

South Australia

Public Intoxication Act 1984

An Act to provide for the apprehension and care of persons found in a public place under the influence of a drug; and to provide for other incidental matters.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Public Intoxication Act 1984*.

2—Objects and guiding principles

- (1) The object of this Act is—
 - (a) to promote the minimisation of harm that may befall a person in a public place as a result of a person's intoxication; and
 - (b) for that purpose, to confer appropriately limited powers—

- (i) to remove an intoxicated person from a public place in which the person is vulnerable or may become a threat; and
 - (ii) to take the person to a place of safety until the person is recovered.
- (2) In the performance of their functions under this Act, the Minister, police officers, authorised officers and other persons or bodies involved in the administration of this Act are to be guided by the following principles:
 - (a) primary concern is to be given to the health and well-being of a person apprehended under this Act;
 - (b) a person detained under this Act should, where practicable, be detained in a place other than a police station.

4—Interpretation

In this Act, unless the contrary intention appears:

authorised officer means a person appointed as an authorised officer for the purposes of this Act;

child means a person under the age of 18 years;

close personal relationship means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include—

- (a) the relationship between a legally married couple; or
- (b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind;

Note—

Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

domestic partner—a person is the domestic partner of another if the person lives with the other in a close personal relationship;

drug includes alcohol or any other substance that is capable (either alone or in combination with other substances) of influencing mental functioning;

officer in charge, in relation to a police station, means the police officer for the time being in charge of the police station;

person in charge, in relation to a sobering-up centre, means the person for the time being in charge of the sobering-up centre;

public place includes—

- (a) a place to which free access is permitted to the public, with the express or tacit consent of the owner or occupier of that place; and
- (b) a place to which the public are admitted on payment of money, the test of admittance being the payment of money only; and
- (c) a road, street, footway, court, alley or thoroughfare which the public are allowed to use, despite the fact that the road, street, footway, court, alley or thoroughfare is on private property;

relative, in relation to a person, means father, mother, stepfather, stepmother, guardian, spouse, domestic partner, son, daughter, grandparent, grandchild, brother, sister, stepbrother or stepsister of that person, or brother or sister of a parent of that person;

responsible officer, in relation to a police station, means—

- (a) the officer in charge of the police station; or
- (b) if a police officer has, for the time being, been designated by the officer in charge of the police station as the officer with responsibility for persons accepted into custody at the police station—that officer;

sobering-up centre means premises declared to be a sobering-up centre for the purposes of this Act;

spouse—a person is the spouse of another if they are legally married.

5—Administrative provisions

- (1) The Governor may, by proclamation, declare premises that have facilities for the care and treatment of persons under the influence of a drug to be a sobering-up centre for the purposes of this Act.
- (2) The Governor may, by proclamation, vary or revoke any proclamation under this section.
- (3) The Minister may, by instrument in writing, appoint such number of persons to be authorised officers for the purposes of this Act as the Minister thinks necessary or desirable for the proper administration of this Act.

6—Application of Act

This Act applies in relation to any person, whether child or adult.

Part 2—Apprehension and care of persons under the influence of a drug

7—Apprehension of intoxicated persons

- (1) If a police officer or an authorised officer has reasonable grounds to believe that—
 - (a) a person who is in a public place is under the influence of a drug; and
 - (b) by reason of that fact, the person is unable to take proper care of himself or herself,the police officer or authorised officer may apprehend that person.
- (2) The police officer or authorised officer—
 - (a) may exercise such force as is reasonably necessary to apprehend a person under this section; and
 - (b) may search the person apprehended for the purpose of removing any object that may be a danger to that person or to others and remove and take custody of any such object and any valuable object found on that person.

- (3) If a police officer or an authorised officer has apprehended a person under subsection (1), the officer must take that person as soon as reasonably practicable—
- (a) to the place of residence, if any, at which the apprehended person is permanently or temporarily residing and there release the person from custody; or
 - (b) to a place for the time being approved by the Minister for the purposes of this paragraph and there release the person from custody; or
 - (c) to a police station; or
 - (d) to a sobering-up centre for admission as a patient.
- (4) If a person apprehended under this section is taken to a police station, the responsible officer for the police station may detain the person and give such directions to that person as are reasonably necessary for that purpose but must, before the expiration of the period of 12 hours from the time of apprehension—
- (a) discharge the person if the person has, in the opinion of the responsible officer, so recovered from the effects of the drug as to be able to take care of himself or herself; or
 - (b) if not, cause the person to be transferred to a sobering-up centre for admission as a patient.
- (5) If a person apprehended under this section is taken to a sobering-up centre and admitted as a patient, the person may be detained at the centre by the person in charge of the centre but must be discharged—
- (a) if the person has, in the opinion of the person in charge, so recovered from the effects of the drug as to be able to take care of himself or herself; or
 - (b) in any case, before the expiration of the period of 18 hours from the time of apprehension of the person.
- (6) If a person apprehended under this section is taken to a police station and detained there, or is taken to a sobering-up centre and admitted as a patient, any object removed from the apprehended person must be returned to the person on, or before, the person's discharge except where the person indicates that the person does not desire the return of any such object.
- (7) If a child is detained under this section, the person by whom the child is detained must, as soon as practicable after the commencement of the detention, notify a parent or other guardian of the child that the child has been so detained, unless—
- (a) the whereabouts of every such parent or guardian is, after reasonable enquiries, unknown; or
 - (b) it is not, in the circumstances of the case, reasonably practicable to give such a notification.
- (8) If a person (including a child) is detained under this section, the officer by whom the person is detained must allow the person a reasonable opportunity to communicate with a solicitor, relative or friend.

- (9) Despite any other provision of this section, if—
- (a) a solicitor acting on behalf of a person detained in a police station under this section, or a relative or friend of a person so detained, requests that the person be discharged into the care of the solicitor, relative or friend; and
 - (b) the responsible officer for the police station is satisfied that the solicitor, relative or friend is able and willing to care properly for that person,
- that person must be discharged into the care of the solicitor, relative or friend.
- (10) If a child is detained in a police station under this section, the responsible officer for the station must take such steps as are reasonably practicable to keep the child from coming into contact with any adult person detained in the station.
- (11) Nothing in this section prevents a responsible officer for a police station or a person in charge of a sobering-up centre from discharging at any time a person detained under this section for the purpose of receiving medical attention or treatment.

8—Application for declaration

- (1) A person may, before the expiration of 30 days of being discharged from a police station or a sobering-up centre, apply to the Magistrates Court for a declaration that, at the time the person was being detained under this Part, the person was not under the influence of a drug.
- (2) If the Court is satisfied that the applicant was not under the influence of a drug at the time he or she was detained, the Court may make a declaration accordingly.
- (3) In any proceedings under this section, the person by whom the applicant was detained, and the person by whom the applicant was apprehended, are entitled to appear.
- (4) A declaration made under this section in relation to the detention of a person does not establish that the detention was unlawful.

9—Transfer of persons detained in sobering-up centres

A person detained in a sobering-up centre under this Part may be transferred to another sobering-up centre during the course of the detention if the persons in charge of the centres mutually agree to the transfer.

Part 3—Miscellaneous

10—Custody of persons detained

- (1) A person who has been detained will, until discharged in accordance with this Act, be taken to be in lawful custody—
 - (a) while kept in the police station or sobering-up centre under this Act; or
 - (b) while in the custody of a person in whose charge the person is placed by the responsible officer for the police station, or by the person in charge of the sobering-up centre, as the case may be.
- (2) If a police officer or an authorised officer has reasonable cause to believe that a person detained under this Act has escaped from lawful custody, the officer may apprehend the person at any time without warrant and return the person to the place in which the person was being detained.

11—Offence of ill-treating or neglecting persons detained

- (1) A person having the oversight, care or control of a person detained under this Act who ill-treats or wilfully neglects that person is guilty of an offence.

Maximum penalty: \$2 000 or imprisonment for 1 year.

- (2) Nothing in subsection (1) affects or prejudices the operation of any other Act or law in relation to a person who commits an offence against that subsection.

12—Offence to remove or aid escape of detained person

A person who, without lawful excuse—

- (a) removes a person detained under this Act from the place in which the person is being detained, or from the lawful custody of another person; or

- (b) aids a person so detained to escape from that place or that custody,

is guilty of an offence.

Maximum penalty: \$2 000 or imprisonment for 1 year.

13—Immunity relating to official powers or functions

- (1) Subject to this Act, no civil liability attaches to an authorised officer for an act or omission in the exercise or purported exercise of official powers or functions.
- (2) An action that would, but for subsection (1), lie against a person lies instead against the Crown.
- (3) This section does not prejudice rights of action of the Crown in respect of an act or omission of a person not in good faith.

15—Regulations

The Governor may make such regulations as are contemplated by, or are necessary or expedient for the purposes of, this Act.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *Public Intoxication Act 1984* repealed the following:

Alcohol and Drug Addicts (Treatment) Act 1961

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1984	47	<i>Public Intoxication Act 1984</i>	24.5.1984	3.9.1984 (<i>Gazette 30.8.1984 p694</i>)
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 70 (s 180)—1.6.2007 (<i>Gazette 26.4.2007 p1352</i>)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 127 (s 289)—1.2.2010 (<i>Gazette 28.1.2010 p320</i>)
2013	49	<i>Statutes Amendment (Police) Act 2013</i>	24.10.2013	Pt 4 (ss 20—22)—1.9.2014 (<i>Gazette 26.6.2014 p3021</i>)
2016	51	<i>Public Intoxication (Review Recommendations) Amendment Act 2016</i>	10.11.2016	1.3.2017 (<i>Gazette 28.2.2017 p692</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
	amended by 51/2016 s 4	1.3.2017
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 2	inserted by 51/2016 s 5	1.3.2017
s 3 before deletion by 51/2016		

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<i>s 3(1)</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3	deleted by 51/2016 s 5	1.3.2017
s 4		
child	amended by 51/2016 Sch 1	1.3.2017
close personal relationship	inserted by 43/2006 s 180(1)	1.6.2007
domestic partner	inserted by 43/2006 s 180(1)	1.6.2007
	amended by 51/2016 Sch 1	1.3.2017
drug	substituted by 51/2016 s 6(1)	1.3.2017
officer in charge	amended by 49/2013 s 20(1)	1.9.2014
public place	inserted by 51/2016 s 6(2)	1.3.2017
relative	amended by 43/2006 s 180(2)	1.6.2007
responsible officer	inserted by 49/2013 s 20(2)	1.9.2014
spouse	substituted by 43/2006 s 180(3)	1.6.2007
s 5		
s 5(1)	substituted by 51/2016 s 7	1.3.2017
s 5(3)	amended by 51/2016 Sch 1	1.3.2017
Pt 2		
heading	amended by 51/2016 s 8	1.3.2017
s 7		
s 7(1)	amended by 49/2013 s 21(1)	1.9.2014
	substituted by 51/2016 s 9(1)	1.3.2017
s 7(2)	amended by 49/2013 s 21(2)	1.9.2014
s 7(3)	amended by 49/2013 s 21(3)	1.9.2014
	substituted by 51/2016 Sch 1	1.3.2017
s 7(4)	amended by 49/2013 s 21(4), (5)	1.9.2014
	substituted by 51/2016 s 9(2)	1.3.2017
s 7(5)	substituted by 51/2016 s 9(2)	1.3.2017
s 7(6)—(8)	amended by 51/2016 Sch 1	1.3.2017
s 7(9)	amended by 49/2013 s 21(6)	1.9.2014
	amended by 51/2016 Sch 1	1.3.2017
s 7(10)	amended by 49/2013 s 21(7)	1.9.2014
	amended by 51/2016 Sch 1	1.3.2017
s 7(11)	amended by 49/2013 s 21(8)	1.9.2014
	amended by 51/2016 Sch 1	1.3.2017
s 8		
s 8(1) and (2)	substituted by 51/2016 s 10	1.3.2017
s 8(3)	amended by 51/2016 Sch 1	1.3.2017
s 9	amended by 51/2016 Sch 1	1.3.2017
Pt 3		
<i>s 10 before substitution by 51/2016</i>		

<i>s 10(1)</i>	<i>amended by 49/2013 s 22(1)</i>	<i>1.9.2014</i>
<i>s 10(2)</i>	<i>amended by 49/2013 s 22(2)</i>	<i>1.9.2014</i>
s 10	substituted by 51/2016 Sch 1	1.3.2017
s 11		
s 11(1)	amended by 51/2016 Sch 1	1.3.2017
s 12	substituted by 51/2016 Sch 1	1.3.2017
<i>s 13</i>	<i>deleted by 84/2009 s 289</i>	<i>1.2.2010</i>
s 13	inserted by 51/2016 s 11	1.3.2017
<i>s 14</i>	<i>deleted by 51/2016 s 11</i>	<i>1.3.2017</i>

Historical versions

1.6.2007

1.2.2010

1.9.2014