



Australian Capital Territory

Food Amendment Act 2012

A2012-4

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Australian Capital Territory

Food Amendment Act 2012

A2012-4

An Act to amend the *Food Act 2001*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Food Amendment Act 2012*.

2 Commencement

- (1) The following provisions commence on the day after this Act's notification day:
- sections 3 to 6
 - sections 8 to 10
 - section 13
 - schedule 1
 - schedule 2, part 2.2.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) Schedule 2, part 2.1 commences on the commencement of the *Food (Nutritional Information) Amendment Act 2011*, section 4.
- (3) The remaining provisions commence on a day fixed by the Minister by written notice.

Note A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (4) However, if a provision of this Act mentioned in subsection (3) has not commenced within 18 months beginning on the notification day, it automatically commences on the first day after that period.
- (5) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the *Food Act 2001*.

Note This Act also amends the following legislation (see sch 2):

- *Food (Nutritional Information) Amendment Act 2011*
- *Magistrates Court (Food Infringement Notices) Regulation 2005*.

4 New sections 84A to 84C

insert

84A Display of closure notices

- (1) This section applies if a prohibition order—
 - (a) is served on the proprietor of a food business; and
 - (b) directs the proprietor not to use particular premises of the business for—
 - (i) the sale of food; or
 - (ii) the handling of, or doing of any other thing to, food intended for sale.
- (2) A notice (a *closure notice*)—
 - (a) must be placed at each public entrance to the premises of the food business by an authorised officer as soon as practicable after the prohibition order is served on the proprietor of the business; and
 - (b) may be removed only if—
 - (i) a clearance certificate is issued for the prohibition order to which the notice relates; or
 - (ii) an authorised officer removes the notice to reposition, update or correct the notice.

84B Contents of closure notices

A closure notice displayed at the premises of a food business must contain the following information:

- (a) the name and address of the business;
- (b) a statement that the business is subject to a prohibition order under this Act;
- (c) the date the order was made;
- (d) that it is an offence to interfere with the display or contents of the notice;
- (e) the words ‘ACT Government’ and ‘Health Directorate’ at the head of the notice;
- (f) any other information the chief health officer considers appropriate to include.

84C Interference with closure notice

- (1) A person commits an offence if—
 - (a) a closure notice is placed at the premises of a food business by an authorised officer; and
 - (b) the person engages in conduct that results in the notice being moved from where it was placed by the authorised officer; and
 - (c) the person is reckless about whether the notice would be moved from where it was placed

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if—
 - (a) a closure notice is placed at the premises of a food business by an authorised officer; and
 - (b) the person engages in conduct that results in any part of the notice being obscured or defaced; and

- (c) the person is reckless about whether the notice would be obscured or defaced.

Maximum penalty: 100 penalty units.

5 Section 87

substitute

87 Contravention of improvement notices and prohibition orders

- (1) The proprietor of a food business commits an offence if the proprietor engages in conduct that contravenes an improvement notice served on the proprietor.

Maximum penalty: 100 penalty units.

- (2) The proprietor of a food business commits an offence if the proprietor engages in conduct that contravenes a prohibition order served on the proprietor.

Maximum penalty: 400 penalty units.

6 New section 98A

insert

98A Registration certificate must be displayed

- (1) A person commits an offence if—
 - (a) the person conducts a food business that is registered under this part; and
 - (b) the person fails to display a current certificate of registration for the food business on the business's premises.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

(3) In this section:

display, of a certificate on business premises, means show in a way that is clearly visible to a member of the public who enters the premises in the ordinary course of business.

7 New part 9A

insert

Part 9A Food safety supervisors

116 Definitions—pt 9A

In this part:

approved food safety training course means a food safety training course—

- (a) provided by a registered training organisation; and
- (b) approved by the chief health officer in accordance with the food safety training approval guidelines.

food safety supervisor, for a registered food business, means a person who—

- (a) holds a statement of attainment for an approved food safety training course; and
- (b) satisfies any requirement under this Act about eligibility to become or remain a food safety supervisor; and

Note A reference to this Act includes a reference to a statutory instrument made or in force under this Act (see Legislation Act, s 104).

- (c) as part of the person's formal duties in the business is—
 - (i) responsible for recognising, preventing and alleviating food safety hazards in the business; and

- (ii) authorised to supervise and give directions about food safety to any person who handles food in the course of the business; and
- (d) is not also the food safety supervisor for—
 - (i) any other registered food business; or
 - (ii) if the registered food business has more than 1 site where the handling or sale of food happens—more than 1 site for the business.

food safety training approval guidelines means the guidelines made by the chief health officer under section 119.

food safety training course means a training course about ways to recognise, prevent and alleviate food safety hazards in food handled or sold in a registered food business.

registered training organisation—see the *Training and Tertiary Education Act 2003*, dictionary.

statement of attainment, held by a person, means a document issued to the person by a training organisation certifying that the person has satisfactorily completed a course conducted by the organisation.

117 Registered food business must appoint food safety supervisor

- (1) The proprietor of a registered food business commits an offence if—
 - (a) the proprietor fails to ensure that there is a food safety supervisor for the business within 30 days after the day the business is registered (the ***establishment period***); or
 - (b) the business does not have a food safety supervisor at any time after the end of the establishment period.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) (b) does not apply if it is less than 30 days since the last day the business had a food safety supervisor.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

118 Proprietor of registered food business may be food safety supervisor

A proprietor of a registered food business may be the food safety supervisor for the business.

119 Food safety training approval guidelines

- (1) The chief health officer must make guidelines for the approval of a food safety training course under this part.
- (2) A guideline may apply, adopt or incorporate a law of another jurisdiction or an instrument as in force from time to time.
- (3) The Legislation Act, section 47 (6) does not apply to a law of another jurisdiction or an instrument mentioned in subsection (2).

Note A law of another jurisdiction, or an instrument, applied, adopted or incorporated by a guideline does not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)).

- (4) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

**8 Publication of details of food businesses related to offences
Section 146 (3)**

substitute

- (3) The chief health officer—
- (a) must publish a notice about the conviction, or finding of guilt, on a register kept by the chief health officer; and

- (b) if the chief health officer considers it in the public interest—
may publish a notice in a newspaper circulating in the ACT.
- (3A) A notice published on the register may be kept on the register for not more than 2 years.
- (3B) The chief health officer may—
 - (a) correct any mistake, error or omission in the register, subject to any requirements prescribed by regulation; and
 - (b) change a detail included in the register to keep the register up-to-date.
- (3C) The register—
 - (a) may be kept in any form the chief health officer considers appropriate; and
 - (b) must, as far as practicable, be available for public inspection, free of charge, during normal business hours on any business day.

9 Section 146 (4) and (5)

omit

The notice

substitute

A notice

10 Section 146 (6)

after

a person

insert

or the Territory

**11 Regulation-making power
New section 152 (2) (c) to (e)**

insert

- (c) the requirements for eligibility to become, or remain, a food safety supervisor; and
- (d) the functions of food safety supervisors; and
- (e) any other matter relating to the management or conduct of food safety supervisors.

12 Dictionary, new definition of *approved food safety training course*

insert

approved food safety training course, for part 9A (Food safety supervisors)—see section 116.

13 Dictionary, new definition of *closure notice*

insert

closure notice means a notice required under section 84A (2) (Display of closure notices).

14 Dictionary, new definitions

insert

food safety supervisor, for a registered food business, for part 9A (Food safety supervisors)—see section 116.

food safety training approval guidelines, for part 9A (Food safety supervisors)—see section 116.

food safety training course, for part 9A (Food safety supervisors)—see section 116.

registered training organisation, for part 9A (Food safety supervisors)—see section 116.

statement of attainment, held by a person, for part 9A (Food safety supervisors)—see section 116.

Schedule 1 Criminal Code harmonisation

(see s 3)

[1.1] New section 5A

insert

5A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

[1.2] Section 7 (1) (b) to (d)

substitute

- (b) section 18 (Knowingly describing food falsely);
- (c) section 22 (1) (which is about handling food in a way that will, or is likely to, make it unsafe);
- (d) section 23 (1) (which is about handling food in a way that will, or is likely to, make it unsuitable);

[1.3] Section 15 (2)

omit

(Knowingly falsely describing food) or section 21 (2) (False description of food),

substitute

(Knowingly describing food falsely) or section 21 (2) (Negligently describing food falsely),

[1.4] Divisions 3.2 and 3.3

substitute

Division 3.2 Serious offences relating to food

Note 1 For defences to the offences in this division, see div 3.4.

Note 2 For other provisions about the offences in this division, see div 3.5 and pt 10.

16 Knowingly handling food in unsafe way

A person commits an offence if—

- (a) the person handles food intended for sale in a way that will, or is likely to, make the food unsafe; and
- (b) the person knows that handling the food in that way will, or is likely to, make the food unsafe.

Maximum penalty: 1 000 penalty units, imprisonment for 2 years or both.

17 Knowingly selling unsafe food

A person commits an offence if—

- (a) the person sells food; and

(b) the person knows the food is unsafe.

Maximum penalty: 1 000 penalty units, imprisonment for 2 years or both.

18 Knowingly describing food falsely

(1) A person commits an offence if—

- (a) the person falsely describes food intended for sale; and
- (b) the person knows that a consumer of the food who relies on the description will, or is likely to, suffer physical harm.

Maximum penalty: 1 000 penalty units, imprisonment for 2 years or both.

Note For examples of food that is falsely described, see s 15.

(2) A person commits an offence if—

- (a) the person sells food; and
- (b) the person knows that—
 - (i) the food is falsely described; and
 - (ii) a consumer of the food who relies on the description will, or is likely to, suffer physical harm.

Maximum penalty: 1 000 penalty units, imprisonment for 2 years or both.

Division 3.3 Other offences relating to food

Note 1 For defences to the offences in this division, see div 3.4.

Note 2 For other provisions about the offences in this division, see div 3.5 and pt 10.

19 Negligently handling food in unsafe way

A person commits an offence if—

- (a) the person handles food intended for sale in a way that is likely to make the food unsafe; and
- (b) the person is negligent about whether handling the food in that way is likely to make the food unsafe.

Maximum penalty: 750 penalty units.

20 Negligently selling unsafe food

A person commits an offence if—

- (a) the person sells food that is unsafe; and
- (b) the person is negligent about whether the food is unsafe.

Maximum penalty: 750 penalty units.

21 Negligently describing food falsely

(1) A person commits an offence if—

- (a) the person falsely describes food intended for sale; and
- (b) the person is negligent about whether a consumer of the food who relies on the description, will or is likely to, suffer physical harm.

Maximum penalty: 750 penalty units.

Note For examples of food that is falsely described, see s 15.

(2) A person commits an offence if—

- (a) the person sells food; and
- (b) the person is negligent about whether—
 - (i) the food is falsely described; and

- (ii) a consumer of the food who relies on the description will, or is likely to, suffer physical harm.

Maximum penalty: 750 penalty units.

22 Handling and sale of unsafe food

- (1) A person commits an offence if the person handles food intended for sale in a way that will, or is likely to, make the food unsafe.

Maximum penalty: 500 penalty units.

- (2) A person commits an offence if the person sells food that is unsafe.

Maximum penalty: 500 penalty units.

- (3) An offence against this section is a strict liability offence.

23 Handling and sale of unsuitable food

- (1) A person commits an offence if the person handles food intended for sale in a way that will, or is likely to, make the food unsuitable.

Maximum penalty: 400 penalty units.

- (2) A person commits an offence if the person sells food that is unsuitable.

Maximum penalty: 400 penalty units.

- (3) For this section, it is immaterial whether the food is safe.

- (4) An offence against this section is a strict liability offence.

24 Misleading conduct relating to sale of food

- (1) A person commits an offence if the person, when conducting a food business, engages in conduct that is misleading or deceptive or is likely to mislead or deceive in relation to—

- (a) the advertising, packaging or labelling of food intended for sale; or

(b) the sale of food.

Maximum penalty: 500 penalty units.

- (2) A person commits an offence if the person, to sell food or promote the sale of food when conducting a food business, advertises, packages or labels food in a way that falsely describes the food.

Maximum penalty: 500 penalty units.

Note For examples of food that is falsely described, see s 15.

- (3) A person commits an offence if the person, when conducting a food business, sells food that is packaged or labelled in a way that falsely describes the food.

Maximum penalty: 500 penalty units.

- (4) An offence against this section is a strict liability offence.

25 Sale of food not complying with purchaser's demand

- (1) A person commits an offence if the person, when conducting a food business—

- (a) sells food to a purchaser; and
(b) the food is not of the nature or substance demanded by the purchaser.

Maximum penalty: 500 penalty units.

- (2) For this section, it is immaterial whether the food is safe.
(3) An offence against this section is a strict liability offence.

26 Sale of unfit equipment or packaging or labelling material

- (1) A person commits an offence if—

- (a) the person sells equipment (the *equipment sold*); and
(b) the person knows the equipment sold is, or is likely, to be used for the handling of food; and

- (c) the equipment sold, if used for a purpose for which it was designed or intended to be used would, or would be likely to—
 - (i) make food unsafe; or
 - (ii) put other equipment in a condition that, if the other equipment were used for a purpose for which it was designed or intended to be used, would, or would be likely to, make food unsafe.

Maximum penalty: 500 penalty units.

- (2) Strict liability applies to subsection (1) (a) and (c).
- (3) Subsection (1) does not apply if the equipment sold was not designed for use in relation to the handling of food.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

- (4) A person commits an offence if—
 - (a) the person sells packaging or labelling material; and
 - (b) the person knows the material is, or is likely, to be used for the handling of food; and
 - (c) the material, if used for a purpose for which it was designed or intended to be used, would, or would be likely to, make food unsafe.

Maximum penalty: 500 penalty units.

- (5) Strict liability applies to subsection (4) (a) and (c).
- (6) Subsection (4) does not apply if the packaging or labelling material was not designed for use in relation to the handling of food.

Note The defendant has an evidential burden in relation to the matters mentioned in s (6) (see Criminal Code, s 58).

27 Compliance with food standards code

- (1) A person commits an offence if the person contravenes a requirement of the food standards code in relation to—
- (a) the conduct of a food business; or
 - (b) food intended for sale; or
 - (c) food for sale.

Maximum penalty: 500 penalty units.

- (2) A person commits an offence if—
- (a) the person sells food; and
 - (b) the food does not comply with a requirement of the food standards code for the food.

Maximum penalty: 500 penalty units.

- (3) A person commits an offence if—
- (a) the person sells or advertises food; and
 - (b) the food is packaged or labelled in a way that contravenes the food standards code.

Maximum penalty: 500 penalty units.

- (4) A person commits an offence if the person sells food, or advertises food for sale, in a way that contravenes the food standards code.

Maximum penalty: 500 penalty units.

- (5) An offence against this section is a strict liability offence.

[1.5] Sections 28 and 29

substitute

28 Defence relating to publication of advertisements

- (1) This section applies to a prosecution for an offence, relating to the publication of an advertisement, against—
- (a) section 18 (Knowingly describing food falsely); or
 - (b) section 21 (Negligently describing food falsely); or
 - (c) section 24 (Misleading conduct relating to sale of food); or
 - (d) section 27 (3) or (4) (Compliance with food standards code).

- (2) It is not an offence if the defendant—
- (a) conducted a business concerned mainly with the publication of advertisements; and
 - (b) published or arranged for the publication of the advertisement in the ordinary course of the business.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

- (3) However, subsection (2) does not apply if the defendant—
- (a) should reasonably have known that the publication of the advertisement was an offence; or
 - (b) had previously been told in writing by an authorised officer that publication of such an advertisement would be an offence; or
 - (c) is the proprietor of a food business or is otherwise engaged in the conduct of a food business for which the advertisement was published.

29 Defence relating to food for export

- (1) This section applies to a prosecution for an offence against this part if the offence involves contravention of a provision about food in the food standards code.
 - (2) It is not an offence if—
 - (a) the food is to be exported to another country; and
 - (b) the food complies with the laws (the *foreign laws*) in force at the time of the offence in the place to which the food is to be exported; and
 - (c) the foreign laws deal with the same subject matter as the provision of the food standards code.
- Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).
- (3) However, subsection (2) does not apply to food originally intended for export but sold in the ACT.

[1.6] Section 31

substitute

31 Defence in relation to handling food

- (1) This section applies to a prosecution for an offence against—
 - (a) section 16 (Knowingly handling food in unsafe way); or
 - (b) section 19 (Negligently handling food in unsafe way); or
 - (c) section 22 (1) (which is about handling food in a way that will, or is likely to, make it unsafe); or
 - (d) section 23 (1) (which is about handling food in a way that will, or is likely to, make it unsuitable).

- (2) It is not an offence if the defendant caused the food to which the offence relates to be destroyed or disposed of immediately after the food was handled in the way that made it, or was likely to make it, unsafe or unsuitable.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

[1.7] Section 33

omit

[1.8] Section 35 (3), definition of *lesser food handling offence*, paragraph (a)

substitute

- (a) section 19 (Negligently handling food in unsafe way); or

[1.9] Section 36 (3), definition of *lesser food selling offence*, paragraph (a)

substitute

- (a) section 20 (Negligently selling unsafe food); or

[1.10] Section 43

substitute

43 Contravening emergency order

- (1) A person commits an offence if the person engages in conduct that contravenes a prohibition, direction, condition or requirement of an emergency order applying to the person.

Maximum penalty: 500 penalty units.

- (2) In this section:

emergency order includes an emergency order as affected by an order of the Supreme Court under section 42 (Operation of emergency orders).

[1.11] Section 51 (2)

substitute

- (2) A person commits an offence if the person fails to take reasonable steps to comply with a requirement made of the person under subsection (1) (n) or (o).

Maximum penalty: 50 penalty units.

Note The Legislation Act, s 170 and s171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (2A) An offence against this section is a strict liability offence.

[1.12] Section 52 (7)

substitute

- (7) A person commits an offence if the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (6).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Note An authorised officer may seize a thing in a public place under this section and this part applies to the thing seized, see s 51 (3) to (5).

- (8) Subsection (7) does not apply if the person has an authorised officer's approval to interfere with the thing.

[1.13] Section 53 (4)

substitute

- (4) The proprietor of a food business commits an offence if the proprietor contravenes a direction given to the proprietor under subsection (2).

Maximum penalty: 50 penalty units.

- (4A) An offence against this section is a strict liability offence.

[1.14] Section 54

substitute

54 Power to require name and address

- (1) An authorised officer may require a person to state the person's name and home address if the authorised officer believes on reasonable grounds that the person is committing or has just committed an offence against this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The authorised officer must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The person may ask the authorised officer to produce his or her identity card for inspection by the person.
- (4) A person commits an offence if—
- (a) the authorised officer—
 - (i) tells the person the reason for the requirement made of the person under subsection (1); and
 - (ii) complies with any request made by the person under subsection (3); and
 - (b) the person fails to comply with the requirement.

Maximum penalty: 10 penalty units.

- (5) An offence against this section is a strict liability offence.

[1.15] Section 90*substitute***90 Notification of conduct of exempt food businesses**

- (1) A person commits an offence if—
 - (a) the person conducts a food business that is prescribed by regulation for section 89; and
 - (b) the person did not, before starting to conduct the business, give written notice of the notifiable information to the chief health officer.

Maximum penalty: 50 penalty units.

Note 1 If a form is approved under s 151 for giving notice under this section, the form must be used.

Note 2 A fee may be determined under s 150 for giving notice under this section.

- (2) An offence against this section is a strict liability offence.
- (3) In this section:

notifiable information means the information required under the food safety standards to be notified to the appropriate enforcement agency before the business is conducted.

[1.16] Section 91*substitute***91 Food businesses to be registered**

- (1) A person commits an offence if—
 - (a) the person conducts a food business; and

(b) the food business is not registered under this part.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) This section does not apply to a food business that is prescribed by regulation for section 89 (Food businesses exempt from registration).

[1.17] Section 97 (2)

substitute

- (2) The proprietor of the food business commits an offence if—
- (a) there is a change in the particulars, or the operation of the food business, mentioned in subsection (1); and
 - (b) the proprietor does not, as soon as practicable (but within 7 days after the day the change happens)—
 - (i) give written notice of the change to the chief health officer; and
 - (ii) if the change affects particulars shown on the certificate of registration—return the certificate to the chief health officer with the notice.

Maximum penalty: 50 penalty units.

Note 1 If a form is approved under s 151 for giving notice under this section, the form must be used.

Note 2 A fee may be determined under s 150 for giving notice under this section.

- (2A) An offence against this section is a strict liability offence.

[1.18] Section 99*substitute***99 Food business to be conducted in accordance with registration conditions**

- (1) The proprietor of a registered food business commits an offence if—
- (a) the registration of the business is subject to a condition; and
 - (b) the proprietor engages in conduct that contravenes the condition.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

[1.19] Section 103 (1)*substitute*

- (1) The proprietor of a food business commits an offence if—
- (a) the registration of the business is suspended or cancelled; and
 - (b) the proprietor does not, as soon as practicable (but within 7 days after the day the suspension or cancellation takes effect), return the certificate of registration of the business to the chief health officer.

Maximum penalty: 5 penalty units.

- (1A) An offence against this section is a strict liability offence.

[1.20] Section 149 (4)*substitute*

- (4) A person commits an offence if the person fails to comply with a code of practice for—
- (a) handling food intended for sale; or

(b) the sale of food; or

(c) equipment.

Maximum penalty: 50 penalty units.

(4A) An offence against this section is a strict liability offence.

[1.21] Dictionary, note 2

insert

- home address

[1.22] Dictionary, new definition of *engage in conduct*

insert

engage in conduct means—

(a) do an act; or

(b) omit to do an act.

Schedule 2 Consequential amendments

(see s 3)

Part 2.1 Food (Nutritional Information) Amendment Act 2011

[2.1] Section 4

omit

Part 2.2 Magistrates Court (Food Infringement Notices) Regulation 2005

[2.2] Schedule 1, items 10 to 12

omit

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 8 December 2011.

2 Notification

Notified under the Legislation Act on 1 March 2012.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Food Amendment Bill 2012, which originated in the Legislative Assembly as the Food Amendment Bill 2011 and was passed by the Assembly on 21 February 2012.

Clerk of the Legislative Assembly

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