



New South Wales

Summary Offences Amendment (Intoxicated and Disorderly Conduct) Act 2011 No 28

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Summary Offences Amendment (Intoxicated and Disorderly Conduct) Act 2011 No 28

Act No 28, 2011

An Act to amend the *Summary Offences Act 1988* and other legislation with respect to intoxicated and disorderly conduct. [Assented to 10 August 2011]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Summary Offences Amendment (Intoxicated and Disorderly Conduct) Act 2011*.

2 Commencement

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

Schedule 1 Amendment of Summary Offences Act 1988 No 25

[1] Section 3 Definitions

Insert after section 3 (3):

- (4) Notes included in this Act do not form part of this Act.

[2] Section 9

Insert after section 8A:

9 Continuation of intoxicated and disorderly behaviour following move on direction

- (1) A person who:
- (a) is given a move on direction for being intoxicated and disorderly in a public place, and
 - (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,

is guilty of an offence.

Maximum penalty: 6 penalty units.

- (2) For the purposes of this section, 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*, to leave a public place and not return for a specified period.

Note. The maximum period for which a person can be directed not to return to a public place is 6 hours.

It is a requirement under section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002* 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.

- (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.
- (4) A person cannot be proceeded against or convicted for both an offence against this section and an offence against section 199 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (Failure to comply with direction) in relation to the same conduct.

- (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.
- (6) For the purposes of this section, 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.

[3] Section 36

Insert after section 35:

36 Report by Ombudsman on section 9

- (1) As soon as practicable after the end of the period of 12 months from the commencement of section 9 (as inserted by the *Summary Offences Amendment (Intoxicated and Disorderly Conduct) Act 2011*), the Ombudsman must prepare a report on:
 - (a) the operation of section 9, and
 - (b) the issue of penalty notices in respect of offences against section 9.
- (2) For that purpose, the Commissioner of Police is to ensure that the Ombudsman is provided with information about:
 - (a) any prosecutions brought under section 9, and
 - (b) the issue of penalty notices in respect of offences against section 9.
- (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.
- (4) The Ombudsman must furnish a copy of the report to the Attorney General and to the Commissioner of Police.
- (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.
- (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.

- (7) The report:
- (a) is, on presentation and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

[4] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

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[4] Section 206 Detention of intoxicated persons

Insert after section 206 (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 *Summary Offences Act 1988* if the detention is not for the purpose of taking proceedings for the offence.

Note. Section 9 of the *Summary Offences Act 1988* 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.

[Agreement in principle speech made in Legislative Assembly on 22 June 2011
Second reading speech made in Legislative Council on 4 August 2011]

BY AUTHORITY