

South Australia



**CRIMINAL LAW CONSOLIDATION (INTOXICATION) AMENDMENT
ACT 1999**

No. 15 of 1999

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INTOXICATION**

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ANNO QUADRAGESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1999

No. 15 of 1999

An Act to amend the Criminal Law Consolidation Act 1935.

[Assented to 1 April 1999]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Criminal Law Consolidation (Intoxication) Amendment Act 1999*.

(2) The *Criminal Law Consolidation Act 1935* is referred to in this Act as "the principal Act".

Amendment of heading

2. Part 8 of the principal Act is renumbered as Part 7A.

Enactment of new Part 8

3. The following Part is inserted in the principal Act after section 267:

**PART 8
INTOXICATION**

Definition

267A. In this Part—

"consciousness" includes—

- (a) volition;
- (b) intention;
- (c) knowledge;
- (d) any other mental state or function relevant to criminal liability;

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"**objective element**" of an offence means an element of the offence that is not a subjective element;

"**subjective element**" of an offence means a mental element of the offence and includes voluntariness.

Mental element of offence to be presumed in certain cases

268. (1) If the objective elements of an alleged offence are established against a defendant but the defendant's consciousness was (or may have been) impaired by intoxication to the point of criminal irresponsibility at the time of the alleged offence, the defendant is nevertheless to be convicted of the offence if it is established that the defendant—

- (a) formed an intention to commit the offence before becoming intoxicated; and
- (b) consumed intoxicants in order to strengthen his or her resolve to commit the offence.

(2) A defendant's consciousness is taken to have been impaired to the point of criminal irresponsibility at the time of an alleged offence if, because of impairment of consciousness, a subjective element of the alleged offence cannot be established against the defendant.

Question of intoxication must be specifically raised by defendant

269. (1) On the trial of a defendant who was (or may have been) intoxicated at the time of the alleged offence, the question whether the defendant's consciousness was, or may have been, impaired by intoxication to the point of criminal irresponsibility—

- (a) is not to be put to the jury by the judge, the prosecutor or the defendant; and
- (b) if raised by the jury itself, is to be withdrawn from the jury's consideration,

unless the defendant specifically asks the judge to address the jury on that question.

(2) A defendant's consciousness is taken to have been impaired to the point of criminal irresponsibility at the time of an alleged offence if, because of impairment of consciousness, a subjective element of the alleged offence cannot be established against the defendant.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor