30 January

CRIMES AND OTHER LEGISLATION AMENDMENT (ASSAULT AND INTOXICATION) BILL 2014
LIQUOR AMENDMENT BILL 2014
Second Reading

Mr JOHN ROBERTSON: I have said consistently that stronger penalties are part of the solution to crack down on alcohol violence. We support stronger sentences because we accept that sentencing must reflect community expectations and too often the community has felt let down. I shared the community's dismay at the four-year sentence that was handed down to Kieran Loveridge, Thomas Kelly's killer. The sentence was appallingly light, tone deaf and outrageously insensitive to the suffering of the Kelly family and the terrible price paid by Thomas. As parliamentarians, our fundamental responsibility is to ensure that New South Wales has a justice system, not merely a legal system. One thing is certain: There was no sense of justice for Thomas on that day.

Today the Government has introduced the Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014 that establishes a new offence of one-punch assault causing death, which is similar to laws passed in 2008 in Western Australia. The maximum sentence for a conviction is 20 years or 25 years if it can be proven that the offender was intoxicated by drugs or alcohol. The bill also contains a mandatory minimum sentence of eight years. Other features of the bill include: new police powers to conduct drug and alcohol testing; the removal of voluntary intoxication as a mitigating factor in sentencing; increased fines for certain public order offences; and increased penalties for the illegal possession and supply of steroids. The Opposition considers it unfortunate that it has taken so long for this bill to be introduced to Parliament when the Government announced it would establish one-punch laws in November last year.

Having frittered away the summer, the Government tossed the bill in the lap of the Opposition barely an hour ago and demanded it be rubberstamped straightaway. The proposed changes to the law are far reaching and should have been given greater scrutiny than the Parliament is able to afford them on this occasion. That said, I have consistently maintained that this is an issue that should be above politics and Labor will support the one-punch laws. Assaults of this nature have previously been treated under manslaughter, for which the maximum available sentence is 25 years. Nonetheless, Labor recognises the merit in establishing a separate statutory offence for one-punch assaults to raise community awareness, introduce a specific deterrent and offer greater guidance to the judiciary. The creation of a mandatory minimum sentence for this offence is something that our party supports but with considerable reservations. On 11 November 2013 the Attorney General stated in the *Sydney Morning Herald* that he opposes mandatory sentencing because it is an expensive and ineffective crime-fighting tool. The Attorney General further stated:

> ... around the world they have not reduced crime.
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> ...
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> ... mandatory sentences reduce the incentive to plead guilty. This imposes additional costs on the justice system and more trauma on victims and witnesses ...
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> For NSW, the additional costs of running and building prisons would mean either higher state taxes or less money for schools and hospitals.

The Attorney General also stated:

> Mandatory sentencing is discriminatory and does not consider the circumstances of an offence; it therefore frequently imposes offences on minor offenders which are out of step with their crimes.

In light of these concerns expressed by the Government's chief law officer, the Opposition believes it is vital to review the minimum sentence provisions of the bill within three years to consider their efficacy and check for unintended consequences. Nonetheless, our support for the bill is made in the knowledge that these are exceptional circumstances where there is a community mandate. I am conscious that the community has called for these laws. Our system of sentencing failed Thomas Kelly and his family, and that is why this Parliament has been forced to intervene. First and foremost, those who take human life must face the consequences of their actions. Nothing can bring back Lucio, Daniel or Thomas but one-punch laws will send a message to potential offenders and the judiciary of the primacy of human life.

Labor also supports the Liquor Amendment Bill 2014. This bill defines an expanded Sydney CBD Entertainment Precinct for the purpose of implementing a freeze on new liquor licences and the imposition of 1.30 a.m. lockouts and 3.00 a.m. last drinks. The evidence from Newcastle is undeniable. Assaults after dark fell by 37 per cent when the previous Government implemented similar measures in Newcastle. Labor has been calling for lockouts for months. We are pleased that the Government has acknowledged the merits of this policy and has responded at least in part. My main concern is that the Premier's conversion to lockouts looks to have been cobbled together on the run. The issue of alcohol-related violence has not just popped up. If the Government was serious it should have ironed out all the vagaries and had the detail ready to go.

The bill has no detail as to the Government's risk-based licensing scheme. It has no detail as to which venues are included in the lockout and which venues are not. But what we do know is that the Government's lockouts are full of loopholes. They exempt dozens of licensed venues from the new trading restrictions—small bars, restaurant bars and bars with tourist accommodation. Incredibly, the bill fails to define what constitutes a bar and a restaurant. Labor's policy is tough and clear—namely, 1.00 a.m. lockouts and 3.00 a.m. last drinks applied in blanket fashion across Kings Cross and the Sydney central business district. In contrast, the Government has proposed lockouts with loopholes that may not lead to the reduction in violence the community expects. We urge the Government to adopt not just some but all aspects of our policy.

If the Government is happy to cut alcohol sales from 3.00 a.m. then it must have a plan to get people home. It is vital that late-night trains from King's Cross to Town Hall and Central be introduced. Indeed, night-time services across the network should be explored. On Friday and Saturday nights, when cabs are scarce, the last train out of King's Cross is at 1.45 a.m. and the next at 5.15 a.m. In that 3½ hours people have difficulty leaving the area and hooligans can cause trouble. This matter is urgent and should have been addressed in a spirit of bipartisanship by the Parliament today. Labor calls on the Government to guarantee an extra late-night police presence, to introduce 10.00 p.m. restrictions on shots and drinks with high alcohol content, and to make good on its overdue promise to introduce identification scanners in Kings Cross venues. The measures contained in the legislation are a start and the Opposition will support them. Nonetheless, there is a list of unfinished business needed to keep our community safe and Labor stands ready to implement it with the Government. It is too late for some but we must never relent in our quest for changes to the law that are worthy of the memory of those who have lost their lives.

CRIMES AMENDMENT (INTOXICATION) BILL 2014
Second Reading

Debate resumed from 26 February 2014.

Mr JOHN ROBERTSON (Blacktown—Leader of the Opposition) [4.14 p.m.]: Alcohol-fuelled violence is a scourge on our society. It has ended too many nights, destroyed too many lives and shattered too many families. For too long it has gone unabated on our streets, in our venues and behind closed doors. Alcohol, when consumed in moderation, is almost harmless but alcohol, when consumed to excess, can unleash a human being's worst self—the abuser, the bully, the brawler and even the killer. Changing our society's culture around alcohol involves every person in New South Wales, but I passionately believe it begins with the Parliament. The Premier is trying to rush through his legislation like he has to catch a plane, but our job as parliamentarians is not just to blindly rubberstamp a mishmash of laws hastily cobbled together and slapped onto this problem like a bandaid. Today I urge the Premier to aim higher. Do not just play cheap law and order politics for the television cameras, but pass the best possible laws, grounded in reason, informed by the evidence. Labor will seek to amend this bill to improve it in the upper House. We want this Parliament to get it right.

In November last year I announced Drink Smart, Home Safe, Labor's comprehensive policy to tackle alcohol-fuelled violence. I committed Labor to the immediate introduction of six measures: first, treating every Friday and Saturday night in our city like a major event, with enhanced high-visibility policing and the introduction of late-night trains from Kings Cross to Town Hall and Central with potential extension across the network; secondly, introducing an 18-month trial of Newcastle-style alcohol restrictions in Kings Cross and the Sydney central business district; thirdly, risk-based licensing, providing hotels and bottle shops with a financial incentive to operate safe premises; fourthly, establishing a new independent liquor regulator; fifthly, the establishment of undercover sting operations to catch outlets selling alcohol to minors; and, sixthly, the mandatory collection and reporting of alcohol sales data so policymakers can build a picture of the true extent of alcohol-related harm in New South Wales.

Confronted with the horrific tragedies over the past 18 months Labor members have driven the case for alcohol law reform. We listened to doctors and paramedics and we listened to police. We produced a policy that was researched and evidence-based. It is a policy designed to tackle alcohol-related violence at the source to stop the assaults from happening in the first place and to focus on measures before that first terrifying punch gets thrown. Over the course of this summer, we pushed and pushed the Government until it could no longer get away with inaction. This year Labor welcomed the emergency recall of Parliament to tackle alcohol-fuelled violence. It was a move the Opposition had urged on the Government as far back as 3 January. On the day of the emergency session, I offered the Opposition's support for the Crimes and Other Legislation Amendment (Assault and Intoxication) Bill, which established a new offence of one-punch assault causing death and which is similar to laws passed in 2008 in Western Australia. The Opposition also supported the Government's Liquor Amendment Bill 2014 that defined an expanded Sydney CBD Entertainment Precinct and introduced new alcohol-trading restrictions.

There was a reason that Labor gave its support with serious reservations. The Government's package gave every impression of being cobbled together on the run. It left too many gaping holes. The Government proposed nothing new to address the critical shortage of late-night trains, particularly from Kings Cross to Town Hall and Central in the early hours of the morning. The Government proposed no extra high-visibility policing on our streets. The Government also failed lock, stock and barrel to consult on its trading restrictions—the imposition of 1.30 a.m. lockouts and 3.00 a.m. last drinks. After months of inaction, the Premier popped out of his box and sprang these changes on late-night traders, late-night venues and our artists, musicians and young people. Too many of them were taken by surprise. This is not the way Labor would have gone about implementing such a policy. Labor recognises the overriding community demand for action on alcohol-fuelled violence. On this most difficult and sensitive of issues, Opposition members will not oppose for the sake of it. We are willing to work with the Government to look for solutions—and it is that constructive approach that guides us today. All the same, as the Parliament considers the Government's latest legislation, the

pitfalls of its slipshod approach to alcohol law reform are all too evident.

The purpose of the changes brought before the House today are to create various aggravated intoxication offences with increased maximum penalties, to impose minimum mandatory sentences and to amend the recently created offence of assault causing death. While retaining the exception of significant cognitive impairment, the bill introduces mandatory minimum sentencing as follows: five years for reckless grievous bodily harm when intoxicated and in company; four years for reckless grievous bodily harm when intoxicated in public; three years for reckless wounding when intoxicated in public; five years for wounding or causing grievous bodily harm to police when intoxicated in public; and five years for wounding or causing grievous bodily harm to police during public disorder and when intoxicated in public.

Secondly, the bill increases by two years the maximum penalty for the following offences under the Crimes Act if committed by an adult when intoxicated in public: reckless grievous bodily harm or wounding; assault occasioning actual bodily harm; assault and actions against police officers; and affray. A standard non-parole period of five years is to apply for causing grievous bodily harm to a police officer during public disorder. On the issue of intoxication, the Government proposes to amend the law so that a blood or urine sample can be demanded within 12 hours of the alleged incident rather than the current four hours, which was put in place previously by those opposite. Refusal to provide a sample remains a separate, additional offence. The bill makes it clear that intoxication can be established by a person's speech, balance, coordination or behaviour. The bill also provides for a review of the amendments by the Attorney General and the Minister for Police, who are to report to the Premier rather than to the Parliament. I consider that to be completely inappropriate. Laws are developed in the Parliament and any review of those laws should be brought back to this place, not simply delivered to the table of the Premier.

After the deepest consideration, Labor does not believe the Government has produced the optimum package today. This bill has been produced in extreme haste and with none of the consultation that would normally accompany such wideranging sentencing changes. It is a piece of legislation that has been widely criticised and that has limped into this Chamber barely held together with bandages and sticky tape. How do we know this? The instant giveaway is that half the Government's bill comprises fixes to its previous bill. A month ago the Government was severely embarrassed by its failure to specify a minimum non-parole period for its one-punch laws. This would have seen one-punch offenders leaving gaol early—a gaping loophole that became apparent to the Opposition within seconds of seeing the bill.

The entire offence of assault causing death in section 5A of the Crimes Act has now been redrafted, including the requirement for the offence to have been committed in a public place. The Government also has been forced to redraft the offence of affray. This Parliament is being asked to trust a bunch of people who wrote their laws on the back of an envelope the first time and have been forced to return to Parliament for yet another go. The second giveaway is that what the Premier has served up today is a far cry from what he promised at his press conference two months ago. A raft of unworkable mandatory minimum offences has disappeared without a trace. There is no mention anymore of assault occasioning actual bodily harm. There is no mention anymore of assault causing actual bodily harm in company. There is no mention of a new sentencing regime for sexual assault. It turns out that these were just thought bubbles from the Premier that floated away into the atmosphere as January turned into February and February turned into March. They provided a giddy rush at the time and nice fodder for a press release, but they have since been exposed as completely impractical and there is no sign of them today.

The Opposition believes that the Government's latest batch of aggravated intoxicated offences—for which mandatory minimum sentences will apply—are also poorly conceived and poorly drafted. The Government claims that its bill targets only serious offenders with mandatory terms. That is simply not the case. The term "wounding", for example, can include a split lip. By including "reckless wounding" the Government's bill will capture cases where a small, one-off scuffle between mates at a bar unintentionally results in one of them getting a minor cut. Young men in that situation could be locked up for three years or more. In addition, the impact of a hastily cobbled together system of mandatory minimum sentences is likely to be significant on Crown Prosecutors, magistrates, the District Court and correctional facilities. There is no evidence that the Government has modelled or thought through the impact of these changes in any way. Labor believes that a new sentencing structure for alcohol-

fuelled violence must be fail-safe, proportionate and based on reason and evidence. Our duty today is not just to pass any laws; our duty today is to pass the best possible laws. That is why Labor proposes to introduce amendments modelled on mandatory sentencing laws targeting "gross violence", which were introduced by the Victorian Liberal Government in 2012.

I make it abundantly clear to those opposite, because it seems as though they are incapable of understanding, that if these amendments are not successful Labor will ultimately not oppose the Government's bill. The Government is proposing a complicated scheme of aggravated offences. Labor would get rid of it. Instead, we propose to introduce a single and straightforward "gross violence" offence for people who inflict serious injury on others while intoxicated and in a public place. "Serious injury" would be defined as one that endangers life or is substantial and protracted. The charge of gross violence would apply where the offender has engaged in conduct either intended to cause, likely to cause or which is reckless as to causing injury. It also would apply to conduct done in company with two other persons, conduct pursuant to a joint criminal enterprise, conduct using a weapon or firearm, or where the victim was incapacitated. This would include situations where a victim has continued to be kicked or beaten after being knocked down. Labor proposes a five-year mandatory minimum sentence for this offence, with a maximum of 16 years, if the offence was committed while the offender was intoxicated and in a public place. Labor also proposes an equivalent to section 10A of the Victorian Sentencing Act, which would prevent a mandatory sentence from being applied where there are substantial and compelling circumstances.

For months the Premier curled up into a ball and did nothing about alcohol-fuelled violence. Now his Government has completely overshot the runway with these proposals. The Government's package of reforms was cobbled together on the run, and it has taken barely a month to unravel. By contrast, Victoria's legislation was developed by the State's Sentencing Council—an expert body made up of police, prosecutors, victims of crime representatives and specialist academics. The law has been in place for more than a year in Victoria, and from all reports it works well. My message today to the Premier is simple: Do not assume this legislation is perfect. Labor is offering a better approach. Together we can filter out those rare or unforeseen cases which were not intended to result in incarceration. The Opposition's proposal will bring sense to the Government's mess and leave a workable system modelled on proven Australian practice. I believe it represents the best option available to this Parliament. It is the best way to honour the victims of alcohol-fuelled violence and their families and it is the best way to create safer communities and a stronger justice system in New South Wales for generations to come.

Mr PAUL LYNCH (Liverpool) [4.44 p.m.]: As indicated, the Opposition will not oppose the Crimes Amendment (Intoxication) Bill 2014, but it will move amendments in the Legislative Council in an attempt to improve it. The amendments relate to the mandatory sentencing aspects of the bill. They are broadly based on the Liberal Party-proposed but bipartisan Victorian model, and target gross intoxicated violence in public places. They do not include some of the minor injuries that are included in this bill, such as a split lip. They also include a version of section 10A of the Victorian Sentencing Act concerning special reasons on substantial and compelling grounds and thus the retention of judicial discretion.

The Victorian provisions were a considered and thoughtful response informed by a report of the Sentencing Council on this issue and demonstrate that a serious approach was taken to the topic. The Victorian approach is the opposite of the ad hoc, make-it-up-as-you-go-along approach taken by this Government. The bill before the House claims to do a number of things. A number of aggravated intoxication offences are created based on sections 35, 59, 60 and 93C of the Crimes Act. The new aggravated offences increase the current maximum penalties for each offence by two years, are restricted to adults, and apply if the offender was intoxicated in public by alcohol or a narcotic drug. There are also a number of provisions dealing with mandatory sentences.

As well, the bill quite extraordinarily amends section 25A of the Crimes Act; that is, the provision legislated as recently as 30 January this year in the Crimes and Other Legislation Amendment (Assault and Intoxication) Bill 2014. The bill also gives the police the power to require a breath test or analysis and blood or urine sample from those arrested for an aggravated intoxication offence within 12 hours, rather than four, after the alleged offence. The Law Enforcement (Powers and Responsibilities) Act is amended by adding new subsection 2A to section 138H, purporting to make it an offence for a person to consume alcohol or drugs within 12 hours after assaulting a person in order

to alter the presence of concentration of alcohol or drugs in a person's system and thereby avoid prosecution for an aggravated intoxication offence.

New section 8A makes it clear that intoxication can be established by observation of a person's speech, balance; coordination or behaviour. If an offender records alcohol or narcotics in their blood within six hours after the alleged offence they are presumed to have had at least that amount in their system at the time of the offence. Presumptions are also made if there is a reading of 0.15 grams. An offender is also presumed to be intoxicated if they refuse or fail to provide a blood sample for analysis. A new standard non-parole period of five years is proposed in new section 60 (3A). Mandatory sentences will be dealt with as solely indictable. A review of these changes and proposed section 25A is to be carried out by the Attorney General and the Minister for Police and Emergency Services, who will report to the Premier, not to the Parliament.

Some of those issues were not discussed in the Premier's second reading speech, which I found scandalously short on detail for a bill of this nature. It is worth tracing the extraordinary course this bill has taken to get to this point. After a Canute-like refusal to engage with the issue, the Premier announced various measures on 21 January this year. Included in that announcement was mandatory minimum sentencing for a range of offences. By the time Parliament resumed on 30 January this wish list, this thought bubble, had contracted to mandatory sentencing for just one assault by intoxicated hitting resulting in death; that is, new section 25A. So ill thought out was this plan, so inept and uncertain was the Government's position that it had to amend its own bill on 30 January to implement mandatory sentencing. Not only was the Government making it up as it went along, it had not even read its own bill. The situation is no better now.

This bill yet again amends section 25A—the offence introduced on 30 January was amended on that day by the Government itself. It is now being proposed that it be amended again. During my time in this place I have never seen such amateurishness and lack of intellectual rigour with regard to such an important piece of criminal legislation. Section 25A was introduced by the Government and amended twice by it within four weeks. That amateurish approach is exacerbated by this bill. The Premier's 21 January list of offences to be subject to mandatory sentencing is now somewhat moth-eaten—some offences are off the list and others have been added. This is no doubt that to some extent that is a result of internal opposition within the Government to mandatory sentencing and the sidelining of the Attorney General and his department.

More fundamentally, however, it represents the disorganisation and ad hoc performance of a government making it up as it goes along. The Government's performance has been so hopeless that we can expect yet more amendments. The only surprise will be if there are none. Several issues with the drafting of the bill reflect that ad hoc process, this lurching from one position to another. There is a complete lack of system or logic to the Government's position. For example, the way public place is dealt with in the bill is problematic. It is not defined. The definition in section 8A of the Crimes Act relates to the phrase "intoxicated in public". As I said, there are serious doubts about what that definition means. One eminent silk with whom I have discussed this legislation adds the phrase "whatever that means" after most of the elements of the definition.

The Government justified the approach by saying it was a broad approach. The difficulty of course is that what they really mean by "broad" is vague or uncertain, which is a fundamentally bad principle upon which to base criminal law. Another difficulty with the legislation involves the provisions relating to evidence of intoxication and to the definition of intoxication. The provisions proposed in new section 8A (2) as to the person's speech, balance, coordination or behaviour confirm a return to the bad old days of driving under the influence, a system we got rid of because it was so uncertain and inconsistent. This bill has the Government rushing back to the past, which is exactly what it does when it tries to make policy on the run.

The other portions of the definition involved presumptions that throw an onus onto the accused and seem to be arbitrary. There is no particular rigour in any of the figures chosen, either of intoxication limits or times chosen. The arbitrary nature of the figures reinforces the ad hoc nature of the Government's approach. Of course, one of the obvious problems with proving intoxication is the issue of the alleged offender consuming further alcohol or drugs subsequent to the alleged incident, making it impossible to prove that the person was intoxicated at the time of the offence. That was a criticism widely made of the section 25A provision when it was introduced several weeks ago. Making it up on

the run again the Government has responded by creating yet another criminal offence—section 138H (2A) of the Law Enforcement (Powers and Responsibilities) Act—which I referred to earlier. This strikes me as wholly ineffective as a criminal law response in dealing with the problem. That is not an unusual characteristic of a knee-jerk and ad hoc response.

The elements necessary to establish that offence beyond reasonable doubt make it unlikely to be often successfully prosecuted, and that is apart from people who are intoxicated actually knowing of the existence of the offence in the first place or turning their mind to it. The Government has attempted to justify its latest iteration of its position by saying the offences subject to mandatory sentencing are the worst crimes and that only "the most serious acts of street violence" would be targeted by mandatory sentencing laws. That was a claim made by the Government in the*Daily Telegraph* on 25 February 2014. It was reiterated by the Premier in this place in his second reading speech on 26 February 2014 and I think he referred to it again this morning on radio. That is wrong and entirely untrue. These laws include wounding. In a briefing note the New South Wales Bar Association states:

> 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".

The note cites a Court of Criminal Appeal judgement as authority for this proposition, *R v Shepperd* [2003] NSWCCA351. That Court of Appeal judgement in turn quotes *R v Newman* [1948] ALR109. I note the Attorney's response earlier was to confirm that although what I said was true, one should not worry because it will be sorted out by the discretion of the Director of Public Prosecutions. That is a disgraceful basis for an Attorney to put any proposition to this House for instituting a criminal offence. If those mandatory sentencing laws apply to a split lip, then it is entirely false to say that the laws apply to only the most serious cases. It is a lie.

One of the journalists writing in the *Daily Telegraph* on this matter on 25 January 2014 referred to unintended consequences and undue severity in sentences. He remembered being at a party as a 19-year-old when a couple of his mates got into a fight and one belted the other in the lip. If that bloke's lip had been split, under the Government's provision he would go to jail for three years. Removing assault occasioning bodily harm from the Government's list of mandatory sentences was clearly an attempt to exclude some of the comparatively less serious assaults but because of the ad hoc nature of the Government's response, the Government has not got it right and some have still been included.

On 30 January 2014, I spoke of the problems associated with mandatory sentencing and made the point that it was a flawed and failed policy. There is no evidence that it works as a deterrent, especially in relation to crimes of violence. Indeed, there is a plethora of credible evidence to the contrary. Inevitably there will be unjust results flowing from unintended consequences and that in turn will result in jury nullification and in juries refusing to convict, precisely what happened in New South Wales with prosecutions under section 233C of the Migration Act, which resulted in the Commonwealth Attorney-General issuing directions about only prosecuting in exceptional circumstances.

Additionally, while judges lose their discretion, the discretion does not disappear from the system. The criminal justice system in this sense is hydraulic. The discretion is moved from judges to police and prosecutors. Key decisions in the sentencing process are removed from an open courtroom to the chambers of prosecutors and offices of police. Mandatory sentencing also fails to recognise those who help authorities or enter early pleas of guilty, the latter as much an assistance to victims and witnesses as to the broader system. Both these are sensible public policy objectives dismissed by mandatory sentencing. [*Extension of time agreed to.*]

The other substantial problem with the Government's legislation is the cost that will be occasioned to

the criminal justice system and the prison system. This is not to argue that under no circumstances should extra costs be incurred for these systems. It is to say, first, that such costs should be acknowledged and assessed. There was no reference at all to this very important issue in the Premier's second reading speech. It was entirely innocent of any such calculation or reference to cost. Second, it is to argue that a decision should be made whether the extra expenditure is going to make a difference, whether it will work. If it will not work in reducing the level of assault, then there must be a question mark as to the sense of pursuing the policy.

Mandatory sentencing will increase the number of people going to jail and it will do it in two ways. The first and most obvious is that people who might not have been sentenced to jail now will be. As well, the mandatory minimum will be regarded as the sentence for the least serious type of offence, which will have the undoubted effect of increasing all sentences for that offence. Numerically, that might be an even greater impact than the first class. Figures I have obtained from the Parliamentary Library and which are ultimately sourced from the Bureau of Crime Statistics and Research give a sense of the scale of the issue. From October 2009 to September 2013 there were 52 convictions in the Local Court for offences under section 35 (1) of the Crimes Act, 447 for offences under section 35 (2), 47 under section 35 (3) and 700 under section 35 (4). Imprisonment rates were respectively 52 per cent, 35 per cent, 51 per cent and 37 per cent.

From January 2008 to June 2013 there were 83 convictions in the higher courts for section 35 (1), 230 under section 35 (2), 76 under section 35 (3) and 224 under section 35 (4). Imprisonment rates were 78 per cent for the first three and 64 per cent for the fourth. For offences against police from July 2006 to June 2013 there were 12 convictions under section 60 (3A) and three under section 60 (3H) and 75 per cent of the former and all of the latter resulted in imprisonment—in any event a total of 15 convictions over seven years. It is important to get proper figures into this debate. As the Chief Justice of the Supreme Court noted in his address at the opening of the law term the Government got it wrong when quoting figures for the average sentence for manslaughter because it relied upon statistics that merged manslaughter and driving causing death. The figures I have cited do not discriminate as to whether they are in a public place or even in a public place as defined in this bill and they do not discriminate between cases where the offender was intoxicated and cases where the offender was not intoxicated. However, some things do emerge.

It emerges that a significant number of people are already receiving custodial sentences; they will be getting longer sentences and those not getting custodial sentences will start to receive them—a very rough calculation suggests about 420 people per annum, without it being divided up as to whether they were in a public place or affected by alcohol. If the Government believes these figures are wrong it should say so. It should produce its own figures, that is, unless it was in such a mad rush and behaved in such an ad hoc way it has not actually provided the figures and that is why they are not in the Premier's second reading speech. The cost of imprisonment is not cheap; it is approximately $75,000 per annum for each prisoner. Therefore, every extra person put in jail means one fewer teacher or nurse. It is fine if the Government wants to take that course but it should acknowledge that cost and acknowledge the policy it is implementing will have an impact.

There will clearly be an increase in the number of defended hearings because of mandatory sentencing. That means more time required in a system already under considerable stress. Many of the matters are currently dealt with summarily in the Local Court. Under this measure they will be dealt with in the District Court, which is a more expensive jurisdiction to run. There are currently only 70 Crown prosecutors instead of 90; the Government has run those numbers down. Legal Aid has had a cut to funding and is struggling. At every level there will be a squeeze on the system. Our amendments in the upper House seek to rectify the ad hoc, disorganised way in which the Government has approached the problem. The Government has made it up along the way, with no rigour or logic in the system and it has had to constantly amend its own legislation.

In conclusion, I note the tragic results of the road to Damascus conversion that the Attorney General has had to suffer. The truth is that the speech I have given today is the one that he should have given. In performing his duty properly as Attorney General, expressing the things he has believed in for 30 years and spoken about time and again, he should have given the speech I have delivered. He is a tragic victim of this Government's ineptitude and the ad hoc nature of its policy development. He should have been better than this. He has ended his career as Attorney as a failure because he has turned his back on everything he has said and done for three decades.

MEDIA RELEASE

John Robertson MP

NSW Opposition Leader

Wednesday, 19 March 2014

LABOR WELCOMES NSW UPPER HOUSE SUPPORT FOR AMENDMENTS ON ALCOHOL FUELLED VIOLENCE

NSW Opposition Leader John Robertson has tonight welcomed the decision of the NSW Upper House to support Labor's amendments to new alcohol laws.

NSW Labor put forward common sense amendments that would create a single and straightforward 'gross violence' offence for offenders who inflict serious injury on others while intoxicated and in a public place.

The 'gross violence' amendments were modelled on laws introduced by the Victorian Liberal Government in 2012 – and supported in a bipartisan fashion by the Victorian Parliament.

The laws were originally developed by experts on the Victorian Sentencing Council – which is made up of police, law experts and victims groups.

There were serious concerns that the laws proposed by the O'Farrell Government were cobbled together on the run – and could actually result in individuals who are involved in minor incidents with friends that lead to a scratch or cut lip receive a mandatory jail sentence.

The amendments moved by Labor – and supported by the NSW Upper House – ensure that NSW has tough laws for alcohol-fuelled violence which are fail-safe and properly targeted at violent offenders.

Mr Robertson said the O'Farrell Government's approach to new laws targeting alcohol fuelled violence had been a shambles – with poorly drafted legislation being presented that the government had actually had to amend.

"Barry O'Farrell has cobbled together these laws without consultation and as a result he has had to change and amend his own proposals on the run," Mr Robertson said.

"We put forward amendments based on the bipartisan laws passed in Victoria which were the result of extensive consultation with police, victims of crime groups and legal experts.

"These are common sense amendments that will better target crimes involving alcohol fuelled violence which causes serious injury.

"We have said from day one that we would not play politics with cracking down on alcohol fuelled violence – but we will put forward laws that we think will better target violent thugs.

"Unfortunately we are still yet to see the government provide more police resources and late night trains that will help crack down on alcohol fuelled violence."

Labor's amendments propose a five year mandatory minimum sentence for this offence, with a maximum of sixteen years, if it is committed while intoxicated and in a public place.

Mr Robertson noted that support for Labor's amendments came from across the political spectrum – including the Greens Party and the Shooters and Fishers Party.