

Passed by both Houses



New South Wales

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

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2014



New South Wales

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

Act No , 2014

An Act to amend the Crimes Act 1900, the Law Enforcement (Powers and Responsibilities) Act 2002, the Crimes (Sentencing Procedure) Act 1999 and other legislation relating to assaults and intoxication and to other matters.

See also the Liquor Amendment Bill 2014.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 5 commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Crimes Act 1900 No 40

[1] Section 4 Definition of “Intoxication”

Insert after the definition of *Intoxicating substance* in section 4 (1):
Intoxication has the same meaning it has in Part 11A.

[2] Sections 25A and 25B

Insert at the end of Division 1 of Part 3:

25A Assault causing death

- (1) A person is guilty of an offence under this subsection if:
 - (a) the person assaults another person by intentionally hitting the other person with any part of the person’s body or with an object held by the person, and
 - (b) the assault is not authorised or excused by law, and
 - (c) the assault causes the death of the other person.Maximum penalty: Imprisonment for 20 years.
- (2) A person who is of or above the age of 18 years is guilty of an offence under this subsection if the person commits an offence under subsection (1) when the person is intoxicated.
Maximum penalty: Imprisonment for 25 years.
- (3) For the purposes of this section, an assault causes the death of a person whether the person is 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.
- (4) In proceedings for an offence under subsection (1) or (2), it is not necessary to prove that the death was reasonably foreseeable.
- (5) It is a defence in proceedings for an offence under subsection (2):
 - (a) if the intoxication of the accused was not self-induced (within the meaning of Part 11A), or
 - (b) if the accused had a significant cognitive impairment at the time the offence was alleged to have been committed (not being a temporary self-induced impairment).
- (6) In proceedings for an offence under subsection (2):
 - (a) evidence may be given of the presence and concentration of any alcohol, drug or other substance in the accused’s breath, blood or urine at the time of the alleged offence as determined by an analysis carried out in accordance with Division 4 of Part 10 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, and
 - (b) the accused is conclusively presumed to be intoxicated by alcohol if the prosecution proves in accordance with an analysis carried out in accordance with that Division that there was present in the accused’s breath or blood a concentration of 0.15 grams or more of alcohol in 210 litres of breath or 100 millilitres of blood.

- (7) If on the trial of a person for murder or manslaughter the jury is not satisfied that the offence is proven but is satisfied that the person has committed an offence under subsection (1) or (2), the jury may acquit the person of murder or manslaughter and find the person guilty of an offence under subsection (1) or (2). The person is liable to punishment accordingly.
- (8) If on the trial of a person for an offence under subsection (2) the jury is not satisfied that the offence is proven but is satisfied that the person has committed an offence under subsection (1), the jury may acquit the person of the offence under subsection (2) and find the person guilty of an offence under subsection (1). The person is liable to punishment accordingly.
- (9) Section 18 does not apply to an offence under subsection (1) or (2).
- (10) In this section, *cognitive impairment* includes an intellectual disability, a developmental disorder (including an autistic spectrum disorder), a neurological disorder, dementia, a mental illness or a brain injury.

25B Assault causing death when intoxicated—mandatory minimum sentence

- (1) A court is required to impose a sentence of imprisonment of not less than 8 years on a person guilty of an offence under section 25A (2). Any non-parole period for the sentence is also required to be not less than 8 years.
- (2) If this section requires a person to be sentenced to a minimum period of imprisonment, nothing in section 21 (or any other provision) of the *Crimes (Sentencing Procedure) Act 1999* or in any other Act or law authorises a court to impose a lesser or no sentence (or to impose a lesser non-parole period).
- (3) Nothing in this section (apart from subsection (2)) affects the provisions of the *Crimes (Sentencing Procedure) Act 1999* or any other Act or law relating to the sentencing of offenders.
- (4) Nothing in this section affects the prerogative of mercy.

[3] Section 428E Intoxication in relation to murder, manslaughter and assault causing death

Insert “or for an offence under section 25A” after “manslaughter” wherever occurring.

[4] Section 428E

Insert at the end of the section:

- (2) An offence under section 25A is not an offence of specific intent for the purposes of this Part.

[5] Schedule 11 Savings and transitional provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014

Review of operation of amendments made by amending Act

- (1) For the purposes of this clause, *the relevant Ministers* are the Attorney General and the Minister for Police and Emergency Services.
- (2) The relevant Ministers are to review the operation of the amendments made by the *Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014*. The Ministers may engage persons to assist in the review.

- (3) The review is to be undertaken as soon as practicable and within 3 years after the date of assent to that Act.
- (4) The relevant Ministers are to report to the Premier on the outcome of the review as soon as practicable after the review is completed.

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

Part 10, Division 4

Insert after Division 3:

Division 4 Testing of certain offenders for intoxication

138D Persons to whom Division applies and purpose of exercise of powers

- (1) This Division applies to a person who has been arrested by a police officer:
 - (a) for an alleged offence under section 25A (2) of the *Crimes Act 1900*, or
 - (b) for any other offence that involves the assault of another person if the police officer believes that the person would be liable to be charged with an offence under section 25A (2) of the *Crimes Act 1900* if the other person dies.
- (2) A police officer may exercise the powers conferred by this Division for the purpose of confirming whether the person had consumed or taken alcohol, a drug or other intoxicating substance before the alleged offence and the likely amount consumed or taken.

138E Definitions

In this Division, *breath test*, *breath analysis* and other words and expressions used in this Division and in Schedule 3 to the *Road Transport Act 2013* have the same meanings as they have in that Schedule.

138F Breath testing and breath analysis for presence of alcohol

- (1) A police officer may require a person to whom this Division applies to undertake a breath test, either at or near the scene of the alleged offence or at a police station or other place at which the person is detained in connection with the alleged offence.
- (2) A police officer may require a person to whom this Division applies to undertake a breath analysis at a police station or other place at which the person is detained in connection with the alleged offence.
- (3) A breath test or breath analysis may only be required to be undertaken under this section within 2 hours after the commission of the alleged offence.
- (4) The following provisions of Schedule 3 to the *Road Transport Act 2013* apply in relation to a breath test or breath analysis under this section (with any necessary or prescribed modifications):
 - (a) the police officers authorised to carry out a breath analysis,
 - (b) the provision of a statement to the person undertaking the breath analysis as to the concentration of alcohol determined by the analysis,
 - (c) the issue of evidentiary certificates relating to the breath analysis,
 - (d) any other provisions prescribed by the regulations.
- (5) Evidence of the presence or concentration of any alcohol in an accused's breath as determined by a breath analysis carried out in accordance with this section may be used only in proceedings for an offence under section 25A (2) of the *Crimes Act 1900*.

138G Blood and urine samples for analysis for presence of alcohol or drugs

- (1) A police officer may require a person to whom this Division applies to provide samples of the person's blood and urine (taken by an authorised sample taker) at a police station or other place at which the person is detained in connection with the alleged offence.
- (2) A blood or urine sample may only be required to be provided under this section if the person has refused to undertake (or cannot be required to undertake) a breath analysis pursuant to a requirement under section 138F or if the police officer has a reasonable belief that the person is under the influence of a substance other than alcohol. The person may also request that blood or urine samples be taken under this section if the person has undertaken such a breath analysis.
- (3) A blood or urine sample may only be required to be provided under this section within 4 hours after the commission of the alleged offence.
- (4) A person may be taken to and detained at a hospital for the purpose of the taking of a blood or urine sample required to be provided under this section.
- (5) The following provisions of Schedule 3 to the *Road Transport Act 2013* apply in relation to blood or urine samples taken under this section (with any necessary or prescribed modifications):
 - (a) the procedures for taking the blood or urine samples,
 - (b) the procedures for analysing the blood or urine samples (including the independent analysis of a portion of a blood or urine sample at the request of the person providing the sample),
 - (c) offences relating to sample handling and the use of samples,
 - (d) the issue of evidentiary certificates relating to the blood or urine samples and their analysis,
 - (e) the protection from liability of authorised sample takers in relation to the taking of blood or urine samples,
 - (f) any other provisions prescribed by the regulations.
- (6) Evidence of the presence or concentration of any alcohol, drug or other substance in an accused's blood or urine as determined by an analysis carried out in accordance with this section may be used only in proceedings for an offence under section 25A (2) of the *Crimes Act 1900*.

138H Offences relating to testing

- (1) A person who refuses to provide a blood or urine sample pursuant to a requirement under section 138G is guilty of an offence.
Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.
- (2) It is a defence to a prosecution for an offence under subsection (1) if the person was unable on medical grounds to comply with the requirement.
- (3) A person who commits an offence under the provisions of Schedule 3 to the *Road Transport Act 2013* that are applied by this Division is taken to be guilty of an offence under this Division.

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

[1] Section 21A Aggravating, mitigating and other factors in sentencing

Insert after section 21A (5A):

(5AA) Special rule for self-induced intoxication

In determining the appropriate sentence for an offence, the self-induced intoxication of the offender at the time the offence was committed is not to be taken into account as a mitigating factor.

[2] Section 21A (5B)

Omit “Subsection (5A) has effect”. Insert instead “Subsections (5A) and (5AA) have effect”.

[3] Section 21A (6)

Insert in alphabetical order:

self-induced intoxication has the same meaning it has in Part 11A of the *Crimes Act 1900*.

[4] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbers:

Part Provision consequent on enactment of Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014

Existing offences and proceedings

The amendments made to this Act by the *Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014* apply to the determination of a sentence for an offence whenever committed, unless:

- (a) the court has convicted the person being sentenced of the offence, or
- (b) a court has accepted a plea of guilty and the plea has not been withdrawn,

before the commencement of the amendments.

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

Schedule 1

Insert each of the following in alphabetical order:

| | | | | | | |
|---|------|-----|------|-----|---|---|
| Anabolic and androgenic steroidal agents, other than in implant preparations for use in animals | 500g | 50g | 750g | 5kg | — | — |
| Atamestane | 500g | 50g | 750g | 5kg | — | — |
| Bolandiol | 500g | 50g | 750g | 5kg | — | — |
| Bolasterone | 500g | 50g | 750g | 5kg | — | — |
| Bolazine | 500g | 50g | 750g | 5kg | — | — |
| Boldenone | 500g | 50g | 750g | 5kg | — | — |
| Bolenol | 500g | 50g | 750g | 5kg | — | — |
| Calusterone | 500g | 50g | 750g | 5kg | — | — |
| Chlorandrostenolone | 500g | 50g | 750g | 5kg | — | — |
| Clostebol | 500g | 50g | 750g | 5kg | — | — |
| Danazol | 500g | 50g | 750g | 5kg | — | — |
| Dihydrolone | 500g | 50g | 750g | 5kg | — | — |
| Dimethandrostanolone | 500g | 50g | 750g | 5kg | — | — |
| Drostanolone | 500g | 50g | 750g | 5kg | — | — |
| Enestebol | 500g | 50g | 750g | 5kg | — | — |
| Epitiostanol | 500g | 50g | 750g | 5kg | — | — |
| Ethyldienolone | 500g | 50g | 750g | 5kg | — | — |
| Ethylloestrenol | 500g | 50g | 750g | 5kg | — | — |
| Fluoxymesterone | 500g | 50g | 750g | 5kg | — | — |
| Formebolone | 500g | 50g | 750g | 5kg | — | — |
| Furazabol | 500g | 50g | 750g | 5kg | — | — |
| Hydroxystenozol | 500g | 50g | 750g | 5kg | — | — |
| Mebolazine | 500g | 50g | 750g | 5kg | — | — |
| Mepitiostane | 500g | 50g | 750g | 5kg | — | — |
| Mesabolone | 500g | 50g | 750g | 5kg | — | — |
| Mestanolone | 500g | 50g | 750g | 5kg | — | — |
| Mesterolone | 500g | 50g | 750g | 5kg | — | — |
| Methandienone | 500g | 50g | 750g | 5kg | — | — |
| Methandriol | 500g | 50g | 750g | 5kg | — | — |
| Methenolone | 500g | 50g | 750g | 5kg | — | — |
| Methylclostebol | 500g | 50g | 750g | 5kg | — | — |
| Methyltestosterone | 500g | 50g | 750g | 5kg | — | — |

| | | | | | | |
|---|------|-----|------|-----|---|---|
| Methyltrienolone | 500g | 50g | 750g | 5kg | — | — |
| Metribolone | 500g | 50g | 750g | 5kg | — | — |
| Mibolerone | 500g | 50g | 750g | 5kg | — | — |
| Nandrolone | 500g | 50g | 750g | 5kg | — | — |
| Norandrostenolone | 500g | 50g | 750g | 5kg | — | — |
| Norbolethone | 500g | 50g | 750g | 5kg | — | — |
| Norclostebol | 500g | 50g | 750g | 5kg | — | — |
| Norethandrolone | 500g | 50g | 750g | 5kg | — | — |
| Normethandrone | 500g | 50g | 750g | 5kg | — | — |
| Ovandrotone | 500g | 50g | 750g | 5kg | — | — |
| Oxabolone | 500g | 50g | 750g | 5kg | — | — |
| Oxandrolone | 500g | 50g | 750g | 5kg | — | — |
| Oxymesterone | 500g | 50g | 750g | 5kg | — | — |
| Oxymetholone | 500g | 50g | 750g | 5kg | — | — |
| Prasterone (dehydroepiandrosterone (dhea) or dehydroisoandrosterone (dhia)) | 500g | 50g | 750g | 5kg | — | — |
| Propetandrol | 500g | 50g | 750g | 5kg | — | — |
| Quinbolone | 500g | 50g | 750g | 5kg | — | — |
| Roxibolone | 500g | 50g | 750g | 5kg | — | — |
| Silandrone | 500g | 50g | 750g | 5kg | — | — |
| Stanolone | 500g | 50g | 750g | 5kg | — | — |
| Stanozolol | 500g | 50g | 750g | 5kg | — | — |
| Stenbolone | 500g | 50g | 750g | 5kg | — | — |
| Testolactone | 500g | 50g | 750g | 5kg | — | — |
| Testosterone, other than in implant preparations for use in animals | 500g | 50g | 750g | 5kg | — | — |
| Thiomesterone | 500g | 50g | 750g | 5kg | — | — |
| Trenbolone, other than in implant preparations for use in animals | 500g | 50g | 750g | 5kg | — | — |
| Trestolone | 500g | 50g | 750g | 5kg | — | — |

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

5.1 Summary Offences Act 1988 No 25

Section 9 Continuation of intoxicated and disorderly behaviour following move on direction

Omit “6 penalty units” from section 9 (1). Insert instead “15 penalty units”.

5.2 Criminal Procedure Regulation 2010

Schedule 3 Penalty notice offences

Omit the matter relating to sections 4 (1), 4A (1) and 9 of the *Summary Offences Act 1988*.

Insert instead, respectively:

| | |
|----------------|---------|
| section 4 (1) | \$500 |
| section 4A (1) | \$500 |
| section 9 | \$1,100 |

Schedule 6 Consequential amendment of other Acts

6.1 Crimes (Domestic and Personal Violence) Act 2007 No 80

[1] Section 4 Meaning of “personal violence offence”

Insert “25A,” after “24,” in section 4 (a).

[2] Sections 39 (1) and 40 (5) (b)

Omit “or manslaughter” wherever occurring. Insert instead “, manslaughter or an offence under section 25A of the *Crimes Act 1900*”.

6.2 Crimes (Sentencing Procedure) Act 1999 No 92

Section 76 Home detention not available for certain offences

Omit “or manslaughter” from section 76 (a). Insert instead “, manslaughter or an offence under section 25A of the *Crimes Act 1900*”.