



New South Wales

Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014

Explanatory note

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

The *Liquor Amendment Bill 2014* is cognate with this Bill.

Overview of Bill

The objects of this Bill are as follows:

- (a) to create a separate offence (with a maximum penalty of imprisonment for 20 years) where an assault by intentionally hitting a person causes death (without the necessity to prove that the death was reasonably foreseeable and whether the person was killed as a result of the injuries received directly from the assault or from hitting the ground or an object as a consequence of the assault),
- (b) to create an aggravated form of that separate offence by increasing the maximum penalty for the offence to imprisonment for 25 years if the offence was committed by an adult accused when intoxicated (whether under the influence of alcohol, a drug or other substance),
- (c) to require the courts to impose a minimum sentence of imprisonment for 8 years on a person guilty of that aggravated intoxication offence,
- (d) to authorise a police officer to require a breath test or a breath analysis, or require the provision of a blood or urine sample, after arresting an offender for the aggravated intoxication offence of assault causing death (or for any other offence that may lead to a charge for such an aggravated intoxication offence if the victim dies) for the purpose of confirming whether the offender had consumed or taken alcohol, a drug or other intoxicating substance before the alleged offence and the likely amount consumed or taken,
- (e) to prevent self-induced intoxication being taken into account as a mitigating factor in determining the appropriate sentence for any offence,

- (f) to declare various anabolic and androgenic steroids to be narcotic drugs subject to the same maximum penalties for trafficking and possession as applies to other narcotic drugs,
- (g) to increase the penalty notice fines for the following conduct anywhere in the State:
 - (i) offensive conduct or language in public place or school (increased from \$200 and \$150 to \$500),
 - (ii) failure of intoxicated person in a public place to comply with move on direction (increased from \$200 to \$1,100).

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 the date of assent to the proposed Act, except for Schedule 5.

Schedule 1 Amendment of Crimes Act 1900 No 40

Schedule 1 [1] defines *intoxication* by reference to Part 11A of the Act, namely intoxication because of the influence of alcohol, a drug or any other substance.

Schedule 1 [2] inserts proposed section 25A into the Act to create the separate offence of assault causing death, and the aggravated offence when the offender is intoxicated, as referred to in paragraphs (a) and (b) of the Overview. The proposed section provides a defence to the aggravated intoxication offence if the intoxication was not self-induced or if the accused had a significant cognitive impairment. The proposed section also makes evidentiary provisions in proceedings for the offence, including a conclusive presumption of intoxication if the accused has more than 0.15 concentration of alcohol following a breath or blood sample analysis.

Schedule 1 [2] also inserts proposed section 25B into the Act to require the imposition of a minimum sentence of imprisonment for 8 years for the aggravated intoxication offence as referred to in paragraph (c) of the Overview.

Schedule 1 [3] and [4] amend section 428E of the Act as a consequence of the creation of the proposed offence of assault causing death and, in particular, to provide that evidence of self-induced intoxication cannot be used by the offender to establish that he or she did not have the requisite intent to commit the offence.

Schedule 1 [5] provides for a review of the operation of the amendments made by the proposed Act within 3 years after the date of assent.

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

Schedule 2 inserts proposed Division 4 into Part 10 of the Act to confer on police officers the breath testing, breath analysis powers and blood or urine sampling powers referred to in paragraph (d) of the Overview.

Schedule 3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

Schedule 3 [1]–[3] amend section 21A of the Act to prevent self-induced intoxication being taken into account as a mitigating factor in sentencing as referred to in paragraph (e) of the Overview.

Schedule 3 [4] inserts a transitional provision into Schedule 2 to the Act to extend the above amendments to existing offences and proceedings (unless the court has already convicted the offender or the offender has already entered a plea of guilty).

Schedule 4 Amendment of Drug Misuse and Trafficking Act 1985 No 226

Schedule 4 amends Schedule 1 to the Act to declare the various steroids as narcotic drugs as referred to in paragraph (f) of the Overview.

Schedule 5 Amendment of Summary Offences Act 1988 No 25 and Criminal Procedure Regulation 2010

Schedule 5 amends the Regulation to increase penalty notice fines as referred to in paragraph (g) of the Overview. The Schedule amends the Act to increase consequentially maximum court fines for the move on offence so it is greater than the penalty notice fine.

Schedule 6 Consequential amendment of other Acts

Schedule 6.1 amends the *Crimes (Domestic and Personal Violence) Act 2007* to make the proposed new offence of assault causing death a “personal violence offence” for the purposes of that Act.

Schedule 6.2 amends the *Crimes (Sentencing Procedure) Act 1999* to exclude home detention as a sentencing option for the proposed new offence of assault causing death.