



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.



New South Wales

Crimes Amendment (Intoxication) Bill 2014

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Crimes Act 1900 No 40	3
Schedule 2 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103	11
Schedule 3 Consequential amendment of other Acts	13



New South Wales

Crimes Amendment (Intoxication) Bill 2014

No. , 2014

A Bill for

An Act to amend the *Crimes Act 1900* with respect to the imposition of increased maximum sentences, and the imposition of minimum sentences, for certain offences committed when the offender was intoxicated in public; and for other purposes.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Crimes Amendment (Intoxication) Act 2014*.

3

2 Commencement

4

This Act commences on a day or days to be appointed by proclamation.

5

Schedule 1 Amendment of Crimes Act 1900 No 40

[1] Section 4 (1) Definition of “Intoxication”	2
Omit the definition.	3
[2] Sections 8A and 8B	4
Insert after section 8:	5
8A “Intoxicated in public”—aggravated intoxication offences	6
(1) In this section:	7
<i>aggravated intoxication offence</i> means an offence under section 25A (2), 35 (1AA), 35 (1A), 35 (2A), 35 (3A), 59 (1A), 59 (3), 60 (1B), 60 (2B), 60 (3B), 60 (3C) or 93C (1A).	8
<i>narcotic drug</i> includes any prohibited drug under the <i>Drug Misuse and Trafficking Act 1985</i> .	11
<i>prescribed concentration of alcohol</i> means a concentration of 0.15 grams or more of alcohol in 210 litres of breath or 100 millilitres of blood.	13
(2) For the purposes of an aggravated intoxication offence, a person is <i>intoxicated</i> if:	16
(a) the person’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 any other intoxicating substance in conjunction with alcohol or a narcotic drug), or	17
(b) there was present in the person’s breath or blood the prescribed concentration of alcohol.	21
(3) For the purposes of an aggravated intoxication offence, a person is <i>intoxicated in public</i> if the person is intoxicated while in or in the vicinity of a public place, including the following:	23
(a) any premises or land open to the public,	26
(b) premises licensed to sell liquor,	27
(c) premises or land regularly used by a local community for consuming or taking alcohol or narcotic drugs,	28
(d) premises declared under the <i>Restricted Premises Act 1943</i> ,	30
(e) premises or land occupied by a criminal group (within the meaning of Division 5 of Part 3A).	31
(4) It is a defence in proceedings for an aggravated intoxication offence if the accused would not have been intoxicated but for intoxication that was not self-induced (within the meaning of Part 11A).	33
(5) For the purposes of proceedings for an aggravated intoxication offence (and without limiting any other evidence that may be given of intoxication):	36
(a) evidence may be given of the presence and concentration of any alcohol, narcotic drug or other intoxicating substance in the accused’s breath, blood or urine as determined by an analysis carried out in accordance with Division 4 of Part 10 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> , and	38
(b) the concentration of alcohol in the accused’s blood at the time of the alleged offence is presumed to be at least the concentration of alcohol in the accused’s blood within 6 hours after the alleged offence as	43

	determined by such an analysis (unless the accused proves the contrary), and	1 2
	(c) the concentration of a narcotic drug in the accused's blood or urine at the time of the alleged offence is presumed to be at least the concentration of the drug in the accused's blood or urine within 6 hours after the alleged offence as determined by such an analysis (unless the accused proves the contrary), and	3 4 5 6 7
	(d) the accused is presumed to have been intoxicated at the time of the alleged offence if the accused refused or failed to provide a blood sample (other than on medical grounds) in relation to the alleged offence pursuant to a requirement under Division 4 of Part 10 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (unless the accused proves that the accused was not intoxicated at the time of the alleged offence).	8 9 10 11 12 13 14
(6)	A presumption under subsection (5) (b) or (c) cannot be rebutted unless the accused also proves that the accused did not consume or take alcohol or a narcotic drug within 6 hours after the time of the alleged offence in order to alter the presence or concentration of alcohol or a narcotic drug in the person's blood or urine.	15 16 17 18 19
8B	Minimum sentences of imprisonment, and non-parole period, for certain aggravated intoxication offences	20 21
(1)	This section applies to an offence under any section or subsection of this Act for which a sentence of imprisonment is specified at the end of the section or subsection as the minimum penalty for the offence. Note. See sections 25A (2), 35 (1AA), 35 (1A), 35 (2A), 35 (3A), 60 (3B) and 60 (3C).	22 23 24 25
(2)	A court, in proceedings on indictment, is required to impose a sentence of imprisonment on a person guilty of any such offence that is not less than the sentence of imprisonment specified as the minimum penalty for the offence.	26 27 28
(3)	Any non-parole period for that sentence of imprisonment is also required to be not less than the minimum sentence for the offence.	29 30
(4)	This section does not apply to the sentencing of a person who had a significant cognitive impairment at the time the offence was committed (not being a temporary self-induced impairment). A <i>cognitive impairment</i> includes an intellectual disability, a developmental disorder (including an autistic spectrum disorder), a neurological disorder, dementia, a mental illness or a brain injury.	31 32 33 34 35 36
(5)	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 <i>Crimes (Sentencing Procedure) Act 1999</i> 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).	37 38 39 40
(6)	Nothing in this section affects the prerogative of mercy.	41
[3]	Section 25A Assault causing death	42
	Omit "with any part of the person's body or with an object held by the person" from section 25A (1) (a).	43 44
[4]	Section 25A (2)	45
	Insert "in public" after "intoxicated".	46

[5] Section 25A (2)	1
Insert at the end of the subsection:	2
Minimum penalty: Imprisonment for 8 years.	3
[6] Section 25A (2A)	4
Insert after section 25A (2):	5
(2A) For the purposes of this section, a person hits another person if the person:	6
(a) hits the other person with any part of the person’s body, or	7
(b) hits the other person with a thing worn or held by the person, or	8
(c) forces any part of the other person’s body to hit the ground, a structure or other thing.	9
	10
[7] Section 25A (3)	11
Omit “or an object”. Insert instead “or other thing”.	12
[8] Section 25A (5), (6) and (10)	13
Omit the subsections.	14
[9] Section 25A	15
Insert at the end of the section:	16
Note. See section 8A for provisions relating to establishing intoxication in public for the purposes of the aggravated intoxication offence under subsection (2).	17
	18
[10] Section 25B Assault causing death when intoxicated—mandatory minimum sentence	19
	20
Omit the section.	21
[11] Section 35 Reckless grievous bodily harm or wounding	22
Insert before section 35 (1):	23
(1AA) Reckless grievous bodily harm—when intoxicated in public and in company	24
A person of or above the age of 18 years who, when intoxicated in public and in the company of another person or persons:	25
	26
(a) causes grievous bodily harm to any person, and	27
(b) is reckless as to causing actual bodily harm to that or any other person, is guilty of an offence.	28
	29
Maximum penalty: Imprisonment for 16 years.	30
Minimum penalty: Imprisonment for 5 years.	31

[12] Section 35 (1A)	1
Insert after section 35 (1):	2
(1A) Reckless grievous bodily harm—when intoxicated in public	3
A person of or above the age of 18 years who, when intoxicated in public:	4
(a) causes grievous bodily harm to any person, and	5
(b) is reckless as to causing actual bodily harm to that or any other person,	6
is guilty of an offence.	7
Maximum penalty: Imprisonment for 12 years.	8
Minimum penalty: Imprisonment for 4 years.	9
[13] Section 35 (2A)	10
Insert after section 35 (2):	11
(2A) Reckless wounding—when intoxicated in public and in company	12
A person of or above the age of 18 years who, when intoxicated in public and	13
in the company of another person or persons:	14
(a) wounds any person, and	15
(b) is reckless as to causing actual bodily harm to that or any other person,	16
is guilty of an offence.	17
Maximum penalty: Imprisonment for 12 years.	18
Minimum penalty: Imprisonment for 4 years.	19
[14] Section 35 (3A)	20
Insert after section 35 (3):	21
(3A) Reckless wounding—when intoxicated in public	22
A person of or above the age of 18 years who, when intoxicated in public:	23
(a) wounds any person, and	24
(b) is reckless as to causing actual bodily harm to that or any other person,	25
is guilty of an offence.	26
Maximum penalty: Imprisonment for 9 years.	27
Minimum penalty: Imprisonment for 3 years.	28
[15] Section 35 (5)	29
Insert “and no or a lesser minimum penalty” after “that carries a lesser maximum penalty”.	30
[16] Section 35	31
Insert at the end of the section:	32
Note. See section 8A for provisions relating to establishing intoxication in public for the	33
purposes of the aggravated intoxication offences under this section.	34

[17] Section 59	1
Omit the section. Insert instead:	2
59 Assault occasioning actual bodily harm	3
(1) Assault	4
A person who:	5
(a) assaults any person, and	6
(b) by the assault occasions actual bodily harm to that person,	7
is guilty of an offence.	8
Maximum penalty: Imprisonment for 5 years.	9
(1A) Assault—when intoxicated in public	10
A person of or above the age of 18 years who, when intoxicated in public:	11
(a) assaults any person, and	12
(b) by the assault occasions actual bodily harm to that person,	13
is guilty of an offence.	14
Maximum penalty: Imprisonment for 7 years.	15
(2) Assault—when in company	16
A person who, in the company of another person or persons:	17
(a) assaults any person, and	18
(b) by the assault occasions actual bodily harm to that person,	19
is guilty of an offence.	20
Maximum penalty: Imprisonment for 7 years.	21
(3) Assault—when intoxicated in public and in company	22
A person of or above the age of 18 years who, when intoxicated in public and	23
in the company of another person or persons:	24
(a) assaults any person, and	25
(b) by the assault occasions actual bodily harm to that person,	26
is guilty of an offence.	27
Maximum penalty: Imprisonment for 9 years.	28
(4) Alternative verdict	29
If on the trial of a person charged with an offence under any subsection of this	30
section the jury is not satisfied that the offence is proven but is satisfied that	31
the person has committed an offence under any other subsection of this section	32
(that carries a lesser maximum penalty), the jury may acquit the person of the	33
offence charged and find the person guilty of an offence under that other	34
subsection. The person is liable to punishment accordingly.	35
Note. See section 8A for provisions relating to establishing intoxication in public for the	36
purposes of the aggravated intoxication offences under this section.	37
[18] Section 60 Assault and other actions against police officers	38
Omit “is liable to imprisonment for 5 years.” from section 60 (1). Insert instead:	39
is guilty of an offence.	40
Maximum penalty: Imprisonment for 5 years.	41

[19] Section 60 (1A) and (2)	1
Omit “is liable to imprisonment for 7 years.” wherever occurring. Insert instead:	2
is guilty of an offence.	3
Maximum penalty: Imprisonment for 7 years.	4
[20] Section 60 (1B)	5
Insert after section 60 (1A):	6
(1B) A person of or above the age of 18 years who, when intoxicated in public, assaults, throws a missile at, stalks, harasses or intimidates a police officer while in the execution of the officer’s duty, although no actual bodily harm is occasioned to the officer, is guilty of an offence.	7 8 9 10
Maximum penalty: Imprisonment for 7 years.	11
[21] Section 60 (2A)	12
Omit “is liable to imprisonment for 9 years.”. Insert instead:	13
is guilty of an offence.	14
Maximum penalty: Imprisonment for 9 years.	15
[22] Section 60 (2B)	16
Insert after section 60 (2A):	17
(2B) A person of or above the age of 18 years who, when intoxicated in public, assaults a police officer while in the execution of the officer’s duty, and by the assault occasions actual bodily harm, is guilty of an offence.	18 19 20
Maximum penalty: Imprisonment for 9 years.	21
[23] Section 60 (3)	22
Omit “is liable to imprisonment for 12 years.”. Insert instead:	23
is guilty of an offence.	24
Maximum penalty: Imprisonment for 12 years.	25
[24] Section 60 (3A)	26
Omit “is liable to imprisonment for 14 years.”. Insert instead:	27
is guilty of an offence.	28
Maximum penalty: Imprisonment for 14 years.	29
[25] Section 60 (3B) and (3C)	30
Insert after section 60 (3A):	31
(3B) A person of or above the age of 18 years who by any means, when intoxicated in public:	32 33
(a) wounds or causes grievous bodily harm to a police officer while in the execution of the officer’s duty, and	34 35
(b) is reckless as to causing actual bodily harm to that officer or any other person,	36 37
is guilty of an offence.	38
Maximum penalty: Imprisonment for 14 years.	39
Minimum penalty: Imprisonment for 5 years.	40

(3C)	A person of or above the age of 18 years who by any means, during a public disorder and when intoxicated in public:	1
		2
(a)	wounds or causes grievous bodily harm to a police officer while in the execution of the officer's duty, and	3
		4
(b)	is reckless as to causing actual bodily harm to that officer or any other person,	5
		6
	is guilty of an offence.	7
	Maximum penalty: Imprisonment for 16 years.	8
	Minimum penalty: Imprisonment for 5 years.	9
[26]	Section 60	10
	Insert at the end of the section:	11
	Note. See section 8A for provisions relating to establishing intoxication in public for the purposes of the aggravated intoxication offences under this section.	12
		13
[27]	Section 93C Affray	14
	Omit section 93C (1). Insert instead:	15
(1)	A person:	16
(a)	who uses or threatens unlawful violence towards another, and	17
(b)	whose conduct is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety,	18
		19
	is guilty of an offence.	20
	Maximum penalty: Imprisonment for 10 years.	21
(1A)	A person of or above the age of 18 years:	22
(a)	who, when intoxicated in public, uses or threatens unlawful violence towards another, and	23
		24
(b)	whose conduct is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety,	25
		26
	is guilty of an offence.	27
	Maximum penalty: Imprisonment for 12 years.	28
(1B)	An offence under subsection (1) or (1A) is an offence of affray.	29
[28]	Section 93C (2)	30
	Insert "or (1A)" after "subsection (1)".	31
[29]	Section 93C (5)	32
	Insert "under subsection (1)" after "Affray".	33
[30]	Section 93C (6)	34
	Insert after section 93C (5):	35
(6)	If on the trial of a person for an offence under subsection (1A) 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 (1A) and find the person guilty of an offence under subsection (1). The person is liable to punishment accordingly.	36
		37
		38
		39
		40
[31]	Section 93C	41
	Insert at the end of the section:	42

	Note. See section 8A for provisions relating to establishing intoxication in public for the purposes of the aggravated intoxication offence under subsection (1A).	1 2
[32]	Schedule 11 Savings and transitional provisions	3
	Omit Part 33. Insert instead:	4
	Part 33 Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014 and Crimes Amendment (Intoxication) Act 2014	5 6 7
	75 Review of operation of amendments made by amending Acts	8
	(1) For the purposes of this clause, <i>the relevant Ministers</i> are the Attorney General and the Minister for Police and Emergency Services.	9 10
	(2) The relevant Ministers are to review the operation of the amendments made by the <i>Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014</i> and the <i>Crimes Amendment (Intoxication) Act 2014</i> . The Ministers may engage persons to assist in the review.	11 12 13 14
	(3) The review is to be undertaken as soon as practicable and before 1 February 2017.	15 16
	(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.	17 18

Schedule 2	Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103	1
		2
[1] Section 138D		3
	Omit the section. Insert instead:	4
138D Persons to whom Division applies and purpose of exercise of powers		5
(1)	This Division applies to a person who has been arrested by a police officer for an alleged aggravated intoxication offence under the <i>Crimes Act 1900</i> .	6 7
(2)	A police officer may exercise the powers conferred by this Division to confirm or disprove that the person was intoxicated.	8 9
[2] Section 138E		10
	Omit the section. Insert instead:	11
138E Definitions		12
	In this Division:	13
	<i>aggravated intoxication offence</i> means an offence against section 25A (2), 35 (1AA), 35 (1A), 35 (2A), 35 (3A), 59 (1A), 59 (3), 60 (1B), 60 (2B), 60 (3B), 60 (3C) or 93C (1A) of the <i>Crimes Act 1900</i> .	14 15 16
	<i>breath test, breath analysis</i> and other words and expressions used in this Division and in Schedule 3 to the <i>Road Transport Act 2013</i> have the same meanings as they have in that Schedule.	17 18 19
	<i>narcotic drug</i> includes any prohibited drug under the <i>Drug Misuse and Trafficking Act 1985</i> .	20 21
[3] Section 138F Breath testing and breath analysis for presence of alcohol		22
	Omit “within 2 hours after the commission of the alleged offence” from section 138F (3).	23
	Insert instead “as soon as possible and within 2 hours after the police officer has reason to believe that the alleged offence was committed”.	24 25
[4] Sections 138F (5) and 138G (6)		26
	Omit “an offence under section 25A (2) of the <i>Crimes Act 1900</i> ” wherever occurring.	27
	Insert instead “an aggravated intoxication offence”.	28
[5] Section 138G Blood and urine samples for analysis for presence of alcohol or drugs		29
	Insert “or failed” after “refused” in section 138G (2).	30
[6] Section 138G (3)		31
	Omit “within 4 hours after the commission of the alleged offence”.	32
	Insert instead “as soon as possible and within 12 hours after the police officer has reason to believe that the alleged offence was committed”.	33 34
[7] Section 138G (6)		35
	Omit “alcohol, drug or other substance”. Insert instead “alcohol or narcotic drug”.	36
[8] Section 138H Offences relating to testing		37
	Insert “or fails” after “refuses” in section 138H (1).	38

[9] Section 138H (2A) and (2B)	1
Insert after section 138H (2):	2
(2A) A person is guilty of an offence if the person consumes or takes alcohol or a narcotic drug within 12 hours after assaulting a person in order to alter the presence or concentration of alcohol or a narcotic drug in the person's breath, blood or urine and thereby avoid prosecution for an aggravated intoxication offence.	3 4 5 6 7
Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.	8
(2B) A person cannot be found guilty of both an offence under subsection (2A) and an aggravated intoxication offence to which the assault under that subsection relates.	9 10 11

Schedule 3	Consequential amendment of other Acts	1
3.1	Crimes (Sentencing Procedure) Act 1999 No 92	2
[1]	Section 18 Interpretation of provisions imposing penalties	3
	Insert at the end of the section:	4
	Note. See section 8B of the <i>Crimes Act 1900</i> for the interpretation of a penalty expressed to be a minimum penalty for certain offences against that Act.	5 6
[2]	Part 4, Division 1A, Table Standard non-parole periods	7
	Insert after Item No 6:	8
	6A Section 60 (3A) of the <i>Crimes Act 1900</i> (wounding or inflicting grievous bodily harm on police officer during public disorder) 5 years	
3.2	Criminal Procedure Act 1986 No 209	9
[1]	Schedule 1 Indictable offences triable summarily	10
	Omit “35” from item 2 of Table 1. Insert instead “35 (1), (2), (3) or (4)”.	11
[2]	Schedule 1	12
	Omit “60 (2) or (2A)” from item 2 of Table 1. Insert instead “60 (2), (2A) or (2B)”.	13
[3]	Schedule 1	14
	Omit “60 (1) or (1A)” from item 1 of Table 2. Insert instead “60 (1), (1A) or (1B)”.	15