

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice [5.04 p.m.], on behalf of the Hon. Eric Roozendaal: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in Hansard.

Leave granted.

The Government is pleased to introduce the Crimes Amendment (Drink and Food Spiking) Bill 2008.

This bill marks the NSW Government's response to growing community concerns about the practice of drink spiking, through introducing a new two-year summary offence for drink and food spiking, and modernising existing offences relevant to drink spiking to ensure that they apply to the use of alcohol.

Drink spiking is an insidious practice. It was identified as a significant problem throughout Australia in an Australian Institute of Criminology (AIC) report. The AIC estimated that up to 4,000 cases of drink spiking occur across Australia each year, that the spiking agent most commonly used was alcohol, that one-third of drink spikings involve sexual assault, that four out of five victims were young women and that only one in six cases of drink spiking were reported to police.

Drink spiking is not harmless or simply a funny prank; it has a variety of negative physical and emotional effects on the victim. In the majority of incidents, the physical effects include memory loss and nausea. Also common are intoxication, vomiting, unconsciousness and even paralysis. Those effects are, of course, compounded if there is additional associated criminal behaviour.

Following the AIC report, the Standing Committee of Attorneys General commissioned the Model Criminal Law Officers Committee to examine the issue. The Committee, which finalised its report in July 2007, found that there were already a number of State and Territory criminal laws of general application covering the most serious cases of drink spiking and its consequences. Despite the existence of these laws, the Committee identified a gap in the law when it came to addressing the act of drink spiking itself. As a result, the Committee devised a model food and drink spiking offence. To date, Western Australia, Queensland and South Australia have also introduced offences similar to the model food and drink spiking offence.

The present bill implements the model offence by inserting new section 38A into the Crimes Act. An offence under section 38A is committed if the accused 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 person intends the other person to be harmed by the consumption of the drink or food.

For the purposes of section 38A, "harm" includes an impairment of the senses or understanding of a person, that the person might reasonably be expected to object to in the circumstances.

The term "impair" includes further impair.

The term "intoxicating substance" is broadly defined to include "alcohol or a narcotic drug or any other substance that affects a person's senses or understanding".

For the purposes of the new section 38A, giving a person food or drink includes preparing the drink or food for the person or making it available for consumption by the person.

In keeping with the Model Criminal Law Officers Committee's recommendation, the new offence carries a maximum penalty of two years imprisonment and/or 100 penalty units, which currently amounts to \$11,000. This penalty is appropriate considering that the offence is at the lower end of the drink spiking continuum, and fits within the tiered penalty structure currently applying to the more serious drink spiking offences in the Crimes Act. Currently the Crimes Act contains:

section 38 - Using chloroform laudanum or other stupefying or over-powering drug to commit or assist in the commission of an indictable offence (maximum penalty 25 years); and

Administering any poison or other destructive or noxious thing to:

section 39 - endanger life or inflict grievous bodily harm (maximum penalty 10 years); or

section 41 - injure or cause distress or pain (maximum penalty 5 years).

Under the new section 38A, two defences are available.

Firstly, it will be a defence where the 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.

Secondly, there is a defence where a person uses an intoxicating substance in the course of a medical, dental or other health professional practice.

These defences will serve to clarify the extent of the application of the offence and ensure that prosecutions and convictions are targeted towards appropriate levels and categories of criminality.

In addition to introducing the new drink and food spiking offence, this bill modernises the more serious offences in the Crimes Act that are relevant to drink spiking and that carry penalties up to 25 years imprisonment, which I have previously outlined. These changes will ensure that these more serious offences apply to alcohol - the most commonly used drink spiking agent.

In summary, this bill ensures that the sinister practice of drink spiking is tackled at all levels - from the most serious cases to those at the lower end of the scale - with tiered penalties in place to ensure that offenders face appropriate punishment.

The additional amendments in the bill will bring existing drink spiking offences into the 21st Century, and ensure that police have a range of options when charging persons who are accused of using alcohol as a drink spiking agent.

I commend the bill to the House.