

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

## **Explanatory Notes for Amendments to be moved during consideration in detail by The Honourable Attorney-General, Minister for Justice and Minister for Women MP**

### **Title of the Bill**

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

### **Objectives of the Amendments**

The amendment omits clause 4 and substitutes a new clause 4, thereby substituting a new section 316A (amended section 316A).

Amended section 316A does not contain the defence of “prank” as was contained in subsection (6) of the introduced provision. However, 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 the alcohol.

Amended section 316A contains an extended definition of the phrase “stupefied or overpowered” to clarify that the offence will apply in circumstances where the accused’s intent was to intoxicate another person and will apply in circumstances where the accused administers or attempts to administer, in drink, a stimulant to another person.

### **Achievement of the Objectives**

Although Queensland’s Criminal Code contains a number of offences relevant to the act of drink spiking (sections 218(c), 316, 317, 322 and 323(b)), a potential gap remains, particularly when the spiking agent is alcohol. Section 316A will fill that gap, for example, it will apply to a person who spikes the drink of another person, intending that other person to become intoxicated. The insertion of this offence will not derogate from the liability of an offender for more serious existing offences in the Code.

## **Consistency with Fundamental Legislative Principles**

The amendments are consistent with fundamental legislative principles.

## **Consultation**

The Department of Premier and Cabinet was consulted in relation to the amendments.

## **Notes on Provisions**

Clause 4 Insertion of new s 316A: This clause omits clause 4 and inserts a new clause 4 which creates the offence of Unlawful drink spiking.

Pursuant to sections 316A(1) and (3) 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 or 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.

If the substance is alcohol, subsection (2) applies, which modifies section 24, to provide an excuse from criminal responsibility for an accused who was acting under an honest and reasonable belief that the victim would not have objected to the addition of the alcohol.

Pursuant to subsection (4) (b), it is irrelevant if the victim was already stupefied or overpowered to some extent before the drink spiking. Further, subsection (4) in conjunction with the definition of "circumstances" makes clear that even if the victim intended to become stupefied, they are entitled to become stupefied on their own terms (that is, timing, place, condition or way of stupefaction).

Subsection (5) 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 duty under an Act or the performance of the responsibilities of a parent or carer.

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Subsection (6) 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 (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 takes any step to provide drink containing the substance instead of other drink.

The phrase “stupefied or overpowered” is defined to include a state of intoxication caused by alcohol, drugs or another substance. It also extends to behavioural change caused by a dangerous drug, whether or not the mind is otherwise affected. The extended definition ensures that the provision will apply to circumstances where stimulants are used as the spiking agent.