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Proof

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CRIMES AMENDMENT (INTOXICATION) BILL 2014

Second Reading

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Central Coast, and Vice-President of the Executive Council) [2.56 p.m.]: I move:

That this bill be now read a second time.

On behalf of the Government I speak on the Crimes Amendment (Intoxication) Bill 2014. I seek leave to incorporate in *Hansard* the speech delivered by the Premier in the Legislative Assembly on 26 February 2014.

Leave granted.

On 21 January 2014 I outlined a comprehensive plan to make our streets safer. Many of those measures are already in place, including the new offence of assault causing death—the so-called one-punch law—which carries a maximum penalty of 25 years and a mandatory minimum penalty of eight years. This bill creates additional aggravated personal violence offences with higher maximum penalties and, for the most serious of those offences, mandatory minimum sentences. These offences apply where the offender commits a serious assault whilst intoxicated in public. Maximum penalties are increased by two years compared to the equivalent non-aggravated offence. Mandatory minimum jail sentences will be imposed on adult offenders who commit the most serious of those aggravated offences. The decision to introduce mandatory sentencing has not been made lightly. The Government responded to community concern and it believes it is necessary to introduce these measures to combat the recent spate of serious drug- and alcohol-fuelled attacks on our streets. We are determined to send a strong message to those who engage in drug- and alcohol-fuelled violence: If you get drunk or take drugs and seriously assault someone in public, you will go to jail.

The mandatory minimum sentences are the minimum non-parole period, which is the minimum time that the offender will spend in jail. This means that all offenders found guilty of these offences will receive a prison sentence and the least serious offender will receive the mandatory minimum sentence. The more serious offenders will receive a sentence that is above the mandatory minimum sentence, which will be determined by the judges. Consistent with the provisions of the Act, the requirement to impose a mandatory minimum sentence for the murder of police officers will not apply to a child under 18 years of age at the time of the offence, or to a person with a significant cognitive impairment at the time of the offence.

Under the new laws, a person will be taken to be intoxicated if the person's speech, balance, coordination or behaviour is noticeably affected as the result of the consumption of alcohol or the taking of narcotic drugs. Narcotic drugs, for the purpose of the definition of "intoxication", include all prohibited drugs under the Drugs Misuse and Trafficking Act. This definition is based on a similar definition of intoxication that is used in the Liquor Act and with which police and owners and patrons of licensed premises are familiar. The evidence of intoxication can include observations of witnesses, including police, evidence of prior consumption of alcohol or drugs, and matters captured on closed-circuit television cameras. That provision is consistent with the current provisions of the Crimes Act.

Under the bill, a person will be presumed to be intoxicated if they have had the prescribed concentration of alcohol in their blood within six hours of the offence. The prescribed concentration of alcohol is 0.15 grams, which is equivalent to high-range drink-driving. The presumption of intoxication has the effect of shifting the onus of proof from the prosecution to the accused once a high-range test result has been obtained. To prove they were not intoxicated at the time of the assault, the accused will have to prove that the concentration of alcohol in their blood at the time of the alleged offence was less than the prescribed concentration of alcohol. The accused will also have to prove they did not consume alcohol after the alleged offence in order to alter the presence or concentration of alcohol in his or her blood. This ensures that a person cannot escape conviction for the aggravated offence by deliberately taking alcohol between the time of the offence and the time of arrest for the purposes of wilfully changing the test results. Police who arrest a person suspected of committing an aggravated offence will be able to conduct drug and alcohol testing within 12 hours of the offence. This time frame ensures that police have the opportunity to test an offender who may have initially fled the scene. The results of the test will be admissible along with other evidence of the intoxication of the accused. The new aggravated offences will only apply where the offender was intoxicated in public.

The bill contains a broad definition of "a public place", which includes in, or in the vicinity of, any premises or land that is open to the public. Licensed premises, restricted premises, such as brothels, and premises or land used by criminal gangs, such as the headquarters of outlaw motorcycle gangs, are expressly covered by the definition. The bill applies these definitions of public intoxication to the offence of intoxicated one-punch assaults, which was introduced and passed by the Government earlier this year. The bill also clarifies the scope of that offence to make it clear that it not only covers situations where a person hits another with their fist or an object, but will also apply where force is used by

the accused to cause the victim's body to hit the ground or other thing. As with the one-punch laws, the offence is not intended to cover guns or other projectiles, which are covered by other offences under the law.

I am aware that concerns have been raised by women's services about the potential impact of mandatory sentencing in relation to domestic and sexual assaults, in particular, the concern that victims and witnesses may become more reluctant to provide evidence where mandatory sentencing applies. The bill does not impose mandatory sentences for sexual assault. It applies to serious personal violence offences that occur in public while the offender is intoxicated. Mandatory sentences for sexual assault will be considered once the Government has received the report from the parliamentary inquiry examining sentences for child sexual assault offences. The Government also announced yesterday, through the Minister for Women, the formation of a violent domestic crimes task force to examine support for reporters and witnesses of domestic violence, links between alcohol and domestic violence, and sentencing options for perpetrators. I commend the bill to the House.