



New South Wales

Crimes Amendment (Drink and Food Spiking) Bill 2008

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* so as:

- (a) to create a new summary offence of spiking a person's drink or food with an intoxicating substance with intent to harm the person (maximum penalty 2 years imprisonment or \$11,000 fine, or both), and
- (b) to ensure that other more serious related offences apply to the use of intoxicating substances (namely, using intoxicating substances to commit indictable offences, to endanger life, to inflict grievous bodily harm or to injure or cause distress or pain).

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 a day to be appointed by proclamation.

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

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] inserts a definition of *intoxicating substance* into the Principal Act. The expression is defined to include alcohol or a narcotic drug or any other substance that affects a person's senses or understanding.

Schedule 1 [2] ensures that a reference in the Principal Act to causing an intoxicating substance to be administered to or taken by a person includes a reference to causing a person to inhale, take or be exposed to the intoxicating substance in the person's environment.

Schedule 1 [3] substitutes section 38 of the Principal Act (which makes it an offence to use chloroform laudanum, or other stupefying or over-powering drug, to commit or assist in the commission of an indictable offence) to apply the offence instead to the use of any "intoxicating substance" (as proposed to be defined in Schedule 1 [1]).

Schedule 1 [4] inserts proposed section 38A into the Principal Act to create the proposed summary offence of spiking drink or food (punishable by imprisonment not exceeding 2 years or a fine of not more than 100 penalty units, or both). The offence is committed if the offender causes another person to be given or to consume drink or food containing an intoxicating substance (or more of any such substance than the other person would expect it to contain) in circumstances where:

- (a) the other person is not aware the drink or food contains the substance (or that quantity of the substance), and
- (b) the accused intends the other person to be harmed by the consumption of the drink or food (including any impairment of the senses or understanding that the other person might reasonably be expected to object to in the circumstances).

The proposed section provides defences for proceedings for any such offence, namely:

- (a) the accused has reasonable cause to believe that each person who was likely to consume the drink or food would not have objected to consuming the drink or food if the person had been aware of the presence and quantity of the intoxicating substance in the drink or food, or
- (b) the accused uses the intoxicating substance in the course of any medical, dental or other health professional practice.

Schedule 1 [5] amends section 39 of the Principal Act (which makes it an offence to administer etc any poison or other destructive or noxious thing to endanger a person's life or to inflict grievous bodily harm on a person) to extend the offence to the use of any "intoxicating substance" (as proposed to be defined in Schedule 1 [1]).

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Schedule 1 [6] amends section 41 of the Principal Act (which makes it an offence to administer etc any poison or other destructive or noxious thing to injure or to cause distress or pain to a person) to extend the offence to the use of any “intoxicating substance” (as proposed to be defined in Schedule 1 [1]).

First print



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No. , 2008

A Bill for

An Act to amend the *Crimes Act 1900* in relation to drink and food spiking, and the use of intoxicating substances in the commission of other related offences.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes Amendment (Drink and Food Spiking) Act 2008</i> .	3
2 Commencement	4
This Act commences on a day to be appointed by proclamation.	5
3 Amendment of Crimes Act 1900 No 40	6
The <i>Crimes Act 1900</i> is amended as set out in Schedule 1.	7
4 Repeal of Act	8
(1) This Act is repealed on the day following the day on which this Act commences.	9 10
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	11 12

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 4 Definitions	3
	Insert in alphabetical order in section 4 (1):	4
	<i>Intoxicating substance</i> includes alcohol or a narcotic drug or any other substance that affects a person's senses or understanding.	5 6
[2]	Section 4 (7)	7
	Insert “, intoxicating substance” after “poison” wherever occurring.	8
[3]	Section 38	9
	Omit the section. Insert instead:	10
	38 Using intoxicating substance to commit an indictable offence	11
	A person who:	12
	(a) administers an intoxicating substance to another person, or	13
	(b) causes another person to take an intoxicating substance, with intent to enable himself or herself, or to assist a third person, to commit an indictable offence is guilty of an offence.	14 15 16
	Maximum penalty: Imprisonment for 25 years.	17
[4]	Section 38A	18
	Insert after section 38:	19
	38A Spiking drink or food	20
	(1) In this section:	21
	<i>harm</i> includes an impairment of the senses or understanding of a person that the person might reasonably be expected to object to in the circumstances.	22 23 24
	<i>impair</i> includes further impair.	25
	(2) A person:	26
	(a) who causes another person to be given or to consume drink or food:	27 28
	(i) containing an intoxicating substance that the other person is not aware it contains, or	29 30
	(ii) containing more of an intoxicating substance than the other person would reasonably expect it to contain, and	31 32 33

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Schedule 1 Amendments

(b)	who intends a person to be harmed by the consumption of the drink or food,	1
	is guilty of an offence.	2
	Maximum penalty: Imprisonment for 2 years or 100 penalty units, or both.	3
(3)	For the purposes of this section, giving a person drink or food includes preparing the drink or food for the person or making it available for consumption by the person.	4
(4)	A person does not commit an offence against this section if the person has reasonable cause to believe that each person who was likely to consume the drink or food would not have objected to consuming the drink or food if the person had been aware of the presence and quantity of the intoxicating substance in the drink or food.	5
(5)	A person who uses an intoxicating substance in the course of any medical, dental or other health professional practice does not commit an offence against this section.	6
(6)	An offence against this section is a summary offence.	7
[5]	Section 39 Using poison etc to endanger life or inflict grievous bodily harm	8
	Insert “, intoxicating substance” after “poison” wherever occurring.	9
[6]	Section 41 Using poison etc to injure or to cause distress or pain	10
	Insert “, intoxicating substance” after “poison”.	11