

**CRIMES AND OTHER LEGISLATION AMENDMENT (ASSAULT AND
INTOXICATION) BILL 2014
LIQUOR AMENDMENT BILL 2014**

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Bills introduced on motion by Mr Barry O'Farrell, read a first time and printed.

Second Reading

Mr BARRY O'FARRELL (Ku-ring-gai—Premier, and Minister for Western Sydney)
[10.35 a.m.]: I move:

That these bills be now read a second time.

The purpose of the Liquor Amendment Bill 2014 and Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 is to make our streets safer by introducing new measures to tackle drug- and alcohol-related violence. Recent months have seen a number of serious violent alcohol- and drug-fuelled assaults in the Sydney central business district [CBD] and elsewhere that shocked the community across the State. The New South Wales Government has heard the community's call for action. We are committed to continuing to address the drug- and alcohol-fuelled attacks on our streets and the increase in violence that is used in those attacks. On 21 January 2014 I announced the Government's response to alcohol-related violence. The response outlined a broad range of tough measures to tackle alcohol- and drug-related crime and antisocial behaviour in the central business district precinct and across New South Wales. There is no single or simple cure-all for those problems, but I am confident that these reforms will make a significant difference in tackling drug- and alcohol-fuelled violence on our streets.

The measures announced today build on the targeted approach to tackling drug- and alcohol-fuelled violence that we adopted since coming to government. Our reforms to date have included putting an extra 420 police officers on our streets since December 2011; implementing a three strikes licensing scheme targeting irresponsible venues; trialling sobering-up centres in Kings Cross, Coogee and Wollongong; introducing a plan of management for Kings Cross that includes new late-night transport options, tough new licence conditions for licensed premises, drink restrictions and new security measures; passing new laws that allow for offenders to be banned from licensed venues in Kings Cross and provide for the use of drug detection dogs in the area without police requiring a warrant, and will result in identification [ID] scanners being used in high-risk Kings Cross venues; strengthening the violent venues scheme, which applies special conditions to the State's most violent venues; extending liquor freezes in Oxford Street, Darlinghurst, and Kings Cross; and launching a multimedia advertising campaign aimed at warning of the dangers of excessive and binge drinking.

The introduction of those reforms has coincided with, according to the Bureau of Crime Statistics and Research [BOCSAR], a reported reduction in alcohol-related violence across the State. However, more needs to be done to improve the safety and amenity of the Sydney

central business district, particularly late at night, and that is the basis of these measures. The Government's tough and comprehensive package to tackle this problem will send a strong and consistent message that alcohol- and drug-fuelled violence will not be tolerated. Together, the Liquor Amendment Bill 2014 and Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 will give effect to the Government's reforms to tackle drug- and alcohol-related violence.

The Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 promotes personal responsibility of offenders. The Liquor Amendment Bill 2014 strengthens the Government's existing management approach to licensing.

The Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 introduces a new offence for one-punch assaults where a person unlawfully assaults another who dies as a result of the assault, with a 20-year maximum sentence being introduced. Perpetrators of one-punch killings have previously been prosecuted in New South Wales for manslaughter. This means that when the case goes to court the prosecution has to prove beyond reasonable doubt that the offender should have foreseen that, by doing what he or she did, the victim would be placed at risk of serious injury.

A person will be guilty of the new offence of assault causing death as proposed by new section 25A (1) in this legislation if he or she unlawfully assaults another person by intentionally hitting the other person with any part of his or her body, or with an object he or she is holding, causing the death of the other person. The offence will carry a maximum penalty of 20 years imprisonment. A person will be criminally responsible for the offence even if the person does not intend or foresee the death of the other person, and even if the death was not reasonably foreseeable. If the offender was intoxicated by alcohol or drugs at the time of the assault, a minimum mandatory sentence of eight years imprisonment and a maximum sentence of 25 years imprisonment apply. A "drug" includes a drug under the Drug Misuse and Trafficking Act and a poison, restricted substance or drug of addiction in the Poisons and Therapeutic Goods Act. This will capture steroids as well as psychoactive substances.

The aggravated version of this offence will not apply to people under the age of 18 years. This is consistent with the exemption for juveniles from a mandatory minimum sentence for the murder of police officers that we introduced in 2011. Juveniles will be subject to the 20-year maximum sentence under the one-punch law. It is a defence to the aggravated intoxication offence if the accused has a significant cognitive impairment at the time of the offence. This is also consistent with the provisions that impose a mandatory sentence of life imprisonment for the murder of a police officer. The bill sets out ways in which the prosecution can prove intoxication. An accused person is presumed intoxicated if they have more than 0.15 grams or more of alcohol in 220 litres of breath or 100 millilitres of blood. Where this is not available, or where drugs are suspected, other evidence may be considered, including the concentration of alcohol or drug in a person's breath or blood at the time of the offence and evidence from closed-circuit television [CCTV] footage, eye witnesses and

police observations, all of which are consistent with the current provisions of the Crimes Act.

To ensure that police can enforce the new offences and penalties for alcohol- and drug-related violence, the bill enables police to conduct drug and alcohol testing where they suspect an offender has committed an alcohol- or drug-fuelled violent assault. New sections 138F and 138G in the bill provide police with powers to conduct breath tests and breath analysis, and to require blood and urine samples for analysis. Police will be able to require a breath test from a person at the scene of the alleged offence, or require them to undertake a breath analysis at a police station or other place of detention. Blood and urine samples can be required where police are precluded from taking a breath analysis because of time constraints or because the person has refused to comply or where police reasonably believe that the person is under the influence of a substance other than alcohol. As I have mentioned, if a breath analysis or an analysis of a blood or urine sample confirms a concentration of 0.15 grams or more of alcohol—equivalent to a high-range PCA offence—this will deem intoxication for the purposes of the new offence of aggravated assault causing death.

To make it clear that drugs and alcohol are not an excuse for violent behaviour, voluntary intoxication by drugs or alcohol will be removed as a mitigating factor when courts determine sentences in future. This change reflects the view that the choice to become intoxicated should not lead to reduced culpability. Self-induced intoxication is no excuse for violence. The vulnerability of the victim, including age, will continue to be taken into account, as it is now, in relation to sentencing matters. The bill will insert 50 steroidal agents into the list of prohibited drugs under schedule 1 of the Drug Misuse and Trafficking Act 1985, making them prohibited drugs in New South Wales and allowing heavy penalties to be imposed for their possession and supply. Currently, the New South Wales maximum penalty for the illegal supply and possession of steroids is two years, and this will be increased to 25 years to bring it into line with Victoria. The significant increase will send a very strong message about the seriousness of illegal steroid use.

Alcohol-related violence and antisocial behaviour is not welcome on our streets and, frankly, will no longer be tolerated. It is therefore critical that police can fine those offenders who do behave in such a manner, and that the fine is a sufficient amount to act as a deterrent for this unacceptable behaviour. For this reason, this bill will increase fine amounts for criminal infringement notices routinely used by police in dealing with antisocial behaviour. Fines for offensive language will increase from \$150 to \$500. Offensive behaviour fines will increase from \$200 to \$500. Fines for continuation of intoxicated and disorderly behaviour following a move-on direction will be increased from \$200 to \$1,100. The maximum penalty for the offence of continued intoxicated and disorderly behaviour will increase from \$660 to \$1,650.

Turning now to the Liquor Amendment Bill 2014, which will strengthen our risk-based approach to liquor licensing and will build on other reforms that have been introduced since 2011, this bill will allow high-risk precincts to be targeted through the adoption of tailored regulatory measures that are appropriate for that precinct. The Government's view is that a tailored approach is the best approach as it allows the particular problems in an area to be

targeted while taking account of local issues. The bill also introduces important liquor reforms across the State. The bill enables the Government to prescribe high-risk precincts in which licensed premises will be subject to regulatory conditions, such as lockouts, 3.00 a.m. last drinks and other restrictions. This approach enables tailored action to be taken immediately within a precinct. The Government has announced the proposed CBD Entertainment Precinct, which will extend from parts of Surry Hills in the south to The Rocks in the north and from Kings Cross in the east to Cockle Bay in the west.

The bill includes new regulations to impose 1.30 a.m. lockouts and the cessation of liquor service at 3.00 a.m., which I will outline in more detail shortly. It also allows other conditions to be imposed. These could include prohibiting the use of glass, restrictions on outlaw motorcycle gangs, requiring the use of responsible service of alcohol [RSA] marshals, restrictions on shots and closed-circuit television requirements. These are similar to the approaches we have already applied in Kings Cross. Importantly, these conditions will be developed over coming weeks and tailored to reflect the unique circumstances of the Sydney central business district, which represents a large and diverse geographical area that includes a mix of commercial, residential, entertainment and tourist facilities.

The bill introduces a 1.30 a.m. patron lockout for hotels, nightclubs, general bars and registered clubs in the Sydney central business district precinct. These venues will also be required to cease alcohol service at 3.00 a.m. However, these restrictions will not apply to small bars, which are those that have a maximum capacity of 60 people and, due to their small patron capacity, are not seen to be as high risk as other licensed venues. Nor will they apply to restaurants and tourism accommodation establishments, which are establishments other than accommodation on a bed or dormitory-style basis rather than in separate rooms, although where tourist accommodation establishments contain a bar that can be accessed from the street the bar will be subject to 1.30 a.m. lockouts and 3.00 a.m. cease liquor service provisions. The Government recognises that these measures will result in some business operators having to reconsider how they operate their licensed premises, and people heading out for a night in the city may have to adjust their plans accordingly. However, these restrictions are needed to improve the safety and amenity of the Sydney CBD Entertainment Precinct, which must be our number one priority.

Importantly, the bill recognises that venues currently approved to trade beyond 3.00 a.m. can continue to operate by providing other services and facilities past the 3.00 a.m. cease liquor service time. These include dining, entertainment, gaming and non-alcoholic drinks service. The bill extends the existing liquor licence freeze provisions that apply in the Kings Cross and Oxford Street, Darlinghurst, precincts across the new Sydney CBD Entertainment Precinct. An exemption from these freeze provisions applies to small bars, restaurants and tourist accommodation establishments as these venues are assessed as being low risk and their development should not be prevented. The expanded freeze will commence when the bill commences and will continue for two years from commencement of the legislation. Amendments to the Liquor Act 2007 that commenced on 6 December last year enable temporary and long-term banning orders to be issued to troublemakers preventing them from

entering most licensed premises in the Kings Cross precinct.

This bill extends those temporary and long-term banning order provisions that apply in Kings Cross to the new Sydney CBD Entertainment Precinct. Temporary banning will prevent troublemakers gaining entry to all licensed premises except low-risk restaurants that do not trade beyond midnight. In more serious circumstances, the police commissioner can apply to the Independent Liquor and Gaming Authority for long-term banning orders of up to 12 months. These orders will prevent entry to all high-risk venues in the CBD Entertainment Precinct. Any long-term banning order made by the Independent Liquor and Gaming Authority can, as currently, be reviewed by the Civil and Administrative Tribunal. Persons breaching a temporary banning order will be liable to a maximum court penalty of \$5,500, while breaching of a long-term banning order will attract a maximum penalty of \$11,000.

The Government is concerned about the impact of the availability of takeaway liquor late at night in contributing to alcohol-related violence and other harm. In particular, concerns have been expressed about the impact of preloading whereby people buy cheap alcohol that is consumed at home before they go to licensed premises later in the night.

To ensure regulatory consistency, the bill applies a prohibition across the State on the sale of takeaway liquor after 10.00 p.m. from liquor stores, and hotels and clubs authorised to sell takeaway liquor either from a designated area or across the bar. These provisions also capture home delivery services of alcohol after 10.00 p.m. In July 2012 the Government commenced a trial of online responsible service of alcohol [RSA] training to provide an option for people required to undertake this training as an entry requirement into the New South Wales liquor industry.

In recent months, the Government has been made aware of instances where the integrity of online responsible service of alcohol training may have been compromised following complaints about the minimal time needed to complete that training. The Government is not prepared to continue to risk the integrity of the responsible service of alcohol training scheme and, therefore, is suspending approvals to conduct online responsible service of alcohol training by training providers until the integrity of the qualification can be improved. Further reforms of responsible service of alcohol will be considered as part of the Government's response to the independent statutory review of the Liquor Act 2007 and the Gaming and Liquor Administration Act 2007, which was released in December. Responsible service of alcohol training will continue to be available across New South Wales in classroom format for more than 100 training providers, including TAFE, industry associations and private training colleges.

I turn now to the bill's provisions that allow for the introduction of annual liquor licence fees for all licensed premises in New South Wales. The concept of a periodic licence fee to offset the costs associated with the regulation of the liquor industry was identified as part of the 2013 statutory review of the Liquor Act conducted by the former Commissioner of the Office of Liquor, Gaming and Racing, Mr Michael Foggo. The independent report on the review

noted that for several years annual risk-based fees have applied in Queensland and Victoria. The report recommended the adoption of a similar scheme for New South Wales to reflect contemporary best-practice regulation. The report noted also that a contemporary licensing scheme—by ensuring that lower-risk business operations would attract lower fees—would encourage the development of New South Wales business models that are associated with lower risk of alcohol-related harms. The bill provides a regulatory framework for the introduction of periodic licence fees that will apply to all permanent liquor licences.

The bill will enable regulations to be made to prescribe the annual fee payable by each liquor licensee. These regulation-making powers will enable a range of risk factors to be taken into consideration in determining the fee for a particular licence venue, including its licence type, compliance history and trading hours. The fee regime will encourage and reward best practice by the operators of licensed venues. Licensees will be able to reduce their fees through adopting lower-risk business models while ensuring compliance with liquor laws. The bill also provides a framework that will enable a licence to be suspended or cancelled when the annual fee is not paid by the due date. The fees that will apply under the periodic licence scheme will be prescribed by regulation before they first fall due in the first part of this year. Full details on the fee structure that will apply under the periodic licensing scheme will be outlined in a draft regulation to be released ahead of the commencement of the scheme.

Following these measures, the Government will continue to ensure that actions are taken to reduce alcohol-related violence particularly in hot-spot precincts. This issue has no end point; it will take constant vigilance and action to change the culture that drives alcohol- and drug-fuelled violence. This bill will allow the boundaries of the Sydney central business district [CBD] precinct to be varied to accommodate any changes in circumstances, including any spike in alcohol-related violence in adjacent areas. I note that the Bureau of Crime Statistics and Research review of Newcastle showed no occurrence of displacement. I note that the KPMG independent review of the Melbourne changes also showed no displacements. Similar measures to those contained in the Liquor Amendment Bill 2014 can be considered for other high-risk precincts experiencing high levels of alcohol-related violence anywhere in the State.

This legislation enables precincts to be established in other areas across this city and State. Approximately 140 voluntary liquor accords exist already in Sydney suburbs and towns. Last week I spent some time in Tamworth, which has a voluntary liquor accord. Publicans, police and the public put in place in Tamworth a 12.30 p.m. lockout to make that community safe, and it was advertised during my visit. Manly has had similar success, driven again not just by the local member but also by police, publicans and the public. This demonstrates that when communities want to solve this problem and those involved in the alcohol industry are prepared to step up and accept that there is a problem and they are part of the solution, it can be resolved. Should that not happen—should high-risk precincts be required elsewhere because of unacceptably high levels of alcohol and drug-fuelled violence—this legislation gives government the power to act. I urge those communities without voluntary liquor accords and agreements that experience problems to get on board with the liquor accord process, otherwise expect down the track a call from government. The Liquor Amendment

Bill 2014 provides that lockouts and cessation of liquor sales in the central business district precinct will be subject to an independent statutory review after two years. The amendments made by the Crimes and Other Legislation Amendment Bill 2014 will be subject to review after three years.

Last week when I announced these reforms I said that the sitting of this Parliament would depend on the ability to draft the legislation. I thank all who were involved in drafting this legislation. It has been a difficult task and provides serious consequences for drug and alcohol-fuelled violence, whether in the Sydney central business district or across the State. This legislation is complex and I make no apologies for wanting to get it operating as quickly as possible. Should the Parliament pass this legislation today, the so-called "one-punch law" will operate this weekend. My determined reason for getting this legislation introduced quickly was highlighted by last weekend's attack in Orange. This legislation may require tweaking from time to time; we will tweak it. We will make changes that will be designed to make it more effective and improve its operation because the community message has been heard. It is unacceptable to think it is okay to go out, get intoxicated, start a fight and throw a punch. This legislation means that people will face serious consequences.

To clarify a provision of this legislation, I foreshadow that the Attorney General will move an amendment during the consideration in detail stage to clause 25B of the Crimes and Other Legislation Amendment (Assault and Intoxication) Bill to make it abundantly clear that a court is required to set a non-parole period of eight years in respect of a person convicted of an offence under clause 25A (2)—that is, the aggravated mandatory one-assault penalty. We believed the legislation was clear, but a question was raised and we are determined to fix it. I make no apologies for doing that because we want this legislation to be effective and to send the strongest possible message to people across this State that our determination is to try to change the culture that results in too many serious injuries and deaths from unacceptable behaviour in too many places, including the Sydney central business district. The Government has heard the community's call for action. I am confident these bills will make a significant difference to addressing unacceptable drug- and alcohol-fuelled violence on our streets. I commend the bills to the House.