Speech by

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CRIMINAL CODE (DRINK SPIKING) AND OTHER ACTS AMENDMENT BILL

Mr McARDLE (Caloundra—Lib) (6.07 pm): It gives me pleasure to rise to make a contribution to the debate in relation to the Criminal Code (Drink Spiking) and Other Acts Amendment Bill. The bill itself amends three acts, those being the Criminal Code, the Corrective Services Act and the Dangerous Prisoners (Sexual Offenders) Act. It is the amendment to the Criminal Code that I want to spend a little bit of time on, at least initially.

There was an excellent discussion paper issued in April 2006 by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General that provides an in-depth analysis of the current law and proposed amendment in relation to drink spiking. Added to that, our library has produced a publication, research brief No. 30 of 2006, which also overviews the position in some depth. I wish to thank the Acting Attorney-General for the briefing given to me by staff members yesterday.

There is little doubt that drink spiking has become more prevalent with technology's ability to manufacture more and more dangerous drugs and the use of these drugs and alcohol for some form of gratification in spiking the drinks of others. The media has often reported drink spiking concentrates on serious types of criminal behaviour—that is, the addition of a date rape drug such as Rohypnol without the knowledge of the victim in order to induce an extremely inebriated state with the additional intention of taking sexual advantage of the victim. Milder cases may include the addition of extra alcohol or a different form of alcohol in a drink just to see the victim make a fool of themselves.

The Australian Institute of Criminology in July 2003 gave the following definition of drink spiking—

The term drink spiking refers to drugs or alcohol being added to a drink (alcohol or non-alcoholic) without the consent of the person consuming it. For an incident to be defined as drink spiking in this report, it need not involve further criminal victimisation, even though such offences can occur after an incident of drink spiking.

In the same document the AIC reported that between 1 July 2002 and 30 June 2003 between 3,000 and 4,000 suspected incidents of drink spiking occurred in Australia, with one-third involving sexual assault. In addition, between 15 and 19 suspected drink spiking incidents occurred per 1,000 persons during the same period.

The AIC went on to analyse police data, sexual assault data and its own hotline data to establish a number of factors in relation to drink spiking. This analysis highlighted the following points: four out of five victims are female; about one-half of drink spiking victims are aged under 24 while about one-third are aged between 25 and 34; the majority of reported drink spiking incidents have no associated criminal victimisation, indicating that prank spiking may be a common motivation for drink spiking; between 20 and 30 per cent of incidents reported to police involve sexual assault while it is estimated that about one-third of all drinking spiking incidents are associated with sexual assault; about five per cent of incidents involve robbery; and two-thirds of suspected drink spiking incidents occur in licensed premises.

Many victims do not know who the offender was. Drink spiking can be perpetrated by strangers or known acquaintances. Incidents involving sexual assault are more likely to occur with a known offender. Many victims experience memory loss after drink spiking. Apprehension of offenders is very uncommon. Forensic testing of blood and urine samples is relatively rare and does not conclusively prove that drink spiking has occurred. Lastly, the vast majority of incidents of drink spiking are not reported to police.

From that analysis, we can see that the prevalence of drink spiking can only be roughly estimated at this point. It is equally important to bear in mind that, as stated by the model Criminal Code Officers Committee discussion paper, the number of suspected drink spiking sexual assaults estimated to have occurred between 2002-03 is very, very small compared with the much larger number of sexual assaults in general which were reported to police during that year. Nevertheless, there is a trend of greater use of recreational drugs by our youth generally which appears to be spilling over into drink spiking without a full realisation of the implications, both physical and psychological, to the person being given the drugs.

A statement by the Drug Advisory Council of Australia issued on 23 October entitled 'Parents Blind to Drug Use' reads—

A recent survey has found that eight out of ten parents supervising teenage parties were unaware that there were alcohol, cannabis, cocaine, ecstasy or prescription drugs being used at a party they were supervising.

However, at the same party, three out of ten teenagers were aware of the drug use.

That statistic is telling as it shows teenagers are more acutely aware of drug use and the potential to use drugs in one capacity can lead to it being used in other ways.

The AIC report I referred to earlier also estimates that less than 15 per cent of suspected drink spiking sexual assaults are reported to police and only between 20 per cent and 25 per cent of suspected drink spiking non-sexual assaults are reported to police. This leads to the conclusion that the vast majority of suspected drink spiking incidents are not reported.

It is often assumed that drugs other than alcohol are being used in drink spiking, yet forensic evidence does not support this claim. Again, the model document discusses this point. It states that to date alcohol has tended to dominate results of drink-spiking allegations. It is not clear whether that is because alcohol is commonly used to spike drinks, whether it is because other drugs have left the body by the time of testing and only alcohol is left to test, or whether it is because people are unaware how much alcohol they are actually drinking. The only way to test the presence of drugs is to conduct scientific analysis. However, scientific analysis can only confirm whether or not drugs or alcohol are in the body at the time of testing and cannot confirm that a positive result means that a drink was spiked.

The various states and territories in Australia have different legislation dealing with drink spiking. Again referring to the model document, it divides drink spiking into six categories in relation to offences: firstly, drink spiking resulting in death; secondly, drink spiking causing, or with intent to cause, injury or harm; thirdly, drink spiking with intent to commit a sexual offence; fourthly, drink spiking with intent to commit an offence; fifthly, drink spiking with drugs other than alcohol without lawful excuse; and sixthly, drink spiking alcohol for a prank.

Queensland does have legislation for offences of murder and manslaughter that occur as a consequence of drink spiking. Similarly, drink spiking with intent to commit a sexual offence is an offence in Queensland, but the paper identifies a potential gap in Queensland legislation where it does not appear to apply if the drink spiking agent is alcohol. In addition, Queensland does have legislation dealing with drink spiking with intent to commit an indictable offence but, again, there is a potential gap identified in the model paper as to whether or not it applies in the case of alcohol. Similar comments exist with regard to drink spiking with drugs without lawful excuse.

Turning to the bill as it currently stands, clause 4 outlines the proposed amendment and imposes the crime of drink spiking, which carries with it a penalty of five years, but it is a crime that can be dealt with summarily. When I spoke with the Acting Auditor-General's staff yesterday, I raised a particular concern in relation to the phrase 'stupefied and overpowered' as it appears throughout clause 4 of the document. My concern was on two levels. The first is that it moves away from the conclusion contained at page 29 of the model document which states—

Therefore the MCCOC recommends that all Australian jurisdictions enact an offence of 'mere' drink spiking (without further intent) that the offence be summary and that the offence be extended to any substance (any classification of poison, substance, drug, alcohol traditional aphrodisiac, etc) 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.

In essence, that quote refers to an absolute offence. That is, to be an offence drink spiking does not require an intent. Absolute offences, particularly of this nature, need to be treated with a great deal of caution. People can quickly find themselves painted into a corner with results that are unintended. In that regard, I feel that the model document is deficient.

The second concern I had, and it is also identified in the *Alert Digest* tabled today, is that the words 'stupefied and overpowered' place the bar at a very high level—a level that may well be very difficult, if not

impossible, to attain. It was for that reason that I proposed an amendment to amend clause 4 changing the word 'and' for 'or', giving greater flexibility and, in my opinion, a more open approach on that question. We would have divided on that point as there are real concerns with a bill dealing with a matter of this nature that would be almost impossible, or impracticable, to implement. I understand the Acting Attorney-General is now moving an amendment to the bill and is going to replace the existing clause 4 in total.

Mr Welford: Taking up your ideas.

Mr McARDLE: I also understand the word 'and' has been replaced by the word 'or' and a definition of the phrase 'stupefied or overpowered' is to be inserted into the amended bill.

The second subclause of clause 4 that raises some concerns is subclause (6) as it currently stands. The concern stems from comments made in the model document that highlight the use of alcohol is, or at least is believed to be, of greater frequency in drink spiking incidents than any other substance. In essence, subclause (6) allows a person to spike a drink with alcohol provided it was done as a prank.

Under the bill as it currently stands before the House, we would have enormous difficulties in how on the one hand we acknowledge that the substance of alcohol in any form is one of the major drink-spiking substances and how the use of that substance can be excused on the basis that it is a prank. In addition, one would need to wonder how many times alcohol was administered as the drink-spiking substance to no longer be a prank and to move into the realm of where it would be caught by the terms of the bill. In addition, if we are going to accept that drink spiking is an offence and we are going to accept that it is not an absolute offence, then there is no reason, when intent is required to be proven, that it should be an offence when alcohol is the substance administered.

The second concern with subclause (6) is the use of the word 'prank'. This is clearly identified in the *Alert Digest* tabled in the House today. I believe that the digest makes a very concise statement as to their concerns and the use of the word 'prank' where it states—

The committee can see why the motivation of merely working a playful prank would be relevant to the question of the appropriate sentence to be imposed following conviction of the offence. However, the committee questions why it is thought that it should not be an offence at all to administer a substance with the relevant intent, simply because it was done as a playful prank. Put another way, why is someone justifiably liable to 5 years imprisonment for doing precisely the same act with precisely the same intention and outcome as another but absent the motivation of a playful prank?

Accordingly, it was my intention to propose an amendment deleting subclause (6). In my opinion, there was no basis for the subclause to stand in the bill in its current form. If we are going to make a clear statement with regard to drink spiking then we should be uniform.

We are teaching our young people to be cognisant of the risks and dangers of alcohol assumption. It is therefore inappropriate to condone a prank drink spiking with alcohol which could result in serious consequences. One could easily imagine a young person of 18, 19 or 20 years of age consuming what they believe and what would normally be a reasonable amount of alcohol still permitting them to drive a motor vehicle; however, the drink they consumed being spiked with alcohol puts them over the legal limit. We know that section 24 of the Criminal Code is no longer available in drink-driving offences. This, therefore, places at serious risk this person and other road users as a consequence of the drink spiking. A person could simply claim that it was a prank and there is the risk that the perpetrator could walk free.

This may be considered an instance that would not occur on a frequent basis. However, it illustrates the concern I had in relation to the provision. I have now had a chance to read the new clause 4 that will be circulated in the consideration in detail stage. Concerns are addressed firstly by removing the word 'and' and inserting the word 'or' and defining the phrase 'stupefied and overpowered' on an inclusive basis. Equally, the current subclause (6) of clause 4 has been replaced by subclause (2) of the new clause 4, which no longer uses the word 'prank' and in fact places a reverse onus of proof on a defendant to establish that the person who consumed the substance would have done so willingly if they had known it existed. That certainly removes a major concern that we had and we appreciate the Acting Attorney-General's role in that.

The Corrective Services Act 2006 is amended, in essence replacing the current practice of allowing prisoners convicted of a sexual offence to be granted resettlement leave under section 74 of the Corrective Services Act. This practice recently reached public attention through a photograph and an article appearing in one of the local newspapers. The community was outraged that sexual offenders were permitted to be transferred to work camps to perform reparation work in the community. This was seen as unacceptable and rightfully so. The amendment has now been placed before the House to ensure it cannot occur again whilst at the same time still permitting such offenders to leave jail on compassionate, health or medical reasons.

I note that the explanatory notes accompanying the bill indicate that reintegration of sexual offenders in the community will now occur via the transitions programs with a view to addressing the core factors that lead to reoffending. The opposition has no objection in relation to the amendment to this particular act.

Amendment to the Dangerous Prisoners (Sexual Offenders) Act 2003 adds examples under section 16(2)(a) of the conditions for supervised release of certain types of offenders. The opposition has no question as to the viability and in fact necessity for the examples to be put into practice, and in particular we heartily enforce the wearing of monitoring devices to establish the prisoner's location when it is required. My question, however, to the Acting Attorney-General stems from a conversation I had yesterday with members of the Acting Attorney-General's staff. I was informed that in early 2007 monitoring devices would physically be used in Queensland. I posed a series of questions to the staff members present including, firstly, what is the budgeted figure for this implementation? Secondly, who will physically monitor the wearing of the devices given, I assume, probation officers or officers involved in the supervision of prisoners released under this section will not be so involved? Will the monitoring of the devices be controlled from Brisbane or will there be a series of officers throughout Queensland? If so, can the Acting Attorney-General advise where they may be? Will there be legislation brought into the House in relation to the devices? Lastly, if legislation is to be brought into the House, when can that be expected to occur?

As I said, the opposition does not oppose this section of the bill and, in fact, has frequently suggested monitoring devices be fixed to sexual offenders. If I may pose a question to the Acting Attorney-General: turning to subclause (7) of the new clause 4, the document that I have in front of me still has the term 'dangerous drug' defined within what I call the definition section of section 7. I may be wrong, I may not have read the document completely, but I do not think the term 'dangerous drug' appeared in the context of the amended document. It may just be an oversight.

Mr Welford: I think it is in the amendments to drink spiking.

Mr McARDLE: I apologise. Thank you, Acting Attorney-General. On the basis of those comments the opposition will be supporting the bill, and I again thank the Acting Attorney-General for his amendments.