

In 1983 seven people died in the United States after consuming a mild analgesic called Tylenol. Eventually, a person was convicted of fraud and blackmail offences in relation to making a demand for \$1 million in return for cessation of the poisoning of the product, but it was never clear that that person committed the contamination.

There have been similar events in Australia. In 1991 a person threatened to contaminate toothpaste in Sydney and Perth unless paid \$250 000. There was no evidence that the threat was ever carried out, but the company recalled and withdrew the goods from sale. In 1996, a person in Victoria clipped the heads off pins and put the headless pins in food in supermarkets. He made no demands or threats and the only motivation ever discovered was that the person concerned was seeking retribution against society as a whole because he had earlier been convicted of attempted murder.

In February 1997, it was reported that letters had been sent to authorities in Queensland and New South Wales threatening to contaminate Arnott's biscuits. A demand was made about police involvement in the conviction of a named person for murder. The threatened contamination was sufficient to kill a child weighing less than 10 kilograms. Arnott's decided to withdraw its product from over 200 stores in the two States. Arnott's share price fell 25¢, reducing the value of the company by about \$35 million. About 300 casual staff were stood down and Arnott's destroyed 800 truck-loads of biscuits. This year threats were made to contaminate Sanitarium products in South Australia.

These examples reveal quite clearly the potential damage involved or potentially involved in these incidents. People may suffer harm or death from the contaminants quite indiscriminately; the victim may suffer huge losses in stock, goodwill and share price; there will be general public anxiety and alarm; people may lose their jobs; and copycat offences may result.

Social functioning in the modern age turns on interdependence. Most people rely on the integrity of the production and packaging of goods and services, particularly medicines, food and drink, by others. Few people now produce all their own food and water and other necessities of life. If there is a threat to the integrity of that interdependence, then the structure of modern society is itself under threat. This threat is magnified many-fold when the goods or services are in themselves dangerous, such as mass and individual transportation, chemicals and safety products. This interdependence is the key to the special criminal quality of these incidents.

There can be little doubt that the existing criminal law covers much of the antisocial behaviour which occurs in these incidents. The offences of public nuisance, threats, blackmail/extortion, fraud, conspiracy to defraud, various offences of property damage, endangerment and murder/manslaughter may well apply and usually do apply given the particular facts of the case. But these offences are not sufficient on their own terms in some cases. The reasons are that, first, there are documented cases in which none of these offences occur; and, secondly, the application of the existing offences to some incidents do not adequately reflect the gravity or the essence of the offence in its threat to the general public welfare. In the Arnott's case, for example, the demand was not for money or any other financial advantage but the reinvestigation of a murder conviction. That may not suffice for extortion in some Australian jurisdictions. The Model Criminal Code Officers Committee has documented similar examples in which the existing criminal law may not apply or may be inadequate.

CRIMINAL LAW CONSOLIDATION (CONTAMINATION OF GOODS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Criminal Law Consolidation Act 1935. Read a first time.

The Hon. K.T. GRIFFIN: I move:

That this Bill be now read a second time.

In February 1997 the Standing Committee of Attorneys-General (SCAG) asked the Model Criminal Code Officers Committee (MCCOC) to review the different legal regimes dealing with product contamination across Australia and to develop a model for a consistent approach across the country and its jurisdictions to the problems posed by product contamination.

The Model Criminal Code Officers Committee was established in June 1990 by the Standing Committee of Attorneys-General. It consists of one representative from each Australian jurisdiction, usually the principal legal adviser to the Attorney-General on criminal law and related issues. The Model Criminal Code Officers Committee released a discussion paper, including draft legislation, in May 1997 and a final report to the Standing Committee of Attorneys-General in February 1998, also including draft legislation. The Standing Committee of Attorneys-General authorised the release of that final report in March 1998.

Product contamination is a thankfully rare and regrettably not unknown phenomenon. It has the capacity to be very serious indeed. Some of the more infamous examples of what can occur will show the Council the need for this legislation.

In general terms, the criminal law covers the protection of the integrity of the individual as well as can be expected. The offences of homicide, threats, fraud, extortion, and so on, will deal with the personal consequences of this kind of behaviour. However, existing criminal law is not directed at the kinds of general public harm occasioned in such cases—the public alarm and anxiety, the destruction of stock, the damage to the goodwill and share price of the company, and so on.

The Model Criminal Code Officers Committee therefore recommended the creation of offences which are directed to the causing of public alarm and anxiety and/or the causing of economic loss. The Model Criminal Code Officers Committee took the view that the criminal law had a gap in focusing on such general consequences.

The original statutes aimed at this behaviour were passed in the United States as a result of the Tylenol incident and were then adapted in the United Kingdom. Similar legislation has been passed in Victoria, Queensland and New South Wales. The Model Criminal Code Officers Committee noted the development of this legislation over time, consulted widely, and fashioned its recommendations to represent the best modern proposals.

The Bill introduced into the Parliament is in general consistent with the national model within the limits of differing drafting styles. However, the South Australian draft differs from the model in three vital substantive respects. First, the Model Bill recommended by Model Criminal Code Officers Committee applies in relation to conduct of varying descriptions (acts, threats, etc.) with the intention either of (a) causing public alarm and anxiety or (b) causing economic loss (through public awareness of the contamination).

The Bill as introduced applies in relation to conduct of varying descriptions with the intention of (a) causing public alarm or anxiety; (b) causing loss or harm to another (by any means); or (c) gaining a benefit for himself, herself or another. This last is a large extension. It is not in the Model Bill, because making a threat (for example) with intention to make a gain is classic extortion and normally should be dealt with by that offence.

The problem is that South Australia has an antique extortion/blackmail offence which does not properly cover the situations which may arise. For example, current extortion offences do not appear to cover the person whose gain is simply the venting of a grudge or seeing the victim squirm. The Bill as introduced tries to cover that with an extended definition of 'benefit'.

Secondly, the Model Criminal Code Officers Committee Model Bill is confined to 'contamination of goods' (albeit widely defined), but the Bill as introduced extends also to 'acts prejudicing public health or safety'. The definition at the beginning of the Bill shows how broad this is. Put simply, the offence is getting into what would normally be called 'sabotage'. While South Australian law contains a traditional and modern set of offences against property in the Criminal Law Consolidation Act, it does not yet contain an offence, which might be akin to arson, that deals with massive damage to economic interests or property by the sabotage, or threatened sabotage, of public infrastructure and other instances of a similar scale. That being so, the Bill as introduced differs from the Model Bill in extending coverage to that kind of incident.

It is appropriate to fill these gaps, even at the price of overlap, because the possible conduct and its consequences may be so very serious. If and when a law against sabotage can be enacted and reform of the general law of extor-

tion/blackmail can take place, it may be necessary to amend this law so as to reduce any undesirable amount of overlap and clearly delineate the scope of the offence. The need for national consistency in this area is clear and obvious. It will be kept firmly in mind as the law in this and related areas develops. I commend the Bill to the Council and seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

Clause 2: Insertion of new Part

This clause inserts a new Part in the Criminal Law Consolidation Act as follows:

PART 7A

CONTAMINATION OF GOODS AND OTHER ACTS PREJUDICING PUBLIC HEALTH OR SAFETY

259. Interpretation

New section 259 inserts definitions relevant to the new Part.

260. Unlawful acts of goods contamination or other acts prejudicing the health or safety of the public

New section 260 creates an offence in certain circumstances where a person—

- contaminates goods or commits some other act prejudicing public health or safety; or
- makes it appear that—
 - goods have been, or are about to be, contaminated; or
 - some other act prejudicing public health or safety has been, or is about to be, committed; or
 - makes a threat to contaminate goods or to commit some other act prejudicing public health or safety (a threat includes a threat to be implied from conduct or a conditional threat); or
 - falsely claims that goods have been or are about to be contaminated, or some other act prejudicing public health or safety has been, or is about to be, committed.

Acts prejudicing public health or safety extend (by the definition) to interference with public infrastructure for water, electricity, gas, sewerage etc., public transport or communication systems or other facilities on which the health or safety of the public is dependant. The public is defined to include a section of the public including, for example, consumers of particular goods.

The new offence applies if the person commits such an act intending—

- to cause prejudice, to create a risk of prejudice, or to create an apprehension of a risk of prejudice, to the health or safety of the public; and
- by doing so—
 - to gain a benefit for himself, herself or another (benefit is widely defined); or
 - to cause loss or harm to another; or
 - to cause public alarm or anxiety.

The maximum penalty provided is imprisonment for 15 years.

The Hon. T.G. ROBERTS secured the adjournment of the debate.