

Public Drunkenness (Decriminalisation) Bill

No.

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By Authority L. V. North, Government Printer Melbourne

LEGISLATIVE ASSEMBLY

Read 1° 28 November 1990

(Brought in by Mr Kennan and Mr Roper)

A BILL

to amend the **Summary Offences Act 1966** so as to repeal offences relating to drunkenness in public places, to provide for the apprehension and care of people found in public places under the influence of alcohol or a drug and for other purposes.

Public Drunkenness (Decriminalisation) Act 1990

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The purposes of this Act are—

- 5 (a) to repeal offences relating to drunkenness in public places; and
- (b) to provide for the apprehension and care of people found in public places under the influence of alcohol or a drug.

Section headings appear in bold italics and are not part of the Act (see **Interpretation of Legislation Act 1984**).

2. Commencement

This Act comes into operation on a day or days to be proclaimed.

3. Definitions

In this Act— 5

“**Authorised person**”, in relation to any provision of this Act, means a person appointed under section 14 as an authorised person for the purposes of that provision.

“**Drug**” means any drug of dependence as defined in section 4 (1) of the **Drugs, Poisons and Controlled Substances Act 1981**. 10

“**Police gaol**” has the same meaning as in the **Corrections Act 1986**.

“**Public place**” has the same meaning as in the **Summary Offences Act 1966**. 15

“**Sobering-up unit**” means premises declared under section 16 to be a sobering-up unit for the purposes of this Act.

PART 2—REPEAL OF OFFENCES RELATING TO DRUNKENNESS 20

4. Repeal of offences relating to drunkenness

Sections 13, 14, 15 and 16 (a) of the **Summary Offences Act 1966** are repealed.

No. 7405.
R printed to
No. 9928.
Subsequently
amended by
Nos 9945,
10012,
10087,
10094,
10262,
101/1986,
124/1986,
127/1986,
6/1987,
45/1987,
70/1987,
81/1987,
97/1987,
36/1988,
74/1988,
12/1989,
50/1989,
57/1989,
81/1989
and 24/1990.

**PART 3—APPREHENSION AND CARE OF PEOPLE UNDER
THE INFLUENCE OF ALCOHOL OR A DRUG**

5. *Apprehension of people under the influence of alcohol or a drug*

- 5 (1) A member of the police force or an authorised person may at any time without warrant apprehend any person in a public place whom he or she believes on reasonable grounds is under the influence of alcohol or a drug.
- 10 (2) A person may only be apprehended under sub-section (1) if the member of the police force or the authorised person believes on reasonable grounds that the person—
- (a) runs a significant risk of injury because of his or her inability, due to alcohol or a drug, properly to protect himself or herself; or
- 15 (b) is behaving in a manner that is likely—
- (i) to cause injury to himself or herself; or
- (ii) to cause injury to another person; or
- (iii) to cause loss of, or damage to, property.
- 20 (3) A person may be apprehended under sub-section (1) irrespective of his or her age.

6. *Use of reasonable force*

A member of the police force or an authorised person may use reasonable force to effect the apprehension of a person under section 5 (1).

25 **7. *How apprehended person may be dealt with***

- (1) After apprehending a person under section 5 (1) the member of the police force or the authorised person may—
- (a) remove the person from the public place and release him or her from custody; or

- (b) find a person who is willing and able to look after the person and release him or her from custody into the care of that other person; or
 - (c) take the person to the place where he or she is permanently or temporarily residing and there release him or her from custody; or 5
 - (d) transfer him or her into the custody of the person for the time being in charge of a sobering-up unit; or
 - (e) transfer him or her into the custody of the person for the time being in charge of a police station or police gaol. 10
- (2) Whatever action is taken under sub-section (1) must be taken within a reasonable time of the person being apprehended. 15
- (3) Any person who subsequently has custody under this Act of a person apprehended under section 5 (1) may deal with the apprehended person in any manner specified in sub-section (1).
- (4) In determining how to deal with an apprehended person, the person who has custody of him or her must, as far as practicable and appropriate, act in the manner that is the least restrictive of the person's liberty. 20

8. Detention of apprehended person

- (1) The member of the police force or the authorised person who apprehended a person under section 5 (1) or the person for the time being in charge of a sobering-up unit, police station or police gaol to which a person has been taken under section 7— 25
- (a) may detain that person until he or she is required to be released from custody by virtue of section 13; and 30
 - (b) may use reasonable force to effect the detention.
- (2) The person for the time being in charge of a sobering-up unit, police station or police gaol to which a person under the age of 17 years has been taken under section 7 must take any steps that are reasonably practicable to keep the 35

person from coming into contact with any adult person being detained in that place.

9. *Search of apprehended person*

- 5 (1) The member of the police force who apprehends a person under section 5 (1) has the same power to search the person and seize any thing found in his or her possession that he or she has at common law with respect to a person arrested in connection with an offence.
- 10 (2) An authorised person who apprehends a person under section 5 (1) may search the person and seize any thing found in his or her possession that the authorised person believes on reasonable grounds may be a danger to the person being searched or to any other person.
- 15 (3) The person for the time being in charge of a sobering-up unit, police station or police gaol to which a person has been taken under section 7 or a person authorised by the person in charge may search the person in custody and seize any thing found in his or her possession.
- 20 (4) The person carrying out a search under sub-section (1), (2) or (3)—
- (a) may use reasonable force to effect it; and
 - (b) if practicable, must be of the same sex as the person being searched; and
 - 25 (c) must carry it out in circumstances that afford reasonable privacy to the person being searched.
- (5) Any thing seized under sub-section (1), (2) or (3) must be returned to the person when he or she is released from custody under this Act unless the person in possession of it is otherwise entitled to retain it.

30 **10. *Right to communicate with, and to be visited by, a person***

- (1) A person apprehended under section 5 (1) has the right, as far as practicable and appropriate—
- (a) to communicate by telephone with a person and inform that person of his or her whereabouts; and
 - 35 (b) to be visited by a person.

- (2) As soon as possible after apprehending a person under section 5 (1) the member of the police force or the authorised person must inform the person of his or her rights under sub-section (1).
- (3) The member of the police force or the authorised person— 5
- (a) must make reasonable facilities available to enable a person to exercise his or her rights under sub-section (1); and
- (b) may make a telephone call on behalf of a person if it is not practicable or appropriate for the person to make the call. 10
- (4) If the apprehended person is under the age of 17 years, the member of the police force or the authorised person must notify his or her parent or guardian of his or her whereabouts unless it is not possible or practicable to do so. 15

11. *Medical treatment*

The person who has custody of a person apprehended under section 5 (1) must ensure that the person in custody has access to any reasonable medical care and treatment that appears to be necessary. 20

12. *Nature of custody under this Act*

- (1) While a person is in custody under this Act he or she must not be— 25
- (a) questioned or otherwise subjected to an investigative procedure to determine his or her involvement (if any) in the commission of an offence; or
- (b) charged with an offence. 30
- (2) A person who is in custody under this Act is not in custody for the purposes of Subdivision (30A) of Division 1 of Part III of the **Crimes Act 1958**, despite anything to the contrary in that Subdivision.
- (3) Nothing in this section prevents a person from being 35

taken into custody for the purposes of Subdivision (30A) of Division 1 of Part III of the **Crimes Act 1958** immediately on being released from custody under this Act.

5 **13. *Release from custody***

A person apprehended under section 5 (1) must be released from custody at the end of 8 hours or at any earlier time that there ceases to be reasonable grounds for the person who has custody of him or her to believe—

- 10 (a) that he or she is under the influence of alcohol or a drug; or
- (b) that he or she—
- 15 (i) runs a significant risk of injury because of his or her inability, due to alcohol or a drug, properly to protect himself or herself; or
- (ii) is behaving in a manner that is likely—
- (A) to cause injury to himself or herself; or
- (B) to cause injury to another person; or
- (C) to cause loss of, or damage to, property.

20 **PART 4—ADMINISTRATIVE AND OTHER PROVISIONS**

14. *Appointment of authorised persons*

- (1) The Minister may, by instrument, appoint such number of authorised persons as are necessary for the purposes of this Act.
- 25 (2) The appointment of an authorised person may be made subject to conditions, limitations or restrictions as to—
- (a) the powers exercisable by that person; and
- (b) when, where and in which circumstances that person may exercise those powers.
- 30 (3) A person appointed as an authorised person holds office for the period specified in the instrument of appointment unless he or she sooner—
- (a) resigns; or
- (b) is removed from office by the Minister.

- (4) A resignation must be in writing addressed to the Minister.
- (5) A person may be re-appointed as an authorised person.
- (6) An authorised person is entitled to the remuneration (if any) and allowances (if any) specified in the instrument of appointment or fixed from time to time by the Governor in Council. 5
- (7) An authorised person is not subject to the **Public Service Act 1974** by reason only of being an authorised person.

15. Identification documents 10

- (1) The Minister must cause a certificate of identification to be issued to each authorised person.
- (2) An authorised person must produce his or her certificate of identification—
 - (a) if practicable, on each occasion before he or she proceeds to exercise a power under this Act; 15
 - (b) on demand.
- (3) A person must not—
 - (a) forge or counterfeit a certificate of identification; or
 - (b) knowingly make use of a forged, counterfeited or false certificate of identification; or 20
 - (c) personate the person named in a certificate of identification; or
 - (d) falsely pretend to be an authorised person.

Penalty applying to sub-section (3): Imprisonment for 2 years. 25

16. Sobering-up units

The Minister may, by instrument, declare any premises that have facilities for the care of people under the influence of alcohol or a drug to be a sobering-up unit for the purposes of this Act. 30

17. Evidence obtained in contravention of this Act

- (1) Evidence obtained from a person in contravention of section 12 is inadmissible as evidence against him or her in any proceeding for an offence.
- 5 (2) A court may admit evidence that is inadmissible under sub-section (1) if the person seeking to adduce the evidence satisfies the court on the balance of probabilities that the circumstances—
- 10 (a) are exceptional; and
- (b) justify the reception of the evidence.

18. Immunity from liability

- A person is not liable for anything done or omitted to be done by him or her in good faith and with reasonable care—
- 15 (a) in the exercise of a power or the discharge of a duty under this Act; or
- (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.

20 19. Regulations

- The Governor in Council may make regulations for or with respect to—
- 25 (a) prescribing forms; and
- (b) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

