

## EXPLANATORY MEMORANDUM

### CRIMINAL CODE AMENDMENT (DRINK AND FOOD SPIKING) BILL 2007

#### General Information

The purpose of this Bill is to insert into the WA *Criminal Code* section 305A, which expressly and specifically deals with drink and food spiking.

#### Clause 1 – Short title

The short title of this amendment Act is the *Criminal Code Amendment (Drink and Food Spiking) Bill 2007*.

#### Clause 2 – Commencement

Clause 1 and this clause both come into operation on the day this Act receives the Royal Assent. All other amendments come into operation on the day after this Act receives the Royal Assent.

#### Clause 3 – *The Criminal Code* amended

The amendments in this Act are to the *Criminal Code Compilation Act 1913*.

#### Clause 4 – Section 305A inserted

Clause 4 inserts section 305A into *The Criminal Code* after section 305.

Section 305A(1) provides the definition of terms used within the section:

“**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;

“**impair**” includes further impair and temporarily impair;

“**intoxicating substance**” includes any substance that affects a person’s senses or understanding.

Section 305A(2) provides that for the purposes of this section, giving a person drink or food includes preparing the drink or food for the person, or making it available for the person to consume.

Section 305A(3) provides that section 305A will apply in two situations. First, where a person (“the provider”) causes another person to be given or to consume drink or food containing an intoxicating substance where that other person is not aware of the presence of that intoxicating substance. Second, where the provider causes another person to be given or to consume drink or food containing more of an intoxicating substance than that other person would reasonably expect that drink or food to contain.

Section 305A(4) provides the offence of food and drink spiking and outlines the penalties. Subsection (4) provides that an offence is committed where the provider, who causes another person to be given or to consume drink or food, intends that other person to be harmed by the consumption of the drink or food. An offence will also be committed where the provider, who causes another person to be given or to consume drink or food, knows or believes that the consumption of the drink or food is likely to harm a person.

In either of these situations, the provider will be guilty of a crime and is liable to imprisonment for a maximum of 3 years. Where the summary conviction penalty applies, the provider will be liable for imprisonment for a maximum of 12 months and a fine of not more than \$12 000.

Section 305A provides a specific defence to these new offences in subsection (5).

Section 305A(5) provides that it will be a defence to the offences contained in subsection (4) if the accused 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 they were aware of the presence and quantity of the intoxicating substance in the drink or food.