Short title**

1. This Act may be cited as the "Intoxicated Persons (Amendment) Act 1985".

**Amendment of Act No. 67, 1979**

2. The Intoxicated Persons Act 1979 is amended in the manner set forth  
10 in Schedule 1.

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**SCHEDULE 1**

(Sec. 2)

**AMENDMENTS TO THE INTOXICATED PERSONS ACT 1979**

(1) Section 3 (3)—

15           After section 3 (2), insert:

(3) The Governor may, by proclamation, vary or revoke any proclamation made for the purposes of paragraph (a) or (b) of the definition of "proclaimed place" in subsection (1).

(2) (a) Section 5 (1) (b) (i)—

20           Omit "or".

*Intoxicated Persons (Amendment) 1985*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INTOXICATED PERSONS ACT 1979—  
*continued*

(b) Section 5 (1) (b) (ia)—

After section 5 (1) (b) (i), insert:

- 5 (ia) the behaviour of the intoxicated person has become so violent as to warrant the removal of the intoxicated person from the proclaimed place; or

(c) Section 5 (1A), (1B)—

After section 5 (1), insert:

10 (1A) A member of the police force or an authorised person shall not take an intoxicated person to a proclaimed place, being a police station, for the purpose of detaining that person unless—

- 15 (a) no other proclaimed place which has facilities adequate for the detention of the intoxicated person is close by;
- (b) it is impracticable by reason of distance or the unavailability of necessary resources to take the intoxicated person to the intoxicated person's home;
- (c) the intoxicated person has been refused entry into a proclaimed place, not being a police station; or
- 20 (d) it is otherwise impracticable, for a reason similar to a reason specified in paragraph (a), (b) or (c), to take the intoxicated person to a proclaimed place other than a police station.

25 (1B) Nothing in this section prevents an intoxicated person from being taken to a police station temporarily for the purpose of ascertaining whether another proclaimed place in which the intoxicated person may be detained is available.



*Intoxicated Persons (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE INTOXICATED PERSONS ACT 1979—  
*continued*

## (d) Section 5 (3)—(3B)—

Omit section 5 (3), insert instead:

5 (3) Where an intoxicated person is detained under this Act at any proclaimed place, including a police station, the intoxicated person—

10 (a) shall be informed by a member of the police force, an authorised officer or a person engaged in the conduct of the proclaimed place that a responsible person who is willing immediately to undertake the care of the intoxicated person may secure the intoxicated person's release; and

15 (b) shall be given a reasonable opportunity to contact a person who is a friend or relative for the purpose of securing the release of the intoxicated person into the care of a responsible person.

20 (3A) 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, except as provided by subsection (3B), release the intoxicated person into the care of a responsible person willing immediately to undertake the care of the intoxicated person.

(3B) Where—

25 (a) a responsible person—

30 (i) by reason of the intoxication of the responsible person or some other incapacity of the responsible person, is incapable of immediately undertaking the care of the intoxicated person; or

(ii) by reason of the violent behaviour of the intoxicated person, is incapable of immediately

*Intoxicated Persons (Amendment) 1985*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INTOXICATED PERSONS ACT 1979—  
*continued*

undertaking the care of, or controlling, the  
intoxicated person; or

(b) the intoxicated person is unwilling to be released into  
the responsible person's care,

5 the intoxicated person shall not be released into the responsible  
person's care.

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BY AUTHORITY

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**INTOXICATED PERSONS (AMENDMENT) ACT 1985 No. 126**

*New South Wales*



ANNO TRICESIMO QUARTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 126, 1985**

An Act to amend the Intoxicated Persons Act 1979 in relation to the proclamation of places for the purposes of that Act and other matters concerning the detention and care of intoxicated persons. [Assented to, 25th November, 1985.]

*Intoxicated Persons (Amendment) 1985*

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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 (Amendment) Act 1985".

**Amendment of Act No. 67, 1979**

2. The Intoxicated Persons Act 1979 is amended in the manner set forth in Schedule 1.

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SCHEDULE 1

(Sec. 2)

AMENDMENTS TO THE INTOXICATED PERSONS ACT 1979

(1) Section 3 (3)—

After section 3 (2), insert:

(3) The Governor may, by proclamation, vary or revoke any proclamation made for the purposes of paragraph (a) or (b) of the definition of "proclaimed place" in subsection (1).

(2) (a) Section 5 (1) (b) (i)—

Omit "or".

*Intoxicated Persons (Amendment) 1985*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INTOXICATED PERSONS ACT 1979—  
*continued*

(b) Section 5 (1) (b) (ia)—

After section 5 (1) (b) (i), insert:

- (ia) the behaviour of the intoxicated person has become so violent as to warrant the removal of the intoxicated person from the proclaimed place; or

(c) Section 5 (1A), (1B)—

After section 5 (1), insert:

(1A) A member of the police force or an authorised person shall not take an intoxicated person to a proclaimed place, being a police station, for the purpose of detaining that person unless—

- (a) no other proclaimed place which has facilities adequate for the detention of the intoxicated person is close by;
- (b) it is impracticable by reason of distance or the unavailability of necessary resources to take the intoxicated person to the intoxicated person's home;
- (c) the intoxicated person has been refused entry into a proclaimed place, not being a police station; or
- (d) it is otherwise impracticable, for a reason similar to a reason specified in paragraph (a), (b) or (c), to take the intoxicated person to a proclaimed place other than a police station.

(1B) Nothing in this section prevents an intoxicated person from being taken to a police station temporarily for the purpose of ascertaining whether another proclaimed place in which the intoxicated person may be detained is available.

*Intoxicated Persons (Amendment) 1985*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INTOXICATED PERSONS ACT 1979—  
*continued*

(d) Section 5 (3)—(3B)—

Omit section 5 (3), insert instead:

(3) Where an intoxicated person is detained under this Act at any proclaimed place, including a police station, the intoxicated person—

(a) shall be informed by a member of the police force, an authorised officer or a person engaged in the conduct of the proclaimed place that a responsible person who is willing immediately to undertake the care of the intoxicated person may secure the intoxicated person's release; and

(b) shall be given a reasonable opportunity to contact a person who is a friend or relative for the purpose of securing the release of the intoxicated person into the care of a responsible person.

(3A) 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, except as provided by subsection (3B), release the intoxicated person into the care of a responsible person willing immediately to undertake the care of the intoxicated person.

(3B) Where—

(a) a responsible person—

(i) by reason of the intoxication of the responsible person or some other incapacity of the responsible person, is incapable of immediately undertaking the care of the intoxicated person; or

(ii) by reason of the violent behaviour of the intoxicated person, is incapable of immediately

*Intoxicated Persons (Amendment) 1985*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INTOXICATED PERSONS ACT 1979—  
*continued*

undertaking the care of, or controlling, the  
intoxicated person; or

- (b) the intoxicated person is unwilling to be released into  
the responsible person's care,

the intoxicated person shall not be released into the responsible  
person's care.

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