



Speech by

Steve Wettenhall

MEMBER FOR BARRON RIVER

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CRIMINAL CODE (DRINK SPIKING) AND OTHER ACTS AMENDMENT BILL

Mr WETTENHALL (Barron River—ALP) (7.38 pm): I rise to support the bill and the proposed amendments to the Criminal Code. The people of far-north Queensland and Cairns in particular have major concerns about violence, assaults and sexual assaults that occur in relation to and connected with alcohol abuse. This legislation is an important plank in the fight against those occurrences.

Cairns is well known as a party town where tourists and locals alike enjoy the many offerings at licensed venues and other places in the region. Certainly there has been anecdotal evidence that drink spiking has occurred in Cairns. That of course is something that directly affects the people in my electorate of Barron River, which takes in the northern suburbs of Cairns.

This is an important piece of legislation that will act very importantly as a deterrent to drink spiking. As the research that has been undertaken has noted, it is notoriously difficult to quantify the extent of this type of antisocial behaviour that we know as drink spiking, which is all the more reason for the introduction of an offence of this type.

Drink spiking has been an emerging problem over the last few years. The phenomenon of drink spiking includes the addition of drugs and alcohol into alcoholic and non-alcoholic drinks without the knowledge or consent of the person consuming the drink. Although all states and territories have offences for when drugs or alcohol are administered with the intention of committing a further offence, such as sexual assault or causing harm to the person, no Australian jurisdiction has a drink spiking offence simpliciter. As has been mentioned before by other members, this is groundbreaking legislation.

This legislation and its amendments to the Criminal Code arise from recommendations of the Model Criminal Code Officers Committee, which in turn was referred the issue by the Standing Committee of Attorneys-General. The Model Criminal Code Officers Committee recommended that all Australian jurisdictions enact a summary offence of drink spiking. We have gone further and made this an indictable offence that will be able to be dealt with summarily at the election of the defendant, but significantly the offence carries a maximum term of imprisonment of five years. That is appropriate given the potential physical and mental harm that may flow from falling victim to drink spiking.

Under the Queensland Criminal Code Act there are a number of offences that are of a related nature, including section 218(1)(c), where an offender administers a drug or other thing to a person with intent to stupefy or overpower the person to enable a sexual act to be engaged in, which carries a maximum penalty of 14 years imprisonment; section 316, where an offender administers, or attempts to administer, any stupefying or overpowering drug or thing to any person with intent to commit an indictable offence, which carries a maximum penalty of life imprisonment; section 322, where an offender causes any poison or other noxious thing to be administered with intent to injure or annoy another and thereby endangers the person's life, which carries a maximum penalty of 14 years imprisonment; and section 323(1)(b), where an offender causes any poison or other noxious thing to be administered with intent to injure or annoy another person, which carries a maximum penalty of seven years imprisonment. This

offence plugs a gap in the Criminal Code for the offence of drink-spiking simpliciter. The commitment to make the maximum penalty for five years necessitates that drink spiking be an indictable offence. Given the serious consequences to victims and that this is an emerging problem, that is entirely appropriate.

Under the provisions of the offence, where a person administers, or attempts to administer, a substance to another person, it is irrelevant whether the spiked drink is in fact consumed. It is irrelevant if the victim is a person other than the intended victim, which is appropriate given the often crowded conditions that are experienced in particular in licensed venues where drinks can be left unattended and consumed by persons regardless of the intention of the person who spiked the drink. It is irrelevant if a victim was already stupefied or overpowered to some extent before the drink spiking.

The bill introduces a defence that will be removed by proposed amendments that create a defence which modifies the operation of section 24 of the Criminal Code and brings it into line with the defence provisions but only where alcohol is the spiking agent. Section 24 of the Criminal Code Act provides an excuse from criminal responsibility for a person who does an act under an honest and reasonable, but mistaken, belief in the existence of any state of things. Under proposed new section 316A, an accused will be excused from criminal responsibility if he or she was under an honest and reasonable, but mistaken, belief that the victim would not have objected to the addition of alcohol. That is an entirely appropriate amendment to the act, making it consistent with the remaining defence provisions under the Criminal Code and is more consistent with the policy intent of the original bill, which is to ensure that people do not consume alcohol or other drugs without their knowledge.

As I have indicated, this is an issue that is of major concern in the community. Day in, day out we hear stories of tragedy in the media of offences that are connected with the abuse of alcohol and other drugs. This is a timely response to that community concern and to the recommendations and the research that has been undertaken. Most importantly, in my view it will act as a strong deterrent and have an educative function to people who might consider spiking other people's drinks without their knowledge or consent.