



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: Criminal:REad824759

4 March 2013

The Hon. B.R. O'Farrell MP  
Premier of New South Wales  
Level 40, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

By email: [kuringgai@parliament.nsw.gov.au](mailto:kuringgai@parliament.nsw.gov.au)

Dear Premier,

### **Crimes Amendment (Intoxication) Bill 2014**

I am writing to you in relation to the introduction of the Crimes Amendment (Intoxication) Bill 2014 ("the Bill") to the NSW Parliament last week.

The Law Society maintains its strong opposition to mandatory minimum sentencing in that:

- It prevents all the circumstances of the offence and offender being taken into account
- It is ineffective in deterring offenders
- It creates uncosted pressures in the system
- It has a disproportionately severe impact on disadvantaged groups in the community.

The Law Society's Criminal Law, Juvenile Justice, Indigenous Issues and Human Rights Committees ("the Committees") have reviewed the Bill. Their concerns are set out below.

### **Definition of intoxication**

The Committees are very concerned about the new definition of intoxication. It creates uncertainty; it is potentially a very low threshold; and, the concept of "noticeably affected" relies heavily on the subjective views of police officers.

Further, the Committees object to the presumptions created around the issue of intoxication. For example, the Bill would create a presumption of intoxication where someone refuses to submit to a test. The application of this provision would be particularly harsh if the person does not realise the consequences of refusal, especially if they don't have access to a lawyer. This is likely to be of particular concern for Indigenous people. The Committees also note the provisions which require the defendant to disprove the presumption of intoxication if testing is refused or if testing shows intoxication within six hours after the offence. The Committees' view is that these provisions are generally inconsistent with the presumption of innocence and the requirement that the prosecution prove every element of the offence.

The Committees further submit that it is anomalous that the higher maximum penalties for offences involving intoxication mean there is a higher penalty available for the intoxicated accused compared with a sober, deliberate accused.

### **Impact on Indigenous community**

The Committees submit that the broad definition of intoxication is likely to have a particularly severe impact on Indigenous people, given their complicated relationship with the police and will likely greater disadvantage their ability to test the evidence (particularly at a time when the Aboriginal Legal Service is facing funding cuts). The Committees' further view is that the focus on intoxication "in public" will also impact more harshly on Indigenous people, amongst other vulnerable groups. Consorting laws are a good example of how Parliament's intent can differ significantly from the effect of the legislation. Recent statistics from the NSW Ombudsman show that in around 70% of the cases sampled, consorting provisions were used by frontline police against Aboriginal people, and not to break up organised crime associations. The proposed Bill is not consistent with efforts to reduce the incarceration rate of Indigenous peoples.

Please do not hesitate to contact me (02 9926 0216) or the Chief Executive Officer, Michael Tidball (02 9926 0215) should you need any further information.

Yours sincerely,

A handwritten signature in cursive script that reads "Ros Everett".

**Ros Everett**  
**President**