

CRIMINAL CODE AMENDMENT (DRINK AND FOOD SPIKING) BILL 2007

Introduction and First Reading

Bill introduced, on motion by **Mr J.A. McGinty (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR J.A. MCGINTY (Fremantle - Attorney General) [12.20 pm]: I move -

That the bill be now read a second time.

Currently in Western Australia there is no express drink and food spiking criminal offence. This reprehensible behaviour can, and often does, lead to other serious criminal offences causing serious harm to victims. Drink spiking refers to drugs or alcohol being added to an alcoholic or non-alcoholic drink without the consent of the person consuming it and without the spiker intending to commit a further offence, even though such offences may occur after the drink spiking. Food spiking also has the potential for serious harm and consequences to victims. However, there are no empirical findings on its prevalence and nature. Even so, I am sure that all members would agree that the spiking of food and drinks should be subject to the same specific criminal offence and penalties.

Currently, statistics suggest a significant under-reporting of drink spiking. There are no statistics on the rate of confirmed cases of drink spiking in Western Australia. However, in 2006-07 WA Police received 37 reports of alleged drink spiking and in 2005-06 it received 46 reports. Between 2002 and 2003 drink spiking was extensively reported in the media, and the number of reported cases jumped significantly to 210. Many people who think their drink might have been spiked do not report their suspicions to the police. This might be because of embarrassment or because, at the time of the alleged offence, they were knowingly consuming alcohol and were not clear on what occurred. These new laws will make it much harder for persons to spike other people's food or drink and get away with it.

Both South Australia and Queensland have enacted specific criminal offences to deal with such spiking. Also, the Model Criminal Law Officers Committee, at the request of the Standing Committee of Attorneys General, released an extensive discussion paper on drink spiking and is completing a final report on drink and food spiking together with a model bill.

WA laws cover some aspects of drink spiking. For example, to the extent that drink or food spiking is a causal element, prosecutions occur under other offences such as murder, manslaughter and administering a stupefying substance. Often drink spiking may be a prelude to sexual offences and other abusive behaviour. In these circumstances, the prosecution may be able to use section 293 of the Criminal Code, which is the offence of administering a stupefying drug with the intention of committing an indictable offence. However, because of its insidious nature and harmful effects, as well as to clearly convey that this activity is reprehensible, I trust that all members will agree that a new offence of drink and food spiking per se should be created.

As I have alluded, in this state several Criminal Code offences relate to drink and food spiking. For example: section 192 creates the offence of procuring a person to have unlawful carnal knowledge by administering drugs and carries a maximum penalty of two years' imprisonment; section 293 creates the offence of administering a stupefying drug with the intention of committing an indictable offence, with a penalty of 20 years' imprisonment; section 294(5) is the offence of intending to maim, disfigure or disable or do some grievous bodily harm by causing any dangerous or noxious substance or thing to be taken or received by any person, with a penalty of 20 years' imprisonment; and section 304 is the offence of doing unlawfully any act as a result of which bodily harm is caused or the life, health or safety of any person is, or is likely to be, endangered, with a penalty of five years' imprisonment.

However, as members will note, the bill proposes to insert into the WA Criminal Code a new section 305A that expressly and specifically deals with drink and food spiking per se. Specifically, proposed section 305A will apply in two situations. First, where a person causes another person to be given or to consume drink or food containing an intoxicating substance when that other person is not aware of that intoxicating substance. Secondly, where the person causes another person to be given or to consume drink or food containing more intoxicating substance than the person receiving the drink or food would reasonably expect that drink or food to contain. In those circumstances, an offence is committed where the person who causes another person to be given or to consume drink or food intends that other person to be harmed by the consumption of that drink or food. Also, an offence will be committed where the person knows or believes that the consumption of the drink or food being provided is likely to harm a person. In either of these situations the provider will be guilty of a crime with a maximum of three years' imprisonment or, where the summary conviction penalty applies, imprisonment for 12 months and a \$12 000 fine.

Section 305A also provides a specific defence to these new offences. It will be a defence where an accused person had 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 was aware of the presence and quantity of the intoxicating substance in the drink or food. This is a development that I trust all members will support because it will not only impose penalties on those who behave in this manner but also, as importantly, send an unequivocal message that this behaviour will not be tolerated in our community. I commend the bill to the house.

Debate adjourned, on motion by **Mr G.M. Castrilli**.