



New South Wales

Crimes Amendment (Intoxication) Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to create various aggravated intoxication offences (in addition to the recently created offence of assault causing death when intoxicated) by increasing by 2 years the maximum penalty for the following offences under the *Crimes Act 1900* if committed when an adult offender was intoxicated in public by alcohol or a narcotic drug (or by any other intoxicating substance in conjunction with alcohol or a narcotic drug):
 - (i) an offence under section 35 (Reckless grievous bodily harm or wounding),
 - (ii) an offence under section 59 (Assault occasioning actual bodily harm),
 - (iii) an offence under section 60 (Assault and other actions against police officers),
 - (iv) an offence under section 93C (Affray),
- (b) to require the courts to impose the following minimum sentences of imprisonment (and minimum non-parole periods) on a person guilty of the following serious aggravated intoxication offences:

section 35 (1AA) (Reckless grievous bodily harm when intoxicated in public and in company) 5 years

section 35 (1A) (Reckless grievous bodily harm when intoxicated in public) 4 years

section 35 (2A) (Reckless wounding when intoxicated in public and in company) 4 years

- section 35 (3A) (Reckless wounding when intoxicated in public) 3 years
- section 60 (3B) (Wounding or causing grievous bodily harm to police officers when intoxicated in public) 5 years
- section 60 (3C) (Wounding or causing grievous bodily harm to police officers during public disorder and when intoxicated in public) 5 years
- (c) to amend the recently created offence of assault causing death when intoxicated to clarify the assaults to which it applies and to make consequential changes that reflect features of the other proposed aggravated intoxication offences created by this Bill,
- (d) to authorise a police officer to require a breath test or analysis, or require the provision of a blood or urine sample, after arresting an offender for any aggravated intoxication offence to confirm or disprove that the offender was intoxicated (by extending provisions that were recently enacted in relation to assaults causing death when intoxicated) and to amend those provisions by:
- (i) authorising a police officer to require the provision of a blood or urine sample within 12 hours (instead of 4 hours) after the alleged offence, and
 - (ii) making it an offence to consume or take alcohol or a narcotic drug within 12 hours after assaulting a person in order to alter the presence or concentration of the intoxicating substance in the person's breath, blood or urine and thereby avoid prosecution for an aggravated intoxication offence,
- (e) to make other consequential or related amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Crimes Act 1900 No 40

Schedule 1 [11]–[31] amend the Act to create the aggravated intoxication offences referred to in paragraph (a) of the Overview, and to make consequential changes.

Schedule 1 [2] inserts proposed section 8A into the Act in relation to offenders intoxicated in public for the purposes of aggravated intoxication offences. The proposed section provides, in particular, that:

- (a) an offender is intoxicated if the offender's speech, balance, co-ordination or behaviour is noticeably affected as the result of the consumption or taking of alcohol or a narcotic drug (or of any other intoxicating substance in conjunction with alcohol or a narcotic drug), or if the offender has 0.15 or more grams of alcohol in the offender's breath or blood, and
- (b) an offender is intoxicated in public if the offender is intoxicated while in or in the vicinity of a public place, including any premises or land open to the public, any licensed premises, any premises or land regularly used by a local community for consuming or taking alcohol or narcotic drugs, premises declared under the *Restricted Premises Act 1943* and any premises or land occupied by a criminal group, and
- (c) a person has a defence if the intoxication was not self-induced, and
- (d) evidence may be given of the presence and concentration of any alcohol, drug or other intoxicating substance in the offender's breath, blood or urine as determined by an analysis carried out under the *Law Enforcement (Powers and Responsibilities) Act 2002*, and

- (e) an offender who records a concentration of alcohol or a narcotic drug in the person's blood within 6 hours after the alleged offence is taken to have at least that concentration of alcohol or drug in the offender's blood at the time of the alleged offence, and
- (f) an offender is presumed to be intoxicated at the time of an alleged offence if the offender refuses or fails to provide a blood sample for analysis.

Schedule 1 [1] omits the definition of *intoxication* by reference to Part 11A of the Act as a consequence of the special definition of *intoxication* inserted in proposed section 8A.

Schedule 1 [2] inserts proposed section 8B into the Act to specify the minimum sentences of imprisonment (and non-parole periods) for adult offenders when tried on indictment as referred to in paragraph (b) of the Overview. The minimum sentences (and non-parole periods) do not apply to an offender who has a significant cognitive impairment. **Schedule 1 [10]** omits section 25B (which provided a minimum sentence for the recently created offence of assault causing death when intoxicated under section 25A) as a result of that minimum sentence being transferred to proposed section 8B.

Schedule 1 [3]–[9] amend section 25A of the Act as referred to in paragraph (c) of the Overview.

Schedule 1 [32] amends Schedule 11 to the Act to extend the review of the operation of sections 25A and 25B in relation to assaults causing death when intoxicated to all the proposed aggravated intoxication offences.

Schedule 2 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 [1]–[8] amend Division 4 of Part 10 of the Act to confer on police officers the breath testing and analysis powers and the blood and urine sampling powers referred to in paragraph (d) of the Overview relating to the proposed aggravated intoxication offences.

Schedule 2 [9] amends that Division 4 to create the offence referred to in paragraph (d) of the Overview relating to persons consuming or taking alcohol or drugs after an assault in order to alter the presence or concentration of alcohol or a narcotic drug in the person's breath, blood or urine.

Schedule 3 Consequential amendment of other Acts

Schedule 3.1 amends the *Crimes (Sentencing Procedure) Act 1999* to prescribe a standard non-parole period of 5 years for an offence under section 60 (3A) of the *Crimes Act 1900* (wounding or inflicting grievous bodily harm on police officer during public disorder)—the same period proposed as the minimum sentence (and non-parole period) under the amendments made by Schedule 1 to the proposed Act for the aggravated intoxicated form of that offence. This will provide a consistent approach for offences with a standard non-parole period that are to have an aggravated intoxicated form of the offence with a minimum sentence (and non-parole period).

Schedule 3.2 amends the *Criminal Procedure Act 1986* to enable any of the proposed aggravated intoxication offences that do not carry a minimum sentence to be disposed of summarily with the election (as appropriate) of the prosecution or accused.