

2014

THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

FOOD AMENDMENT BILL 2014

SUPPLEMENTARY EXPLANATORY STATEMENT  
AMENDMENTS MOVED BY THE MINISTER FOR HEALTH

**Presented by**  
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**Minister for Health**

## Supplementary Explanatory Statement

This supplementary explanatory statement addresses amendments to the Food Amendment Bill 2014 moved by the Minister for Health. The amendments have been prepared in response to comments by the Standing Committee on Justice and Community Safety (the Committee), exercising its legislative scrutiny role.

### OVERVIEW

The Food Amendment Bill 2014 (the Bill) proposes regulatory reform measures designed to reduce the compliance burden on some food businesses and community organisations under the *Food Act 2001* (the Act).

In exercising its legislative scrutiny role, the Committee has drawn to the attention of the Legislative Assembly its concerns regarding proposed subsection 7A(2)(a) in clause 6 of the Bill. The Committee has noted that proposed subsection 7A(1) provides an exemption from the application of the Act for the handling and sale of food by non-profit community organisations for the purposes of fundraising, except when operating at a regulated event. The businesses that may benefit from this exemption are those conducted by a volunteer for a community organisation to raise funds for one or more purposes, such as religious, educational, or charitable purposes.

In drafting the Bill, due regard was given to the types of activities involved in the sale and handling of food, which are dynamic and diverse. For this reason circumstances could potentially arise in which a food business meets the exemption criteria, but for which other unforeseen factors are present that would make exclusion from the operation of the Act undesirable or unacceptable from a public health risk perspective. For this reason subsection 7A(2)(a) was included to give the Minister the power, by disallowable instrument, to bring a relevant food business back into the operation of the Act should such unforeseen factors eventuate.

The Committee has expressed a valid concern about the broad scope of this discretion, noting that no criteria were provided according to which the power might be exercised. The Committee also expressed concern that this would give to the Minister the power to dispense with the operation of a provision of the Act.

The concerns of the Committee have been acknowledged and these amendments have been prepared to address those concerns.

## **DETAIL**

### **Amendment 1**

#### **Clause 6**

#### **Proposed new section 7A (2) (a)**

#### **Page 4, line 5 –**

An exemption from the application of the *Food Act 2001* (the Act) is provided in subsection 7A(1) of the Bill. The exemption applies to the handling and sale of food by non-profit community organisations for the purposes of fundraising, except when operating at a regulated event. The businesses that may benefit from this exemption are those conducted by a volunteer for a community organisation to raise funds for one or more purposes, such as religious, educational, or charitable purposes.

Subsection 7A(2)(a) of the Bill as presented would also give the Minister the power, by disallowable instrument, to bring a relevant food business back into the operation of the Act should circumstances warrant.

The views of the Committee about the appropriateness of this power being exercisable by the Minister alone through a disallowable instrument, with no criteria as to its use, have been acknowledged. Accordingly, this amendment omits subsection 7A(2)(a) as included in the Bill on presentation, and replaces it with a new subsection 7A(2)(a) containing the text “prescribed by regulation; or”. The effect of this change is the power will be exercisable through regulation rather than a disallowable instrument made by the Minister.

### **Amendment 2**

#### **Clause 6**

#### **Proposed new section 7A (2A)**

#### **Page 4, line 8 –**

The first amendment to be made to the Bill, discussed above, changes paragraph (a) of subsection 7A(2) so that the power is exercised through the Regulation rather than a disallowable instrument made by the Minister.

This amendment will establish that any such regulation may be made in circumstances where it has been determined to be necessary for the protection of public health, or where otherwise appropriate.

Although the criteria are relatively broad, they are nevertheless still criteria that would need to be established in a Regulatory Impact Statement for a proposed regulation, as well as being adequately explained in an accompanying explanatory

statement. Coupled with the Legislative Assembly's power to disallow subordinate legislation, these amendments should be sufficient to ensure that the legislative framework retains adequate flexibility to address unforeseen circumstances, whilst ensuring that the power conferred is appropriate, sufficiently clear and consistently applied.

### **Amendment 3**

#### **Clause 6**

#### **Proposed new section 7A (4)**

#### **Page 4, line 21 –**

This amendment is a necessary consequential amendment because of the changes to proposed section 7A(2)(a).

In the Bill as presented, section 7A(4)(a) established that a declaration made by the Minister under section 7A(2)(a) is a disallowable instrument. The first amendment to be made to the Bill, discussed above, changes paragraph (a) of subsection 7A(2) so that the power is exercised through the Regulation rather than a disallowable instrument made by the Minister.

Accordingly, the only declaration to which section 7A(4) now refers is to a declaration under subsection (3), definition of *community organisation*, paragraph (b)(ii).