

1995

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**FAIR TRADING (PETROLEUM RETAIL MARKETING) BILL**

**SUPPLEMENTARY EXPLANATORY MEMORANDUM**

Amendments to be moved on behalf of the Government

**Circulated by the authority of**

**Gary Humphries  
Minister for Consumer Affairs**

## OUTLINE

This amendment to the Fair Trading (Petroleum Retail Marketing) Bill is intended to prevent people who hold franchise agreements from assigning 50% or more of their interest in those agreements to persons, companies or consortiums who already hold franchise agreements, or to their associates or related bodies corporate, as the case may be.

## FINANCIAL CONSIDERATIONS

There are no financial implications arising from this amendment.

### Clause 4A

This is a new clause to be inserted into the Bill. The clause prevents franchisees from assigning 50% or more of their interest in a franchise agreement, where the person who receives the interest (called the 'assignee')

- already has a franchise agreement;
- is a company controlled by an existing franchisee;
- is a body corporate related to an existing franchisee;
- is an associate of an existing franchisee; or
- is a consortium, joint venture, partnership or other group in which an existing franchisee holds an interest.

Such assignments will be illegal if they are made on or after 17 August 1995.

### Clause 4B

Some provisions in the existing Bill have been moved to Clause 4B because they apply to both Clause 4 and Clause 4A. Clause 4B now provides that if a company is controlled by a franchisee for the purposes of the *Petroleum Retail Marketing Franchise Act 1980* ("the Franchise Act"), it is controlled by a franchisee for the purposes of this Bill also. The relevant provisions of the Franchise Act are set out in detail in the main Explanatory Memorandum of the Bill. In addition, if bodies corporate are related to each other under section 4 of the Franchise Act, they are also taken to be related for the purposes of this Bill. Finally, if two people are associates for the purposes of the Franchise Act, they are associates for the purposes of this Bill.

### Clause 6

This amendment adds a new subsection to Clause 6 to allow the Minister to lift the restrictions on assignment in relation to a particular agreement. By virtue of s7 of

*the Interpretation Act 1967*, the Minister may also lift the restrictions on assignment of a class of agreements or on all agreements.

#### **Clause 7**

This amendment allows the Minister or another person to obtain an injunction to prevent any person from engaging in conduct (or proposing to do so) to give effect to an assignment which clause 4A makes illegal.

#### **Clause 8**

This clause is amended to include agreements to assign interests of 50% or greater in franchise agreements. This means that people who enter into an agreement to assign between 17 August 1995 and the date this Bill is notified in the ACT Gazette, are entitled to be put back in the positions they were in before entering into the agreement, so far as is practicable and reasonable.