

# **Criminal Code (Drink Spiking) and Other Acts Amendment Bill 2006**

## **Explanatory Notes**

### **Objectives of the Bill**

#### **The Bill seeks to:**

Amend the Criminal Code by the insertion of a new offence of unlawful drink spiking;

Amend the *Corrective Services Act 2006* to restrict leave of absence for prisoners detained for sex offences contained in schedule 1 of the Act; and

Amend the *Dangerous Prisoners (Sexual Offences) Act 2003* to clarify that a judicial authority can order that a released prisoner be electronically monitored during the period of a supervision order.

### **Reasons for the Bill**

#### ***Criminal Code***

After referral of the issue by the Standing Committee of Attorneys-General, the Model Criminal Code Officers Committee produced a discussion paper on the issue of drink spiking in March 2006. The discussion paper recommended that all Australian jurisdictions enact an offence of drink spiking which would extend to 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 is drunk wholly, partly or at all. The proposed offence would not require any further intent.

Although Queensland's Criminal Code contains a number of relevant offences (sections 218(c), 316, 322 and 323(b)), all require some further intention either to commit an indictable offence or to further victimise the victim.

Given the potential harm that may flow to victims of drink spiking, it is appropriate that Queensland introduce an offence of unlawful drink spiking.

### ***Corrective Services Act 2006***

The community expressed concerns in the November 2005 Work Outreach Camps Community Engagement Report about sex offenders being transferred to Work Camps to perform reparation work in the community. As a result the *Corrective Services Act 2006* provides that offenders convicted of a sexual offence listed in schedule one of the Act are restricted from transfer to Work Camps.

Limiting access to leave of absence by sexual offenders is in keeping with the existing restrictions in addressing community concerns about sexual offenders being granted release into the community prior to their parole eligibility or full time release.

### ***Dangerous Prisoners (Sexual Offenders) Act 2003***

The *Dangerous Prisoners (Sexual Offenders) Act 2003* allows for the continuing detention or supervised release of sexual offenders who, in the opinion of the court, pose a serious danger to the community if released at their sentence expiry date.

Electronic monitoring is a reliable technology that is utilised in the United Kingdom, Canada, the United States, New Zealand, Victoria, South Australia and Western Australia as an enhanced surveillance regime for higher risk offenders.

Released prisoners under the *Dangerous Prisoners (Sexual Offenders) Act 2003* are prisoners that the court has determined pose a serious danger to the community if they are not subject to appropriate levels of supervision. It is appropriate that the court, in determining an application under the *Dangerous Prisoners (Sexual Offenders) Act 2003*, has the option of ordering that the prisoner be electronically monitored as a condition of a supervision order.

### **Achievement of the Objectives**

The Bill amends the Criminal Code by the insertion of an offence of unlawful drink spiking. The offence will apply to a person who administers or attempts to administer, in drink, a substance to another person, without the other person's knowledge of the presence of the substance, with intent to cause the other person to be stupefied and overpowered.

The Bill amends section 82 of the *Corrective Services Act 2006* to include prisoners detained for a sexual offence as contained in schedule 1 of the

Act. Prisoners included in section 82 may be granted only compassionate leave or health leave.

The Bill also amends section 16 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* by the inclusion of a specific example, to clarify that a judicial authority can order that a released prisoner must wear a device for monitoring the prisoner's location.

### **Estimated Cost for Government Implementation**

The costs of implementation of electronic monitoring will be met from funding allocated to the Department of Corrective Services.

### **Consistency with Fundamental Legislative Principles**

#### ***Unlawful drink spiking***

The offence of unlawful drink spiking includes a defence where the substance was administered, or attempted to be administered, as a prank (the defence does not apply where the substance was a dangerous drug). The accused bears the onus of proving the defence.

According to an Australian Institute of Criminology report, the majority of reported incidents of drink spiking have no associated criminal victimisation, resulting in difficulties in proving existing offences in the Code, which include as an element of the offence, an intent to commit an indictable offence. Given the harm that may flow from falling victim to the act of drink spiking, it is appropriate that the accused bears the onus in proving the act was a playful prank.

#### ***Electronic Monitoring***

There is an argument that electronic monitoring does not have sufficient regard to the rights and liberties of individuals as required by the *Legislative Standards Act 1992*. The wearing of a monitoring device is an intrusion into a person's privacy. However, it must be noted that the added level of supervision that electronic monitoring gives may facilitate the supervised release of a prisoner into the community. Prisoners released on supervision under the *Dangerous Prisoners (Sexual Offenders) Act 2003* are prisoners the court has determined pose a serious danger to the community if they are not subject to appropriate levels of supervision. It will be a matter for the court to determine whether electronic monitoring is warranted in the circumstances in order to ensure the protection of the community.

### ***Restricted Leave of Absence***

The provisions that limit access to leave of absence by sexual offenders are justified as the safety of the community outweighs the interests of a sex offender in release from custody for a short period of time before being eligible for release or parole. Sufficient regard has been had to the rights of sex offenders by maintaining the ability to grant sex offenders supervised leave of absence for compassionate or health and medical reasons.

Sexual offenders are not currently eligible to be transferred to Work Camps and apply for reintegration leave. Education leave is available to prisoners at Work Camps and approval for attendance at approved vocational and training courses in the community may be considered. Sexual offenders may avail themselves of vocational and education programs and opportunities that are provided within correctional centres. The reintegration of sexual offenders into the community will occur via the Transitions Programs with a view to addressing the core factors that lead to re-offending.

### **Consultation**

#### ***Criminal Code – unlawful drink spiking***

The Director of Public Prosecutions, the Chief Justice of the Supreme Court, the Chief Judge of the District Court, the Chief Magistrate, Legal Aid Queensland and departmental representatives on the Queensland Drug Coordinating Committee, were consulted during the drafting of the provision.

## **Notes on Provisions**

### **Part 1 Preliminary**

Clause 1 Short title: This clause provides that the Act's short title is the *Criminal Code (Drink Spiking) and Other Acts Amendment Act 2006*.

Clause 2 Commencement: This clause provides that the amendment to the *Dangerous Prisoners (Sexual Offenders) Act 2003* will commence on a day

fixed by proclamation. The amendments to the Criminal Code and the *Corrective Services Act 2006* commence upon assent.

## **Part 2                      Amendment of Criminal Code**

Clause 3 Code amended in pt 2: This clause provides that this part amends the Criminal Code.

Clause 4 Insertion of new s 316A: This clause creates the new offence of unlawful drink spiking.

Pursuant to section 316A(1) and (2) the offence applies to a person who administers, or attempts to administer, in drink, a substance to another person without that other person's knowledge of the presence of the substance (whether at all or in the quantity added), with intent to cause the other person to be stupefied and overpowered. It is immaterial whether the substance is capable of having the effect intended and it is immaterial if the victim is a person other than the intended victim.

The matters listed as immaterial in subsection (2) are matters which still may affect sentence although a court may take note of Parliament's listing of those matters when considering the weight to give such matters at sentence.

Proposed section 316A(3) in conjunction with the definition of "circumstance" makes clear that even if the victim intended to become stupefied and overpowered, they are entitled to become stupefied and overpowered on their own terms (that is, timing, place or way of stupefaction).

Subsection (4) provides that the offence does not apply to an act lawfully done in the course of the practice of a health professional, the carrying out of a function under an Act or the performance of the responsibilities of a parent or carer.

Subsection (5) defines an attempt to administer a substance for the purpose of the offence (and section 4) as including adding a substance to drink in preparation for the administration of the substance.

Subsection (6) provides a defence if the accused can prove that the substance was administered, or attempted to be administered, as a prank. The defence is not available where the substance involved was a dangerous drug as defined in section 4 of the *Drugs Misuse Act 1986*. For the

purposes of the defence, “prank” means a trick of a playful nature and not a trick of a malicious nature. This definition was included because the Macquarie Dictionary defines “prank” as a trick or practical joke, sometimes mischievous in nature. The meanings for ‘mischievous’ include malicious or playfully annoying. Whether the prank is playful as opposed to malicious will depend on the circumstances and the context in which the prank occurred.

Subsection (7) defines “adding a substance” to drink to include: “cause to be added to drink” (therefore, the offence will extend to the circumstance where the offender has the drink made up by a bartender); substitute drink with other drink containing the substance (for example if the offender switches drinks with the victim); or take any step to provide drink containing the substance instead of other drink.

‘Stupefy and overpower’ is defined to clarify that the phrase includes stupefy and overpower by intoxication.

Clause 5 Amendment of s 552B (Charges of indictable offences that may be dealt with summarily): This clause amends section 552B to include new section 316A. Therefore the offence will be capable of summary disposition at the election of the accused.

### **Part 3                      Amendment of Corrective Services Act 2006**

Clause 6 Act amended in pt 3: This clause provides that this part amends the *Corrective Services Act 2006*.

Clause 7 Amendment of s 82 (Leave for other particular prisoners): This clause amends section 82(1) by including prisoners detained for a sexual offence contained in schedule 1.

Clause 8 Insertion of new ch 7A: This clause provides that the amendment to section 82 is retrospective in that it applies to current prisoners and applies to those prisoners who have applied for leave but the application has not yet been determined.

This clause also provides that for any resettlement leave of absence program granted prior to the amendment of section 82 the law under the pre-amended Act and the *Judicial Review Act 1991*, will apply to these

matters for the purposes of amending, suspending or cancelling those matters.

## **Part 4                      Amendment of Dangerous Prisoners (Sexual Offenders) Act 2003**

Clause 9 Act amended in pt 4: This clause provides that this part amends the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

Clause 10 Amendment of s 16 (Conditions for supervised release): This clause amends section 16 by the insertion of an express example that a judicial authority can order that a prisoner be electronically monitored as a condition of a supervision order.