

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

MILK AUTHORITY (AMENDMENT) BILL (No. 2) 1998

EXPLANATORY MEMORANDUM

**Circulated by the authority of
Brendan Smyth MLA
Minister for Urban Services**

Milk Authority (Amendment) Bill (No. 2) 1998

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 which was in force on 21 July 1996 was deemed to be authorised, but only until 21 July 1998.

The ACT Milk Authority (ACTMA) currently engages in a number of forms of conduct which are potentially in breach of the TPA. During May 1998 the *Milk Authority (Amendment) Bill 1998* was introduced into the Legislative Assembly. The purpose of the amendments was to provide temporary protection against action arising from potential breaches of the TPA. The protection sunsets on 31 December 1998 and the need exists for a more permanent solution to the ACTMA's TPA problems.

Further, the ACT became a signatory on the 11 April 1995 to the National Competition Policy reforms. The Competition Principles Agreement requires the review of policies with the objective of removing barriers to competition and establishing a framework for legislation review and structural reform of public monopolies.

The amendments 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 (No. 2) 1998* addresses the need for government business activities to comply with the TPA and signals to the Australian Competition and Consumer Commission and the National Competition Council the ACT's intention for reform.

Clauses

Part I - Preliminary

Clause 1

Short title of the Act. This is self explanatory.

Clause 2

The “sunset” provisions providing the relevant TPA exemptions actually expire on the first moment of 31 December 1998. In order to provide adequately for the 24 hours of 31 December 1998, the substantive provisions of the Act will commence on 31 December 1998. This is a legal technical issue.

Clause 3

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

Part II - Amendments of the Milk Authority Act 1971

Clause 4

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 5

This amendment facilitates the capacity of the ACTMA to function with a single member.

Clause 6

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 7

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 8

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

Clause 9

The power of the ACTMA to regulate milk prices is rescinded. Price fixing powers transfer to the Treasurer (clause 7) and power to control home vendor distributions transfer to the Minister for Urban Services (clause 11 and clauses 14 -20). 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 exemption 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 10

This clause reflects 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 are to cease at the expiration of 31 December 1999.

Clause 11

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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 12

This explains that the “amended Act” is the Principal Act in force from 31 December 1998. This is self explanatory.

Clause 13

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 sees fit to refer them to the Independent Pricing and Regulatory Commissioner for review. This approach complies with the provisions of the TPA.

Clauses 14 - 19

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 11). 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 20

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.