

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

MILK AUTHORITY (AMENDMENT) BILL 1999

EXPLANATORY MEMORANDUM

**Circulated by the authority of
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Minister for Urban Services**

Milk Authority (Amendment) Bill 1999

Outline

Since 21 July 1996, the Part IV Conduct Rules in the *Trade Practices Act 1974* (TPA) have applied to Government business activities. Anti-competitive conduct, which is in breach of the Part IV rules, must be authorised. Under the transitional arrangements for extending the TPA to government business activities, legislation in force on 21 July 1996 was deemed to be authorised, but only until 21 July 1998.

The ACT Milk Authority (ACTMA) engaged in a number of forms of conduct which were potentially in breach of the TPA. The *Milk Authority (Amendment) Bill 1998*, which commenced on 10 July 1998, was enacted to provide temporary protection against any legal action arising from claimed breaches of the TPA. The protection sunsetted on 31 December 1998 and the ACTMA issued notices to market participants advising that it did not propose to take any action to enforce those ACTMA operations that may breach the TPA. Currently, the ACT milk market has no regulatory protection.

As a signatory to the National Competition Policy reforms the ACT is required to review policies with the objective of removing barriers to competition and establishing a framework for legislation review and structural reform of public monopolies. It is important for industry participants and ACT consumers that this change process is managed within an appropriate framework to ensure continuity and certainty of direction.

The amendments proposed in the Bill will transfer responsibility for the major regulatory functions under the *Milk Authority Act 1971* (MAA) from the ACTMA to Departments of State. Accordingly, the *Milk Authority (Amendment) Bill 1999* addresses the need for government business activities to comply

with the TPA. The retrospectivity and savings provisions of the proposed amendments help to deliver continuity and certainty to the industry, while protecting people who acted in good faith, believing the market to be deregulated, from penalty under the Act or from exposure to civil liability under the Act or at common law.

Clauses

Part I - Preliminary

Clause 1

Short title of the Act. This is self explanatory.

Clause 2

This clause remedies the “lapse” in ACTMA authorisations in the period 31 December 1998 through to enactment of this proposed legislation. Retrospective legislation is necessary to ensure continuity in the industry and provide an adequate level of certainty for the industry relationships necessary to minimise dysfunctional and disruptive behaviour among industry participants. Clause 4 should be read in conjunction with this clause.

Clause 3

The “Principal Act” means the *Milk Authority Act 1971*. This is self explanatory.

Clause 4

This amendment balances the concerns of people who believe they will be unfairly treated under the retrospective nature of legislation introduced in clause 2. Fundamentally, the savings clause provides protection from penalty under the Act, or from exposure to civil liability under the Act or at common law, for

anyone who acted in good faith believing that they were operating in a deregulated market in the period between 31 December 1998 and the enactment of the proposed legislation.

Part II - Amendments of the Milk Authority Act 1971

Clause 5

This amendment means that the number of members of the ACTMA is not set at four and can be less. This is consistent with a reduction in the functions of the ACTMA.

Clause 6

This amendment facilitates the capacity of the ACTMA to function with fewer than four members.

Clause 7

Omits reference to the ACTMA having a function in relation to the prices at which milk may be sold. This aids the separation of pricing regulation and the ACTMA's commercial activities ensuring compliance with TPA provisions in this area.

Clause 8

The ACTMA activities under section 16A of the MAA are in potential breach of Part IV of the TPA. The responsibility for the fixing of milk prices is transferred from the ACTMA to the Treasurer, as the Regulator of monopoly pricing, to remove ACTMA conduct contrary to the provisions of Part IV of the TPA. Current TPA exemptions are repealed as they no longer need apply.

Clause 9

Section 16B is not needed as it gave the Minister powers in relation to maximum prices that are now covered under section 16A.

Clause 10

The power of the ACTMA to regulate milk prices is rescinded. Price fixing powers transfer to the Treasurer (clause 8) and power to control home vendor distributions transfers to the Minister for Urban Services (clause 12 and clauses 15 -21). Section 17 (1A) (a) confirms the ACTMA commercial authority to enter into arrangements in relation to the acquisition, processing, sale and distribution of milk.

The “sunset” provisions for TPA exemptions on existing ACTMA deeds in breach of TPA have been extended until 31 December 1999 to provide time to reach alternative arrangements that comply with TPA provisions. The TPA exemption that restricts home vendors to only selling *Canberra Milk* products (clause A of the vendor licences) has been deleted requiring a licence change to comply with the TPA.

Clause 11

This clause provides for amendments to the schedule to mirror those in the body of the Principal Act. The item relating to Clause A of the Vendor’s Licences is omitted and continuing TPA exemptions (ie. refers to processing and distribution deeds) are to cease at the expiration of 31 December 1999.

Clause 12

The Principal Act is amended to transfer responsibility for the regulation of milk vending from the ACTMA to the Minister for Urban Services. The ACTMA activities under Parts III and IV of the MAA are in potential breach of Part IV of the TPA. The responsibilities for vendor licencing and permits and zoning are transferred to remove ACTMA conduct contrary to the provisions of Part IV of the TPA.

Part III - Transitional

Clause 13

This clause defines the terms “amended Act” and “unamended Act” for the purposes of the transitional provisions that follow.

Clause 14

This means that the maximum prices for milk in place at 31 December 1998 will be deemed to have been made by the Treasurer under the amended Act and will remain until such time as the Treasurer determines new maximum prices. It is intended to apply to the Independent Pricing and Regulatory Commission for a recommendation as to any change in maximum prices that might be required. This approach complies with the provisions of the TPA.

Clauses 15 - 20

These amendments refer to the detail in the transition of the transfer of responsibility for vendor’s licences and permits to the Minister (referenced in clause 12). The amendments dealing with vendor licences and permits may be summarised as follows:

- They are deemed to have been issued by the Minister, thus avoiding the need to have to retain the section 51 TPA authorisation;
- Existing grounds for complaint and revocation may be acted on by the Minister under the amended Act;
- The difficulty of “handing over” an inquiry in progress to the Minister is addressed by enabling the ACTMA to conclude inquiry proceedings; and
- The Minister is able to approve outstanding applications for the transfer of licences and the issue of temporary permits.

Clause 21

The amended Act treats existing zones under the unamended Act as if the determination was made by the Minister. This ensures compliance with TPA provisions.

Schedule

The amendments to the Schedule reflect the changes in the body of the Act. For example, the transfer of the regulation of milk vending from the ACTMA to the Minister requires references to the “Authority” to be amended to the “Minister”. The references to section 51 exemptions that are no longer needed are also deleted.

The amendments in the Schedule at Subsections 27 (6), 27 (7), 29 (1), 29 (4) and 30 (1) provide the Minister with the opportunity to adopt inquiry processes in relation to vendors issues that best suit the circumstances and foster an equitable and speedy resolution.