

**LOCAL GOVERNMENT (STREET DRINKING) AMENDMENT
ACT 1990 No. 105**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Local Government Act 1919 No. 41
 4. Amendment of Justices Act 1902 No. 27
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**LOCAL GOVERNMENT (STREET DRINKING) AMENDMENT
ACT 1990 No. 105**

NEW SOUTH WALES



Act No. 105, 1990

An Act to amend the Local Government Act 1919 with respect to the drinking of alcohol on roads and footpaths and consequentially to amend the Justices Act 1902. [Assented to 13 December 1990]

Local Government (Street Drinking) Amendment 1990

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Local Government (Street Drinking) Amendment Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Local Government Act 1919 No. 41

3. The Local Government Act 1919 is amended by inserting after Division 2A of Part 23 the following Division:

Division 2B—Regulation of drinking on certain roads

Definitions

512H. In this Division:

“**alcohol**” means ethanol or any liquid containing ethanol and includes any liquor within the meaning of the Liquor Act 1982;

“**alcohol-free zone**” means a zone operating under this Division as an alcohol-free zone and in which the consumption of alcohol is accordingly prohibited in the circumstances and to the extent provided by section 512I.

Consumption of alcohol in alcohol-free zone

512I. (1) It is the duty of a police officer who finds a person consuming or about to consume, or who has recently been consuming, alcohol in an alcohol-free zone to warn the person that consumption of alcohol in the zone is prohibited and that alcohol in the person's possession may be confiscated if the person attempts to consume any of it in the zone.

(2) A person who has received a warning under subsection (1) but who, in the same alcohol-free zone in which the warning was delivered, and on the same day:

- (a) commences to consume alcohol in the zone; or
 - (b) fails to desist from consuming alcohol in the zone; or
 - (c) resumes the consumption of alcohol in the zone,
- is guilty of an offence.

Maximum penalty: \$20.

Confiscation of alcohol

512J. (1) Alcohol in the immediate possession of a person in an alcohol-free zone who is committing, or who has just committed, an offence under section 512I may be seized by a police officer together with any container in which it is packaged.

(2) Alcohol (and any container) seized under this section is, by virtue of the seizure, forfeited to the Crown, and may be disposed of in accordance with directions given by the Commissioner of Police.

Alcohol-free zones

512K. (1) A council may, by resolution, declare a zone consisting of one or more public roads or parts of public roads within the area to be an alcohol-free zone.

(2) Such a resolution is not validly made unless:

(a) the council has received an application in a form approved by the Minister:

(i) from a person who the council is satisfied is a representative of a bona fide community group active in the area; or

(ii) from one or more police officers; or

(iii) from one or more persons who the council is satisfied live or work in the area,

requesting that the zone concerned be established as an alcohol-free zone; and

(b) the council has assessed the application by reference to guidelines, if any, for the time being in force under section 512M, and all aspects of the proposed alcohol-free zone accord in all respects with any such guidelines; and

(c) the council has, by publication in one or more newspapers circulating in the area as a whole or in a part of the area that includes the zone concerned:

(i) given notice of its intention to establish the zone as an alcohol-free zone; and

(ii) invited representations and objections from any person or group within the area that wishes to make them,

and has considered any such representations received by the council within 14 days after that publication; and

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(d) if, following consideration of representations under paragraph (c), the council still intends to make the appropriate resolution—advice to that effect has been given by the council to:

- (i) the Anti-Discrimination Board; and
- (ii) the officer in charge of the police station within or nearest to the zone concerned; and
- (iii) the occupier of any premises in respect of which a licence is in force under the Liquor Act 1982 and which border the zone,

and the council has considered any written representations made by or on behalf of any of those persons or bodies within 30 days after advising them.

(3) When, in respect of a zone proposed as an alcohol-free zone:

- (a) a valid resolution under this section has been passed; and
- (b) a starting date for the zone's operation has been specified and notified at least 7 days in advance by publication in one or more newspapers circulating in the area as a whole or in a part of the area that includes the zone concerned; and
- (c) conspicuous signs that comply with the requirements (if any) of ordinances made for the purposes of this subsection have been erected or displayed by or with the approval of the council on the roads or parts of roads affected, clearly indicating that the consumption of alcohol is prohibited in the zone and the period for which the zone operates as an alcohol-free zone,

the zone concerned is established as an alcohol-free zone from the date so specified.

(4) By force of this subsection, the zone ceases to operate as an alcohol-free zone on and from the first anniversary of its commencement in operation, but nothing in this subsection precludes its re-establishment from time to time, in accordance with the procedures provided by this Division, as an alcohol-free zone for a further term or terms of one year.

Suspension or cancellation

512L. (1) The council may, at the request of any person or body or of its own motion, suspend the operation of an alcohol-free zone by publishing notice of the suspension in a newspaper circulating in the area as a whole or in a part of the area that includes the zone concerned.

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(2) During the period indicated in such a notice as the period of suspension, the zone does not operate as an alcohol-free zone.

(3) In like manner the council may at any time cancel the operation of an alcohol-free zone.

Guidelines for alcohol-free zones

512M. (1) For the purposes of this Division, the Minister may from time to time prepare, adopt or vary guidelines to be followed by councils in relation to the establishment of an alcohol-free zone or the cancellation or suspension of the operation of an alcohol-free zone.

(2) The guidelines for the time being in force are to be made available to councils on request and, on payment of such fee (if any) as the Minister may determine, to any interested person.

Penalty notices

512N. (1) A police officer to whom it appears that a person has committed an offence under section 512I may serve on the apparent offender a notice to the effect that, if it is not desired to have the matter determined by a court, the person served may, within a time specified in the notice, pay \$20 to an officer so specified.

(2) A notice under this section may be served personally or by post.

(3) If the amount of \$20 for an alleged offence under section 512I is paid under this section, no person is liable to any further proceedings for the alleged offence.

(4) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor does it in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

Other law not affected

512O. This Division is to be read as supplementing, and not as derogating from, the provisions of the Summary Offences Act 1988 or any other Act or law.

Fine defaulters not to be detained

512P. No person is to be imprisoned or detained in a detention centre in consequence of failing to pay a pecuniary penalty for an offence under section 512I or in consequence of failing to pay an amount under a penalty notice issued in relation to such an offence.

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Amendment of Justices Act 1902 No. 27

4. The Justices Act 1902 is amended by inserting in the matter relating to the Local Government Act 1919 in paragraph (a) of the definition of "penalty notice" in section 100I (1) after the matter "270S (1)" the matter "or 512N".

[*Minister's second reading speech made in—*

Legislative Assembly on 22 November 1990

Legislative Council on 30 November 1990]

FIRST PRINT

LOCAL GOVERNMENT (STREET DRINKING) AMENDMENT BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend Part 23 of the Local Government Act 1919 to enable portions of roads and footpaths in the area of a local council to be established as alcohol-free zones.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

Clause 3 inserts a new Division 2B into Part 23 of the Local Government Act 1919. The effect of the new Division is explained below.

Clause 4 enacts a consequential amendment to the Justices Act 1902, to enable a penalty notice to be issued in respect of an offence arising under the new provisions.

PROPOSED DIVISION 2B OF PART 23 OF LOCAL GOVERNMENT ACT 1919

Meaning of "alcohol"

The word "alcohol" is defined in proposed section 512H to mean ethanol (that is, absolute alcohol) or any liquid containing it. It includes all forms of alcoholic liquor and any other preparations containing alcohol.

Consumption of alcohol in alcohol-free zone

Proposed section 512I requires a police officer who finds a person who is drinking or about to drink alcohol in an alcohol-free zone, or who has just done so, to issue a warning to the person to the effect that drinking in the zone is prohibited and that alcohol is liable to be confiscated from offenders. A person who ignores this warning is guilty of an offence punishable by a \$20 fine. Under proposed section 512J, the person's alcohol can be confiscated by police. Confiscated alcohol is forfeited to the Crown.

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Creation of alcohol-free zones

Proposed section 512K deals with how an alcohol-free zone is created. If application is made to the council of an area by a person living or working in the area, or by the police or any community group in the area, the council may resolve to establish a zone consisting of a road or roads (or parts of roads) as an alcohol-free zone. (Note that, for this purpose, a "road" includes a footpath.)

Before the zone is established as an alcohol-free zone, the council is required to advertise its intentions and to consider representations or objections made by interested parties. It must also consult the local police, the Anti-Discrimination Board and hoteliers and other holders of liquor licences in the affected part of its area.

A zone may be established as an alcohol-free zone for a period of 12 months. After that it lapses, but it may be re-established any number of times, as long as the requisite procedure is complied with each time.

Suspension or cancellation

Proposed section 512L allows the operation of an alcohol-free zone to be suspended or cancelled by the council.

Guidelines

Under proposed section 512M, the Minister is required to set down guidelines for the creation and operation of alcohol-free zones and for their suspension or cancellation. These are to be made available to councils and interested parties.

Enforcement

Proposed section 512N allows a penalty notice to be issued to a person drinking alcohol in the zone.

Proposed section 512O provides that the provisions of the new Division are in addition to existing requirements of the law (e.g. the Summary Offences Act 1988, which prohibits drinking of liquor by minors in public places).

Proposed section 512P provides that no one is to be imprisoned as a consequence of contravening the provisions of the proposed new Division.

FIRST PRINT

**LOCAL GOVERNMENT (STREET DRINKING) AMENDMENT
BILL 1990**

NEW SOUTH WALES



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**LOCAL GOVERNMENT (STREET DRINKING) AMENDMENT
BILL 1990**

NEW SOUTH WALES



No. , 1990

A BILL FOR

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(2) A person who has received a warning under subsection (1) but who, in the same alcohol-free zone in which the warning was delivered, and on the same day:

- (a) commences to consume alcohol in the zone; or
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