

South Australia

Public Intoxication (Review Recommendations) Amendment Act 2016

An Act to amend the *Public Intoxication Act 1984*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Public Intoxication (Review Recommendations) Amendment Act 2016*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Public Intoxication Act 1984*

4—Amendment of long title

Long title—delete "or alcohol"

5—Substitution of section 3

Section 3—delete the section and substitute:

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.

6—Amendment of section 4—Interpretation

- (1) Section 4, definition of *drug*—delete the definition and substitute:

drug includes alcohol or any other substance that is capable (either alone or in combination with other substances) of influencing mental functioning;
- (2) Section 4—after the definition of *person in charge* insert:

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;

7—Amendment of section 5—Administrative provisions

Section 5(1)—delete subsection (1) and substitute:

- (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.

8—Amendment of heading to Part 2

Heading to Part 2—delete "**or alcohol**"

9—Amendment of section 7—Apprehension of intoxicated persons

(1) Section 7(1)—delete subsection (1) and substitute:

- (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) Section 7(4) and (5)—delete subsections (4) and (5) and substitute:

- (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.

10—Amendment of section 8—Application for declaration

Section 8(1) and (2)—delete subsections (1) and (2) and substitute:

- (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.

11—Substitution of section 14

Section 14—delete the section and substitute:

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.

Schedule 1—Statute law revision amendments

Provision amended	How amended
Section 4, definition of <i>child</i>	Delete "eighteen" and substitute: 18
Section 4, definition of <i>domestic partner</i>	Delete "he or she" and substitute: the person
Section 5(3)	Delete "he" and substitute: the Minister

Provision amended	How amended
Section 7(3)	Delete subsection (3) and substitute: <ul style="list-style-type: none">(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—<ul style="list-style-type: none">(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.
Section 7(6)	Delete "Where" and substitute: <p style="text-align: center;">If</p>
Section 7(6)	Delete "and taken into custody pursuant to subsection (2) shall be returned to the person on, or before, his discharge except where he indicates that he" and substitute: <p style="text-align: center;">must be returned to the person on, or before, the person's discharge except where the person indicates that the person</p>
Section 7(7)	Delete "Where a child is detained pursuant to" and substitute: <p style="text-align: center;">If a child is detained under</p>
Section 7(7)	Section 7(7)—delete "he is detained shall" and substitute: <p style="text-align: center;">the child is detained must</p>
Section 7(8)	Delete "Where" and substitute: <p style="text-align: center;">If</p>
Section 7(8)	Delete "pursuant to this section, the person by whom he is detained shall allow him" and substitute: <p style="text-align: center;">under this section, the officer by whom the person is detained must allow the person</p>
Section 7(9)	Delete "Notwithstanding" and substitute: <p style="text-align: center;">Despite</p>
Section 7(9)(a)	Delete "pursuant to" and substitute: <p style="text-align: center;">under</p>
Section 7(9)(a)	Delete "he" and substitute: <p style="text-align: center;">the person</p>

Provision amended	How amended
Section 7(9)	Delete "shall" and substitute: must
Section 7(10)	Delete "Where" and substitute: If
Section 7(10)	Delete "pursuant to" and substitute: under
Section 7(10)	Delete "shall" and substitute: must
Section 7(11)	Delete "pursuant to" and substitute: under
Section 8(3)	Delete "shall be" and substitute: are
Section 9	Delete "pursuant to" and substitute: under
Section 9	Delete "his" and substitute: the
Section 10	Delete the section and substitute:

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.
- Section 11(1) Delete "pursuant to this Act who ill-treats or wilfully neglects that person shall be" and substitute:
under this Act who ill-treats or wilfully neglects that person is

Provision amended

How amended

Section 12

Delete the section and substitute:

**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.