

House of Assembly—No 37

Lapsed owing to prorogation, 12 August 2004, and restored in the Legislative Council, 15 September 2004

South Australia

Criminal Law Consolidation (Abolition of the Drunk's Defence) Amendment Bill 2004

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

- 4 Amendment of s 267A—Definitions
 - 5 Amendment of section 268—Mental element of offence to be presumed in certain cases
 - 6 Amendment of section 269—Question of intoxication must be specifically raised
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Criminal Law Consolidation (Abolition of the Drunk's Defence) Amendment Act 2004*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Amendment of s 267A—Definitions

- (1) Section 267A—before the definition of *consciousness* insert:

alleged offence means the offence with which the defendant is charged but also extends to any other offence of which the defendant could be found guilty on the charge;

- (2) Section 267A—after the definition of *consciousness* insert:

consumption of a drug includes—

- (a) injection of the drug (either by the person to whom the drug is administered or someone else); and
- (b) inhalation of the drug; and
- (c) any other means of introducing the drug into the body;

drug means alcohol or any other substance that is capable (either alone or in combination with other substances) of influencing mental functioning;

medical practitioner means a registered medical practitioner or registered dentist;

- (3) Section 267A—after the definition of *objective element* insert:

recreational use of a drug—consumption of a drug is to be regarded as recreational use of the drug unless—

- (a) the drug is administered against the will, or without the knowledge, of the person who consumes it; or
- (b) the consumption occurs accidentally; or
- (c) the person who consumes the drug does so under duress, or as a result of fraud or reasonable mistake; or
- (d) the consumption is therapeutic;

self-induced—see subsections (2) and (3);

serious harm means—

- (a) serious mental or physical harm; or
- (b) loss of, or damage to property, where the amount or value of the loss or damage exceeds \$10 000;

- (4) Section 267A—after the definition of *subjective element* insert:

therapeutic—the consumption of a drug is to be regarded as therapeutic if—

- (a) the drug is prescribed by, and consumed in accordance with the directions of, a medical practitioner; or
- (b) the drug—
 - (i) is a drug of a kind available, without prescription, from registered pharmacists; and
 - (ii) is consumed for a purpose recommended by the manufacturer and in accordance with the manufacturer's instructions.

- (5) Section 267A—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) Intoxication resulting from the recreational use of a drug is to be regarded as self-induced.
- (3) If a person becomes intoxicated as a result of the combined effect of the therapeutic consumption of a drug and the recreational use of the same or another drug, the intoxication is to be regarded as self-induced even though in part attributable to therapeutic consumption.

5—Amendment of section 268—Mental element of offence to be presumed in certain cases

(1) Section 268—delete subsection (2) and substitute:

5 (2) 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 self-induced 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 the defendant would, if his or her conduct had been voluntary and intended, have been guilty of the offence.

10 (3) However, subsection (2) does not extend to a case in which it is necessary to establish that the defendant—

- 15 (a) foresaw the consequences of his or her conduct; or
(b) was aware of the circumstances surrounding his or her conduct.

Example—

20 A, whose consciousness is impaired by self-induced intoxication to the point of criminal irresponsibility at the time of the alleged offence, beats B up and B dies of the injuries. In this case, A could be convicted of manslaughter but not of murder (because A is taken to have intended to do the act that results in death but not the death).

(4) If—

- 25 (a) the objective elements of an alleged offence are established against a defendant but the defendant's consciousness was (or may have been) impaired by self-induced intoxication to the point of criminal irresponsibility at the time of the alleged offence; and
30 (b) the defendant's conduct resulted in death; and
(c) the defendant is not liable to be convicted of the offence under subsection (1) or (2); and
(d) the defendant's conduct, if judged by the standard appropriate to a reasonable and sober person in the defendant's position, falls so short of that standard that it amounts to criminal negligence,

35 the defendant may be convicted of manslaughter and liable to imprisonment for life.

(5) If—

- 40 (a) the objective elements of an alleged offence are established against a defendant but the defendant's consciousness was (or may have been) impaired by self-induced intoxication to the point of criminal irresponsibility at the time of the alleged offence; and
(b) the defendant's conduct resulted in serious harm (but not death); and

(c) the defendant is not liable to be convicted of the offence under subsection (1) or (2); and

(d) the defendant's conduct, if judged by the standard appropriate to a reasonable and sober person in the defendant's position, falls so short of that standard that it amounts to criminal negligence,

the defendant may be convicted of causing serious harm by criminal negligence.

Maximum penalty: Imprisonment for 4 years.

(6) A defendant's consciousness is taken to have been impaired to the point of criminal irresponsibility at the time of the alleged offence if it is impaired to the extent necessary at common law for an acquittal by reason only of the defendant's intoxication.

6—Amendment of section 269—Question of intoxication must be specifically raised

Section 269(1)—delete "unless the defendant specifically asks" and substitute:
unless the defendant or the prosecutor specifically asks