



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.



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New South Wales

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

No. , 2014

A Bill for

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*.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014</i> .	3 4
2 Commencement	5
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	6 7
(2) Schedule 5 commences on a day or days to be appointed by proclamation.	8

Schedule 1	Amendment of Crimes Act 1900 No 40	1
[1] Section 4 Definition of “Intoxication”		2
	Insert after the definition of <i>Intoxicating substance</i> in section 4 (1):	3
	<i>Intoxication</i> has the same meaning it has in Part 11A.	4
[2] Sections 25A and 25B		5
	Insert at the end of Division 1 of Part 3:	6
25A Assault causing death		7
(1)	A person is guilty of an offence under this subsection if:	8
(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	9 10 11
(b)	the assault is not authorised or excused by law, and	12
(c)	the assault causes the death of the other person.	13
	Maximum penalty: Imprisonment for 20 years.	14
(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.	15 16 17
	Maximum penalty: Imprisonment for 25 years.	18
(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.	19 20 21 22
(4)	In proceedings for an offence under subsection (1) or (2), it is not necessary to prove that the death was reasonably foreseeable.	23 24
(5)	It is a defence in proceedings for an offence under subsection (2):	25
(a)	if the intoxication of the accused was not self-induced (within the meaning of Part 11A), or	26 27
(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).	28 29 30
(6)	In proceedings for an offence under subsection (2):	31
(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 <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> , and	32 33 34 35 36
(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.	37 38 39 40 41

(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.	1 2 3 4 5
(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.	6 7 8 9 10
(9)	Section 18 does not apply to an offence under subsection (1) or (2).	11
(10)	In this section, <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.	12 13 14
25B	Assault causing death when intoxicated—mandatory minimum sentence	15
(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).	16 17
(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 <i>Crimes (Sentencing Procedure) Act 1999</i> or in any other Act or law authorises a court to impose a lesser or no sentence.	18 19 20 21
(3)	Nothing in this section (apart from subsection (2)) affects the provisions of the <i>Crimes (Sentencing Procedure) Act 1999</i> or any other Act or law relating to the sentencing of offenders.	22 23 24
(4)	Nothing in this section affects the prerogative of mercy.	25
[3]	Section 428E Intoxication in relation to murder, manslaughter and assault causing death	26 27
	Insert “or for an offence under section 25A” after “manslaughter” wherever occurring.	28
[4]	Section 428E	29
	Insert at the end of the section:	30
(2)	An offence under section 25A is not an offence of specific intent for the purposes of this Part.	31 32
[5]	Schedule 11 Savings and transitional provisions	33
	Insert at the end of the Schedule with appropriate Part and clause numbering:	34
Part	Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014	35 36
	Review of operation of amendments made by amending Act	37
(1)	For the purposes of this clause, <i>the relevant Ministers</i> are the Attorney General and the Minister for Police and Emergency Services.	38 39
(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> . The Ministers may engage persons to assist in the review.	40 41 42

- | | | |
|-----|--|--------|
| (3) | The review is to be undertaken as soon as practicable and within 3 years after the date of assent to that Act. | 1
2 |
| (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. | 3
4 |

Schedule 2	Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103	1
		2
Part 10, Division 4		3
Insert after Division 3:		4
Division 4	Testing of certain offenders for intoxication	5
138D	Persons to whom Division applies and purpose of exercise of powers	6
(1)	This Division applies to a person who has been arrested by a police officer:	7
(a)	for an alleged offence under section 25A (2) of the <i>Crimes Act 1900</i> , or	8
(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 <i>Crimes Act 1900</i> if the other person dies.	9 10 11 12
(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.	13 14 15 16
138E	Definitions	17
	In this Division, <i>breath test</i> , <i>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.	18 19 20
138F	Breath testing and breath analysis for presence of alcohol	21
(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.	22 23 24 25
(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.	26 27 28
(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.	29 30
(4)	The following provisions of Schedule 3 to the <i>Road Transport Act 2013</i> apply in relation to a breath test or breath analysis under this section (with any necessary or prescribed modifications):	31 32 33
(a)	the police officers authorised to carry out a breath analysis,	34
(b)	the provision of a statement to the person undertaking the breath analysis as to the concentration of alcohol determined by the analysis,	35 36
(c)	the issue of evidentiary certificates relating to the breath analysis,	37
(d)	any other provisions prescribed by the regulations.	38
(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 <i>Crimes Act 1900</i> .	39 40 41 42

138G	Blood and urine samples for analysis for presence of alcohol or drugs	1
(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 3 4 5
(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.	6 7 8 9 10 11 12
(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.	13 14
(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.	15 16
(5)	The following provisions of Schedule 3 to the <i>Road Transport Act 2013</i> apply in relation to blood or urine samples taken under this section (with any necessary or prescribed modifications):	17 18 19
(a)	the procedures for taking the blood or urine samples,	20
(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),	21 22 23
(c)	offences relating to sample handling and the use of samples,	24
(d)	the issue of evidentiary certificates relating to the blood or urine samples and their analysis,	25 26
(e)	the protection from liability of authorised sample takers in relation to the taking of blood or urine samples,	27 28
(f)	any other provisions prescribed by the regulations.	29
(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 <i>Crimes Act 1900</i> .	30 31 32 33
138H	Offences relating to testing	34
(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.	35 36 37
(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.	38 39
(3)	A person who commits an offence under the provisions of Schedule 3 to the <i>Road Transport Act 2013</i> that are applied by this Division is taken to be guilty of an offence under this Division.	40 41 42

Schedule 3	Amendment of Crimes (Sentencing Procedure) Act 1999 No 92	1
		2
[1]	Section 21A Aggravating, mitigating and other factors in sentencing	3
	Insert after section 21A (5A):	4
	(5AA) Special rule for self-induced intoxication	5
	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.	6
		7
		8
[2]	Section 21A (5B)	9
	Omit “Subsection (5A) has effect”. Insert instead “Subsections (5A) and (5AA) have effect”.	10
		11
[3]	Section 21A (6)	12
	Insert in alphabetical order:	13
	<i>self-induced intoxication</i> has the same meaning it has in Part 11A of the <i>Crimes Act 1900</i> .	14
		15
[4]	Schedule 2 Savings, transitional and other provisions	16
	Insert at the end of the Schedule with appropriate Part and clause numbers:	17
Part	Provision consequent on enactment of Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014	18
		19
		20
	Existing offences and proceedings	21
	The amendments made to this Act by the <i>Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014</i> apply to the determination of a sentence for an offence whenever committed, unless:	22
		23
		24
	(a) the court has convicted the person being sentenced of the offence, or	25
	(b) a court has accepted a plea of guilty and the plea has not been withdrawn,	26
		27
	before the commencement of the amendments.	28

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	—	—
Dihydroalone	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	1
		2
5.1	Summary Offences Act 1988 No 25	3
	Section 9 Continuation of intoxicated and disorderly behaviour following move on direction	4
		5
	Omit “6 penalty units” from section 9 (1). Insert instead “15 penalty units”.	6
5.2	Criminal Procedure Regulation 2010	7
	Schedule 3 Penalty notice offences	8
	Omit the matter relating to sections 4 (1), 4A (1) and 9 of the <i>Summary Offences Act 1988</i> .	9
	Insert instead, respectively:	10
	section 4 (1)	\$500
	section 4A (1)	\$500
	section 9	\$1,100

Schedule 6	Consequential amendment of other Acts	1
6.1	Crimes (Domestic and Personal Violence) Act 2007 No 80	2
[1]	Section 4 Meaning of “personal violence offence”	3
	Insert “25A,” after “24,” in section 4 (a).	4
[2]	Sections 39 (1) and 40 (5) (b)	5
	Omit “or manslaughter” wherever occurring. Insert instead “, manslaughter or an offence under section 25A of the <i>Crimes Act 1900</i> ”.	6 7
6.2	Crimes (Sentencing Procedure) Act 1999 No 92	8
	Section 76 Home detention not available for certain offences	9
	Omit “or manslaughter” from section 76 (a). Insert instead “, manslaughter or an offence under section 25A of the <i>Crimes Act 1900</i> ”.	10 11