

Passed by both Houses



New South Wales

Intoxicated Persons (Sobering Up Centres Trial) Bill 2013

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2013

Clerk of the Parliaments



New South Wales

Intoxicated Persons (Sobering Up Centres Trial) Bill 2013

Act No , 2013

An Act to facilitate a trial of sobering up centres for intoxicated persons; and for related purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Intoxicated Persons (Sobering Up Centres Trial) Act 2013*.

2 Commencement

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

3 Object of Act

- (1) The object of this Act is to promote the safety of public places and public amenity by facilitating a trial of a scheme to reduce alcohol-related violence and other anti-social behaviour.
- (2) The trial scheme authorises the detention or care (or both) of certain intoxicated persons for a temporary period at sobering up centres to enable those persons to return to a state of sobriety.
- (3) The trial scheme is not intended to facilitate the detention or care at sobering up centres of vulnerable persons who require services other than those to be provided at the centres.

4 Definitions

- (1) In this Act:

accredited sobering up centre means a sobering up centre identified in an accreditation granted under Part 3.

approved means approved by the Director-General.

authorised officer means:

- (a) in relation to the Sydney City sobering up centre—a police officer, or
- (b) in relation to an accredited sobering up centre—a member of staff of the sobering up centre appointed by the person accredited to operate the centre as an authorised officer for the centre.

authorised sobering up centre means:

- (a) the Sydney City sobering up centre, or
- (b) an accredited sobering up centre.

catchment area, for an authorised sobering up centre, means the geographical area specified for the sobering up centre in the regulations.

cost recovery charge—see section 17.

Director-General means the Director-General of the Department of Family and Community Services.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

health assessment officer means a person engaged at an authorised sobering up centre who is:

- (a) a registered medical practitioner, or
- (b) a registered nurse, or
- (c) in relation to the Sydney City sobering up centre, a registered health practitioner (within the meaning of the *Health Practitioner Regulation National Law*) of a class prescribed by the regulations, or
- (d) in relation to an accredited sobering up centre, a person with first aid, drug and alcohol treatment or health skills or qualifications of a class prescribed by the regulations.

intoxicated person—see subsection (2).

premises includes any building, structure, vehicle or vessel and any place, whether built on or not.

public place includes a school.

responsible person includes any person who is capable of taking care of an intoxicated person including:

- (a) a friend or family member, or
- (b) an official or member of staff of a government or non-government organisation or facility providing welfare or alcohol or other drug rehabilitation services.

school has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

sobering up centre means premises used for the purposes of this Act as a place of detention or care or both for a temporary period to enable intoxicated persons to return to a state of sobriety.

Sydney City sobering up centre means the sobering up centre operated by the NSW Police Force located at the Central Local Court cell complex or such other place as may be prescribed by the regulations.

- (2) For the purposes of this Act, a person is an **intoxicated person** if:
 - (a) the person is of or above 18 years of age, and
 - (b) the person's speech, balance, co-ordination or behaviour is noticeably affected, and
 - (c) 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.

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Part 1 Preliminary

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

Part 2 Detention and transport of intoxicated persons to sobering up centres

Division 1 Detention in catchment area

5 Detention of intoxicated persons in Sydney City sobering up centre catchment area

(1) A police officer may detain an intoxicated person found in a public place in a catchment area for the Sydney City sobering up centre:

(a) if the person:

- (i) has refused or failed to comply with a move on direction, and
- (ii) persists in engaging in the relevant conduct that gave rise to the direction or any other relevant conduct, or

Note. Paragraph (a) substantially mirrors section 199 of the *Law Enforcement (Powers and Responsibilities) Act 2002*. That section makes it an offence to refuse or fail to comply with a move on direction without a reasonable excuse. A person is not guilty of that offence unless it is established that the person persisted, after the direction was given, to engage in the relevant conduct that gave rise to the direction or any other relevant conduct.

(b) if the person is:

- (i) behaving in a disorderly manner or in a manner likely to cause injury to the person or another person or damage to property, or
- (ii) in need of physical protection because the person is intoxicated.

Note. Paragraph (b) sets out the same criteria as are specified in section 206 of the *Law Enforcement (Powers and Responsibilities) Act 2002* that provides for the detention of intoxicated persons.

(2) An intoxicated person detained by a police officer under this section is to be taken directly to the Sydney City sobering up centre.

(3) In this section:

move on direction means 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.

relevant conduct has the same meaning as in Part 14 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

6 Detention of intoxicated persons in accredited sobering up centre catchment areas

- (1) A police officer may detain an intoxicated person found in a public place in a catchment area for an accredited sobering up centre:
 - (a) if the police officer believes that the person is a public nuisance, or
 - (b) if the person is in need of physical protection because the person is intoxicated, or
 - (c) in such other circumstances as may be prescribed by the regulations.
- (2) An intoxicated person detained by a police officer under this section is to be taken directly to the accredited sobering up centre for the catchment area.
- (3) In this section, a person is a *public nuisance* if the person is behaving in an offensive or disorderly manner and the person's behaviour is interfering, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.

7 Person not to be detained for behaviour that constitutes an offence

A police officer is not to detain a person under this Division because of behaviour that constitutes an offence under any law, other than if the behaviour constitutes an offence under:

- (a) section 8, or
- (b) section 9 of the *Summary Offences Act 1988*, or
- (c) section 199 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

8 Power to require identity to be disclosed

- (1) A police officer may require a person detained under this Division to disclose his or her identity.
- (2) A police officer may request a person who is required under this section to disclose his or her identity to provide proof of that identity. It is not an offence to fail to comply with any such request.
- (3) A person who is required by a police officer in accordance with this section to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the requirement.
Maximum penalty: 2 penalty units.

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- (4) A person must not, without reasonable excuse, in response to a requirement made by a police officer in accordance with this section:
- (a) give a name that is false in a material particular, or
 - (b) give an address other than the person's full and correct address.
- Maximum penalty: 2 penalty units.

9 Intoxicated persons may be detained under reasonable restraint

An intoxicated person detained under this Division may be detained under such reasonable restraint as is necessary to protect the intoxicated person and other persons from injury and property from damage.

10 Supplying police officer's details and giving warnings

Section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002* extends to:

- (a) a power in section 5 (1) or 6 (1) as if it were a power to detain a person under that Act, and
- (b) the power in section 8 (1) as if it were a power to request a person to disclose his or her identity under that Act.

Note. Section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002* sets out safeguards relating to the exercise of certain police powers.

Division 2 Admission to sobering up centre

11 Admission of persons to sobering up centres

- (1) As soon as is practicable after arriving at an authorised sobering up centre, an intoxicated person must be informed that:
- (a) in relation to the Sydney City sobering up centre:
 - (i) admission to the centre is compulsory, and
 - (ii) the person and the person's belongings will be searched on entry to the centre, and
 - (iii) the person will be detained at the centre for a period of not less than 4 hours but not more than 8 hours, unless the person ceases to be an intoxicated person or can be released into the care of a responsible person willing to undertake the care of the intoxicated person, and
 - (iv) the person will be required to pay a cost recovery charge, and
 - (b) in relation to an accredited sobering up centre:
 - (i) admission to the centre is voluntary, and
 - (ii) if the person chooses to seek admission to the centre, the person must consent to being assessed by a health

assessment officer and to being monitored by the staff of the centre, and

- (iii) if admitted to the centre, the person may leave the centre at any time and the person will be given a reasonable opportunity to contact a responsible person to come to the centre to assist the person's departure.
- (2) The intoxicated person is to be given such other information as may be specified by the regulations.
 - (3) Before being admitted to an authorised sobering up centre, an intoxicated person must:
 - (a) in relation to an accredited sobering up centre—consent to being assessed by a health assessment officer and to being monitored by the staff of the centre, and
 - (b) be assessed by a health assessment officer to determine whether there are any apparent health reasons to refuse admission to the centre, and
 - (c) be searched in accordance with this section.
 - (4) An assessment of a person by a health assessment officer, and the monitoring of a person by an authorised officer, at an authorised sobering up centre is, for all purposes, taken to have been carried out with the consent of the person.
 - (5) A police officer by whom an intoxicated person is detained under this Part or an authorised officer at an authorised sobering up centre may search the intoxicated person and the person's belongings and may take possession of any personal belongings found in the person's possession.
 - (6) If the health assessment officer determines that there are health reasons to refuse the intoxicated person admission to the centre, the person must not be admitted to the centre.
 - (7) The person in charge of an accredited sobering up centre is to refuse admission of an intoxicated person for the following reasons:
 - (a) the capacity of the centre under its accreditation has been reached,
 - (b) the intoxicated person is behaving or is likely to behave so violently that the staff of the centre would not be capable of taking care of and controlling the intoxicated person,
 - (c) any other reason prescribed by the regulations.

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- (8) On being admitted to an authorised sobering up centre, the intoxicated person:
- (a) in relation to the Sydney City sobering up centre, is to be transferred into the custody of the person in charge of that centre, and
 - (b) in relation to an accredited sobering up centre, is to be released into the care of the person in charge of that centre.
- (9) A person is entitled to the return of the personal belongings taken from the person under this section when the person ceases to be detained or cared for under this Act.

12 Detention of persons in Sydney City sobering up centre

- (1) A person who has been admitted to the Sydney City sobering up centre may be detained there by an authorised officer.
- (2) The person:
- (a) must be given a reasonable opportunity by the person in charge of that centre to contact a responsible person, and
 - (b) must, as far as is reasonably practicable, be kept separately from any person detained at that centre in connection with the commission or alleged commission of an offence, and
 - (c) must be provided with food, drink, bedding and blankets appropriate to the person's needs.
- (3) The person may be detained by an authorised officer under such reasonable restraint as is necessary to protect the person and other persons from injury and property from damage.

13 Release from Sydney City sobering up centre

- (1) A person who has been admitted to the Sydney City sobering up centre is to be released from the centre if:
- (a) the person in charge of the centre is satisfied that the person has ceased to be an intoxicated person, or
 - (b) a responsible person present at the centre is willing to accept the care of the intoxicated person and take the person to a residence or other safe place.
- (2) The person in charge of the Sydney City sobering up centre, as soon as is practicable after a period of 4 hours has elapsed since a person was admitted to the centre, must:
- (a) arrange for the person to be assessed by a health assessment officer, and

- (b) consult with that health assessment officer regarding that assessment, and
 - (c) release the person unless the person in charge believes that it is not safe to do so for health reasons or any other reason.
- (3) The person in charge of the Sydney City sobering up centre is not to permit a person admitted to the centre to remain in the centre for a period that exceeds 8 hours.

14 Care of persons in accredited sobering up centres

An intoxicated person who is admitted to an accredited sobering up centre:

- (a) must be given a reasonable opportunity by the person in charge of that centre to contact a responsible person, and
- (b) must be provided with food, drink, bedding and blankets appropriate to the person's needs.

15 Departure from accredited sobering up centre

- (1) A person who has been admitted to an accredited sobering up centre may leave the accredited sobering up centre at any time.
- (2) The person in charge of an accredited sobering up centre must use his or her best endeavours to ensure that a person admitted to the centre is assessed by a health assessment officer before leaving the centre.
- (3) If a person who has been admitted to an accredited sobering up centre seeks to leave the centre (other than in the company of a responsible person) and the person in charge of the centre is of the opinion that:
 - (a) if the person leaves the centre at that time, there is a significant risk of harm to the person or other persons because of the person's intoxication, or
 - (b) a health assessment officer is not able to examine the person because of the person's refusal to co-operate,the person in charge must ensure that a police officer is contacted and informed of those facts.
- (4) The person in charge of an accredited sobering up centre:
 - (a) may at any time direct a person who has been admitted to the centre to leave the centre, and
 - (b) must, in the circumstance prescribed by the regulations, direct such a person to leave the centre.
- (5) The person in charge of an accredited sobering up centre must, as soon as is practicable after a period of 4 hours has elapsed since a person was

admitted to the centre, arrange for the person to be assessed by a health assessment officer.

- (6) The person in charge of an accredited sobering up centre is not to permit a person admitted to the centre to remain in the centre for a period that exceeds 8 hours.
- (7) On departure from an accredited sobering up centre, a person ceases to be in the care of the person in charge of the centre.

16 Persons admitted to sobering up centres to be regularly monitored

- (1) The person in charge of an authorised sobering up centre must ensure that each person admitted to the centre is regularly monitored.
- (2) If, at any time, the person in charge of an authorised sobering up centre, a health assessment officer or an authorised officer believes that a person who has been taken to an authorised sobering up centre by a police officer or who has been admitted to a centre is in need of urgent medical treatment, the person in charge, health assessment officer or authorised officer is to make arrangements to transport the person to a hospital.

Division 3 Cost recovery charge

17 Cost recovery charge

- (1) A person who has been admitted to the Sydney City sobering up centre must pay the cost recovery charge specified by the regulations.
- (2) The regulations may make provision for or with respect to:
 - (a) the person or body to whom the cost recovery charge is to be paid, and
 - (b) the manner in which that payment is to be made, and
 - (c) the time within which that payment must be made.

18 Enforcement of unpaid cost recovery charges

- (1) A cost recovery charge is taken to be a fine imposed by a court for the purposes of the *Fines Act 1996*.
- (2) Part 4 of the *Fines Act 1996* applies to the enforcement of such a cost recovery charge with such modifications as are specified in the regulations.
- (3) However, Divisions 3 (Driver licence or vehicle registration suspension or cancellation) and 6 (Imprisonment) of Part 4 of that Act do not apply in relation to the enforcement of a cost recovery charge.

19 Application to Local Court to waive or reduce cost recovery charge

- (1) A person may apply to the Local Court to have a cost recovery charge waived or reduced.
- (2) The application is to be lodged within 28 days after the person was admitted to the Sydney City sobering up centre.
- (3) The Commissioner of Police is to be the respondent in the application.
- (4) The Local Court may determine an application by:
 - (a) confirming the imposition of the cost recovery charge, or
 - (b) reducing the charge, or
 - (c) waiving the charge.
- (5) The Local Court, in determining the application, is to have regard to the following:
 - (a) the applicant's remorse (if any),
 - (b) the hardship that payment of the cost recovery charge would impose on the applicant (if any),
 - (c) any attendance by the applicant at a drug or alcohol treatment program,
 - (d) any other matter prescribed by the regulations.
- (6) An application under this section does not permit a review of the circumstances or lawfulness of the detention that gave rise to the imposition of the cost recovery charge.
- (7) A person who has applied to the Local Court under this section may not apply to the Hardship Review Board under section 101B (1) (c) of the *Fines Act 1996* for review of a decision by the State Debt Recovery Office with respect to the writing off or the failure to write off, the whole or part of, the cost recovery charge.

Part 3 Accreditation of sobering up centres

20 Applications

- (1) A person may apply to the Director-General for accreditation to operate a sobering up centre.
- (2) An application for accreditation must:
 - (a) be in the approved form and manner, and
 - (b) be accompanied by the fee prescribed by the regulations and such other information and particulars as may be prescribed by the regulations.

21 Determination of application

- (1) The Director-General may, after considering an application for accreditation, grant the accreditation or refuse to grant the accreditation.
- (2) An accreditation may be granted unconditionally or subject to conditions.
- (3) As soon as practicable after the Director-General determines an application, the Director-General must serve the applicant with a notice stating whether the accreditation has been granted and, if it has been refused, the reasons for the refusal.

22 Variation of conditions of accreditation

- (1) The Director-General may, by notice served on the accredited person, vary an accreditation (including any conditions of the accreditation imposed by the Director-General).
- (2) A variation includes the imposition of new conditions on an accreditation, the substitution of a condition, or the omission or amendment of a condition.

23 Suspension or cancellation of accreditation

- (1) The Director-General may suspend or cancel an accreditation under this Part as provided by this section.
- (2) The Director-General may suspend or cancel an accreditation:
 - (a) if the Director-General is of the opinion that the accredited person has contravened any provision of this Act or the regulations, or
 - (b) if the Director-General is of the opinion that it is no longer in the public interest for the accreditation to remain in force, or
 - (c) on any other grounds specified in the regulations.

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- (3) A suspension or cancellation of an accreditation:
 - (a) must be made by notice in writing served on the accredited person, and
 - (b) takes effect when the notice is served or at a later time specified in the notice.

Part 4 Miscellaneous

24 Application of Environmental Planning and Assessment Act 1979

- (1) This section applies only to the first 2 accredited sobering up centres accredited under this Act.
- (2) Development for the purposes of an authorised sobering up centre to which this section applies is permissible without the need for development consent under the *Environmental Planning and Assessment Act 1979*.
- (3) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of development for the purposes of an authorised sobering up centre to which this section applies.
- (4) Immediately before the expiry of this Act the authority conferred by this section on the carrying out of development ceases.
- (5) Development for the purposes of an authorised sobering up centre to which this section applies does not give rise to any existing use rights within the meaning of Division 10 of Part 4 of the *Environmental Planning and Assessment Act 1979*.
- (6) It is a condition of each accreditation granted under Part 3 that:
 - (a) any building work that is carried out for the purposes of the sobering up centre will be carried out in accordance with the *Building Code of Australia*, and
 - (b) any building that is used for the purposes of the sobering up centre will comply with the *Building Code of Australia*.
- (7) In this section, **building**, **Building Code of Australia** and **building work** have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

25 Police officers and others not liable for certain acts or omissions

No action lies against any police officer, any authorised officer, any health assessment officer or any other person in respect of anything done or omitted to be done by the police officer, authorised officer, health assessment officer or any such other person in good faith in the execution or purported execution of this Act.

26 Exchange of information

- (1) A relevant agency may enter into an arrangement with another relevant agency (***an information sharing arrangement***) for the purposes of sharing or exchanging any information that is held by either agency.

- (2) The information to which an information sharing arrangement may relate is limited to the following:
- (a) health or personal information concerning an intoxicated person who is being assessed for admission, or who has been admitted, into an authorised sobering up centre, reasonably necessary for the following:
 - (i) the exercise of functions under this Act (or under regulations made for the purposes of this Act),
 - (ii) the evaluation of the operation and effectiveness of authorised sobering up centres,
 - (b) any other information that may be prescribed by the regulations.
- (3) The Minister is not to recommend the making of a regulation under subsection (2) (b) or (5) (g) unless the Minister certifies that the Privacy Commissioner has been consulted on the proposed regulation.
- (4) Under an information sharing arrangement, a relevant agency is, despite any other Act or law of the State, authorised:
- (a) to request, receive and use information that is held by another relevant agency that is party to the arrangement, and
 - (b) to disclose that information to the other relevant agency.
- (5) In this section:
- relevant agency** means any of the following:
- (a) NSW Police Force,
 - (b) any person accredited to operate a sobering up centre,
 - (c) the Department of Family and Community Services,
 - (d) the Ministry of Health,
 - (e) a local health district or statutory health corporation (within the meaning of the *Health Services Act 1997*),
 - (f) a person or body designated by the Director-General to evaluate the operation and effectiveness of authorised sobering up centres,
 - (g) any other person or body (or a person or body belonging to a class) that is prescribed by, or approved in accordance with, the regulations.

27 Relationship with other laws

Nothing in this Act limits a police officer from detaining an intoxicated person under section 206 of the *Law Enforcement (Powers and Responsibilities) Act 2002* and dealing with the person in accordance with that Act.

28 Regulations

- (1) 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.
- (2) Without limiting subsection (1), regulations may be made that deal with the following:
 - (a) the cost recovery charge,
 - (b) conditions to be observed by persons being admitted to sobering up centres, including but not limited to:
 - (i) requiring such persons to change clothes, and
 - (ii) permitting the person's belongings to be taken for safekeeping,
 - (c) conditions of accreditation, including conditions relating to the following:
 - (i) standards for sobering up centres, including the elaboration of internal management protocols for centres,
 - (ii) location of sobering up centres,
 - (iii) functions of staff engaged at sobering up centres,
 - (iv) qualifications of staff engaged at sobering up centres,
 - (d) the public and community consultation processes to be undertaken with respect to the operation of sobering up centres,
 - (e) applications to the Local Court for waivers or reductions in cost recovery charges,
 - (f) records to be made and kept for the purposes of this Act, including inspection of any such records,
 - (g) the evaluation of the operation and effectiveness of authorised sobering up centres.

29 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

30 Repeal of Act

This Act is repealed on 1 July 2014 or such later date as is prescribed by the regulations.

31 Review of Act

- (1) If the repeal of this Act is postponed by a regulation under section 30 to a date after 1 July 2016, the Minister is to review this Act to determine

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Part 4 Miscellaneous

whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after 1 July 2016.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after 1 July 2016.

Schedule 1 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.