



New South Wales

Crimes Amendment (Intoxication) Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes Act 1900* to reform the law concerning the effect of intoxication on criminal liability and punishment for criminal conduct.

At present the common law, as stated by the High Court in *R v O'Connor* (1980) 146 CLR 64, enables a defendant to lead evidence on intoxication to cast doubt on whether the defendant acted voluntarily or with the requisite mental state for the offence. The amendments will make the following three fundamental changes to the common law:

- (a) evidence of self-induced intoxication will not be admissible to rebut an allegation that a defendant's conduct was voluntary,
 - (b) evidence of self-induced intoxication will not be admissible to rebut an allegation that a person did not possess the requisite mental state for an offence,
 - (c) evidence of intoxication will not be a mitigating circumstance that can be taken into account in determining the punishment for any offence.
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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 day occurring 3 months after the date of assent unless commenced sooner by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] amends section 1 of the Principal Act to include a reference to proposed Part 11A.

Schedule 1 [2] inserts a Part 11A in the Principal Act containing the following provisions:

Proposed section 428A contains definitions of terms used in the proposed Part.

Proposed section 428B ensures that the proposed Part applies to offences (whether under the Act or otherwise) committed after the commencement of the proposed Part.

Proposed section 428C provides that evidence of self-induced intoxication cannot be considered in determining whether an offence was committed voluntarily or with the requisite mental state for the offence. The proposed section also makes it clear that the standard by which an offence involving negligence is to be judged depends on whether the intoxication was self-induced or not. If the intoxication was self-induced, the standard is that of a reasonable person who was *not* intoxicated. However, if the intoxication was not self-induced, the standard is that of a reasonable person intoxicated *to the same extent* as the defendant concerned.

Proposed section 428D provides that evidence of self-induced intoxication cannot be considered a mitigating circumstance in determining the punishment for an offence.

Proposed section 428E provides that a defendant is not criminally responsible for conduct constituting an offence if it results from intoxication that was not self-induced.

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Proposed section 428F provides that, in cases where intoxication is an issue, self-induced intoxication is presumed unless evidence is led that might lead a court or jury to conclude that there is a reasonable possibility that the intoxication was not self-induced.

Proposed section 428G provides for the abolition of the common law relating to the effect of intoxication on criminal liability and in determining punishment.

Introduced by Mr A A Tink, MP

First print

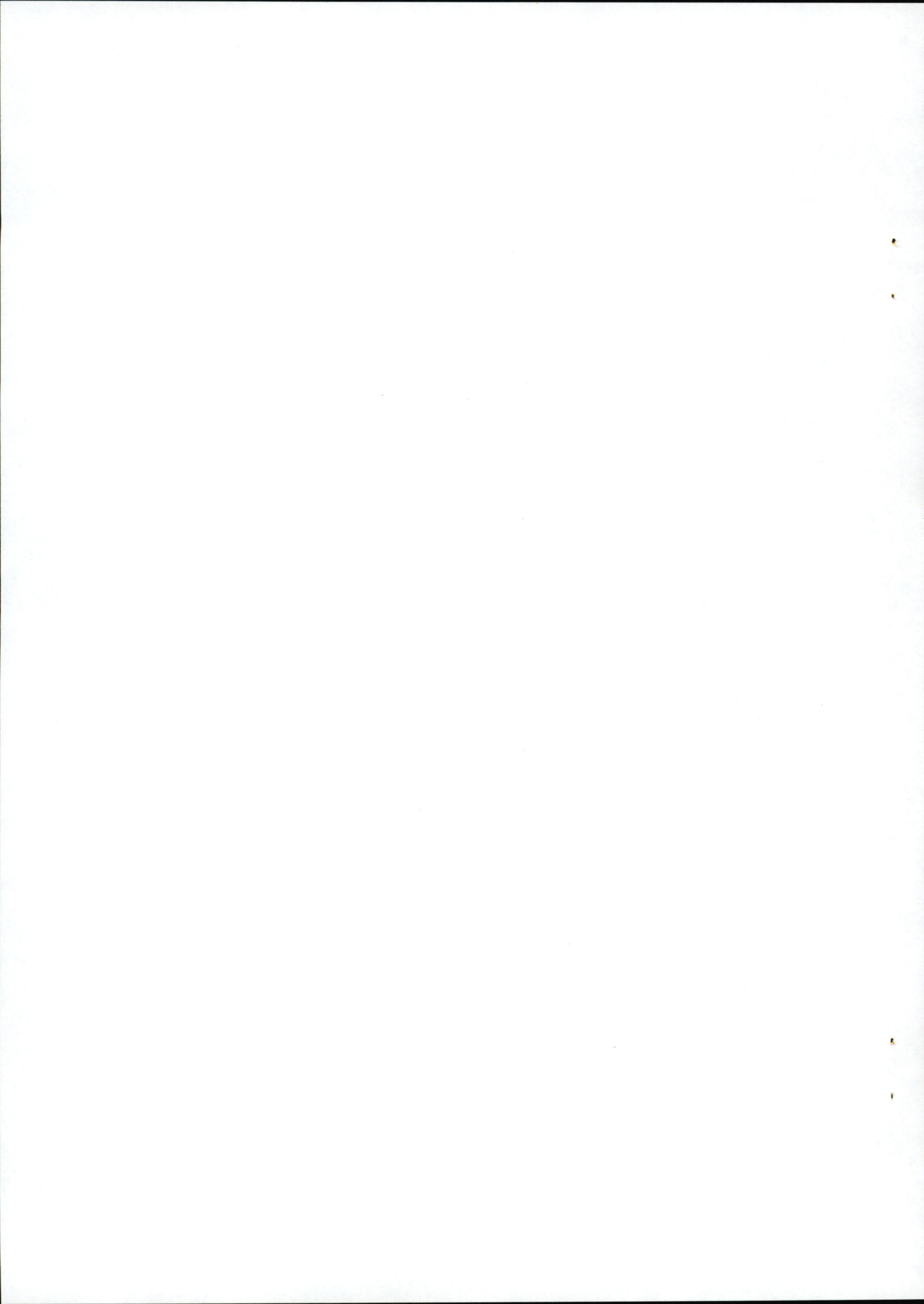


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New South Wales

Crimes Amendment (Intoxication) Bill 1995

No. , 1995

A Bill for

An Act to amend the *Crimes Act 1900* to reform the law on the effect of intoxication in relation to criminal responsibility and punishment; and for related purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Intoxication) Act 1995*.

2 Commencement

This Act commences on the day occurring 3 months after the date of assent unless commenced sooner by proclamation. 5

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 1 Short title and contents of Act

Insert after the matter relating to Part 11:

Part 11A Intoxication—*ss.* 428A–428G 5

[2] Part 11A

Insert after Part 11:

Part 11A Intoxication

428A Definitions

In this Part: 10

drug includes a drug within the meaning of the *Drug Misuse and Trafficking Act 1985*.

intoxication means the impairment of awareness, understanding or control because of the influence of alcohol, a drug or any other substance. 15

self-induced intoxication means any intoxication except intoxication that:

- (a) is involuntary, or
- (b) results from fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force. 20

428B Application of Part

This Part applies to any offence (whether under this Act or otherwise) committed after the commencement of this Part. 25

428C Relevance of intoxication to determination of criminal responsibility

- (1) The following matters cannot be considered in determining whether a person has committed any offence: 5
- (a) evidence that a person was so intoxicated because of self-induced intoxication that the person's conduct was involuntary,
 - (b) evidence that a person was so intoxicated because of self-induced intoxication that the person did not possess the requisite mental state for the offence at the time the offence is alleged to have occurred. 10
- (2) If negligence is an element necessary to constitute an offence by a person who alleges that he or she was intoxicated at the time the offence is alleged to have occurred: 15
- (a) in the case of self-induced intoxication—regard must be had to the standard of a reasonable person who is not intoxicated in determining whether the person who was intoxicated was negligent, and 20
 - (b) in the case of intoxication that is not self-induced—regard must be had to the standard of a reasonable person intoxicated to the same extent as the person who was intoxicated in determining whether the person was negligent. 25
- (3) Nothing in this section affects the onus resting on the prosecution to prove each element of an offence according to the appropriate standard of proof.

428D Relevance of intoxication in determining punishment

Evidence of self-induced intoxication is not to be taken as evidence of a mitigating circumstance for the purposes of determining the punishment for any offence. 30

428E Involuntary intoxication

A person is not criminally responsible for an offence if the person's conduct constituting the offence was because of intoxication that was not self-induced.

428F Presumption of self-induced intoxication

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For the purposes of this Part, a person's intoxication is presumed to have been self-induced unless evidence is adduced that might lead the court or the jury (as the case may be) to conclude that there is a reasonable probability that it was not self-induced.

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428G Abolition of common law relating to the effect of intoxication

The common law relating to the effect of intoxication on criminal liability and in determining punishment is abolished.

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