Speech by

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CRIMINAL CODE (DRINK SPIKING) AND OTHER ACTS AMENDMENT BILL

Mr LANGBROEK (Surfers Paradise—Lib) (8.00 pm): I rise to speak to the Criminal Code (Drink Spiking) and Other Acts Amendment Bill 2006. Drink spiking should be a crime. The schoolies invasion is about to hit the electorate of Surfers Paradise and I am grateful that we are having this discussion before the festival kicks off. I would like to place on record that I am very appreciative of this legislation being moved up the parliamentary agenda.

In preparing my contribution to today's discussion, I went back to the discussion paper on drink spiking, which was released in April this year. The discussion paper was prepared by the Model Criminal Code Officers' Committee of the Standing Committee of Attorneys-General. This discussion paper recommended that each state and territory introduce laws to create a stand-alone drink-spiking offence where no further intent to harm the victim need be shown. Since the release of these recommendations, South Australia has been the first jurisdiction to introduce laws to make it an offence to spike another's food or drink. During the election campaign, it was announced that Queensland would follow suit.

I found it so disturbing that, despite fact that drink spiking is a real problem and compromises the safety of Queenslanders, the Beattie government did not care to contribute to the standing committee. The Beattie government did not care to be involved in the think-tank that resulted in the recommendations that has state governments around the country introducing laws to make drink spiking a crime. The committee members, as noted on page 2 of the discussion paper, which I table, included a representative from the New South Wales Attorney-General's Department, a representative from the South Australian Attorney-General's Department, two representatives from the federal Attorney-General's Department, a representative from the Victorian Department of Justice, a representative from the Tasmanian Department of Justice, a representative from the Northern Territory Department of Justice, a representative from the ACT Department of Justice and a representative from the Western Australian Crown Solicitor's office.

Tabled paper: List of members of the Model Criminal Code Officers' Committee of the Standing Committee of Attorneys-General.

There was no representative from Queensland. I was stunned when I saw this on page 2 of the discussion paper. In April 2006, the only state without a representative was Queensland. I was so stunned because I could recall hearing the Premier during the election campaign—

Government members interjected.

Mr LANGBROEK: I can hear that the members opposite are stunned as well. During the election campaign I heard the Premier say that drink spiking was a concern of his government.

How are we meant to accept that drink spiking is such a concern for the Beattie government when it did not offer a representative to contribute to this discussion paper and reap the benefits of being engaged in the very standing committee that was formed to tackle the threat that drink spiking poses? This meeting was held in April 2006.

As I have said already, I am delighted that we are debating making drink spiking a crime before the next schoolies festival where the potential for drink spiking on a mass scale is quite real for the large

number of young people who will be in the area. I am glad that the election forced the Beattie government to acknowledge that drink spiking is an issue, but it is shameful that the election is the only reason the government cared to acknowledge the problem.

The defence for the new crime of drink spiking is again proof that the Beattie government did not attend the committee. The discussion paper shows that, after surveying the relevant existing laws in each jurisdiction, the committee found that the real weakness in the current legislation was in the less serious matter of drink spiking where no further harm is caused to, or intended to be caused to, the victim of the spiking—in other words, prank spiking. Accordingly, the committee recommended that all Australian jurisdictions enact an offence of mere drink spiking without further intent, that the offence be summary, and that the offence extend to any substance—any classification of poison, substance, drug, alcohol or traditional aphrodisiac—which is likely to impair the consciousness or bodily function of the victim, or which is intended to do so whether or not the spiked drink is drunk wholly, partly, or at all. The committee recommended that the states should not only enact laws specifically against drink spiking but also not provide a defence for prank spiking as the potential for harm still exists in cases of prank drink spiking.

I note that an amendment has been made to the original clause 4 to substitute a new clause 4 thereby substituting a new section 316A. The amended new section 316A does not contain the defence of 'prank', as was contained in subsection (6) of the introduced provision. Someone in the department must have eventually got around to reading the discussion paper of the think-tank of which the Beattie government did not care to be a part. However, as noted in the amendment's explanatory notes, the amended offence provides an excuse for an accused who adds alcohol to a drink of another person but at the time honestly and reasonably believes that the other person would not have objected to the addition of alcohol. I am not sure what the other members of this House think, but to me this amendment may have omitted to use the word 'prank' but, in effect, still allows an excuse for those conducting prank drink spiking. So despite this attempt to acknowledge the recommendations of the discussion paper, the government has still disregarded the advice to not provide a defence to the act of drink spiking. Consequently, the strength of the legislation is not as strong as it could or should be.

The nature of drink spiking makes the gathering of evidence to prove the crime of drink spiking quite difficult. The difficulty in enforcing this new law is only going to be harder with this bucks party defence, because it provides a get-out clause for this crime that should be recognised as exactly that: a crime. Drink spiking should not only be seen as being those frightening cases at the extreme of the continuum—those being the cases that we hear about in the media when date rape drugs are added to drinks, commonly an alcoholic drink, without the knowledge of the victim in order to induce an extremely inebriated state in the victim with the additional intention of taking sexual advantage of the victim or actually doing so. That is one end of the continuum. But milder cases include the addition of alcohol to a known alcoholic drink as a prank just to see the victim make a fool out of themselves, for example.

The Australian Institute of Criminology says that there is no single typical incident of drink spiking. Rather, drink spiking appears to be a complicated phenomenon that can occur in a variety of locations with a variety of victims, with a variety of different spiking additives for a number of different reasons resulting in disparate effects and consequences. The Australian Institute of Criminology has said that, based on its research, four out of five victims are female; that about half of drink spiking victims are aged under 24 while about one-third are aged between 25 and 34; that the majority of reported drink-spiking incidents have no associated criminal victimisation, indicating that prank spiking may be a common motivation for drink spiking; that many victims do not know who the offender was; that the vast majority of incidents of drink spiking are not reported to police; that apprehension of offenders is very uncommon and that forensic urine and blood testing is relatively rare and does not prove conclusively that drink spiking has occurred. In light of those comments, prank drink spiking should not be an excuse. The enforcement of these laws, in recognition of what the AIC has said, is going to be hard enough without having offenders being able to claim, 'He'—or she—'wanted to get like that'. Despite the proposed amendments, in essence the bucks party defence is still provided.

Drink spiking should not be permitted under any circumstances. That is the message that we need to be sending with these laws. There is nothing funny about it. There should be no excuse for drink spiking. There should be no defence for drink spiking. Whether or not it was a prank may be relevant to the question of the appropriate sentence to be imposed following a conviction of the offence. However, it should not be a defence.

The explanatory notes suggest that the reason for the proposed new offence of drink spiking is to implement the recommendation of the MCCOC. That committee's recommendation focuses on an offence that has regard to the nature of the substance used and includes any substance that would be likely to impair the consciousness or bodily function of the victim, or which is intended to do so whether or not the spiked drink was consumed. Thus, the recommendation seems to be that the offence would be committed without intent if the substance is, in fact, likely to impair the consciousness or bodily function of the victim. The offence would also be committed if that intention could be proved regardless of whether, in fact, the substance was consumed.

The explanatory notes seem to accept and reinforce this recommendation by stating that the relevant existing Criminal Code provisions all require some further intention either to commit an indictable offence or to further victimise the victim. However, the proposed offence in new section 316A requires in all cases that, in addition to administering the substance, it be proved that there was an intention to stupefy and overpower, the definition of which has now been expanded. This goes well beyond the recommendation of the MCCOC—something that the Beattie government would have known had it attended and contributed to the committee.

In fact, the Scrutiny of Legislation Committee said that the intention requirement probably goes beyond the requirements of the existing offence that is contained in section 323B of the Criminal Code. So the question has to be asked: is making this new offence, with its current elements, a fruitless exercise?

The Scrutiny of Legislation Committee would suggest so, as I read it. The Scrutiny of Legislation Committee has made several recommendations concerning the drafting of the clauses. I believe they should be acknowledged and changed.

As I have said before, drink spiking should be a crime. Enforcing this new crime is going to be a hard enough task due to the difficulty in proving drink spiking has occurred without having laws which have the Scrutiny of Legislation Committee asking the question: is the legislation unambiguous and drafted in a sufficiently clear and precise way? Enforcing this new crime is going to be a hard enough task due to the difficulty in proving drink spiking has occurred without the having a buck's party defence included within the provision.

The Beattie government should have involved itself in the Model Criminal Code Officers Committee. If it had, schoolies at this year's festival would have had properly drafted laws protecting them. Schoolies do not need stunts. Queenslanders do not need stunts. They need watertight laws that can be enforced. They need laws that will protect their welfare, not the interests of offenders.