

# MEDIA BRIEF

## CRIMES AMENDMENT (INTOXICATION) BILL 2014 - SENTENCING FOR DRUG AND ALCOHOL- RELATED VIOLENCE

20 March 2014



NEW SOUTH WALES  
BAR ASSOCIATION

The Legislative Council has passed an amendment to the *Crimes Amendment (Intoxication) Bill 2014*. That amendment replaces proposed offences with respect to which to which mandatory minimum sentences are to be imposed with an offence of 'Reckless grievous bodily harm when intoxicated in public and in circumstances of gross violence'. That offence will have a minimum penalty of 5 years imprisonment but a court may impose a lesser sentence if persuaded that 'substantial and compelling circumstances' justify a finding that a 'special reason' exists for not imposing that minimum.

The New South Wales Bar Association supports such a discretion to impose a lesser sentence in appropriate circumstances. This will permit the sentencing court to avoid imposing an unjust sentence in those cases where there are significant mitigating circumstances bearing on the objective seriousness of the offence, the culpability of the offender and/or the subjective position of the offender.

The Bar Association is aware that concerns have been raised in the parliament by the premier that the proposed s 34A only applies to the reckless infliction of 'grievous bodily harm' and does not apply to a reckless 'wounding'.

The association supports the limitation of s 34A to cases of infliction of 'grievous bodily harm'. There is no doubt that any serious wounding would constitute the infliction of grievous bodily harm. Any serious wounding would be regarded as really serious injury and thus as 'grievous bodily harm'. Conversely, a minor 'wounding' should not be caught by this provision (although it would be caught by the existing s 35(4)), with a maximum penalty of 7 years imprisonment).

To constitute a 'wounding', it is sufficient that there is an injury by which the interior layer of the skin is broken. No instrument or weapon need be used, so that a split lip inflicted by a punch is a 'wounding'. It is inappropriate that minor cuts or wounds should be caught by s 34A, which imposes a maximum penalty of 16 years imprisonment and a minimum penalty of 5 years.

**For further information, contact Alastair McConnachie at the Bar Association on  
ph: (02) 9229 1756 or mobile: 0420314462.**