

DAIRY INDUSTRY (AMENDMENT) ACT 1993 No. 103

NEW SOUTH WALES



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DAIRY INDUSTRY (AMENDMENT) ACT 1993 No. 103

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Act No. 103, 1993

An Act to amend the Dairy Industry Act 1979 with respect to the deregulation of the supply of milk by vehicle vendors, the removal of retail and certain other price-fixing powers for milk and the repeal of provisions relating to margarine; and for other purposes. [Assented to 2 December 1993]

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Dairy Industry (Amendment) Act 1993.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Dairy Industry Act 1979 No. 208

3. The Dairy Industry Act 1979 is amended as set out in Schedules 1–3.

**SCHEDULE 1—AMENDMENTS RELATING TO
DEREGULATION OF VEHICLE VENDORS AND OF RETAIL
AND CERTAIN OTHER MILK PRICES**

(Sec. 3)

(1) Part 4, Division 1A:

After Division 1 of Part 4, insert:

**Division 1A—Deregulation of vehicle vendors of milk
Deregulation date**

35A. (1) For the purposes of this Division, the **deregulation date** is 1 July 1998, unless an earlier date is appointed by proclamation as the deregulation date.

(2) An earlier date is not to be appointed unless the Minister has first certified to the Governor that the date has been agreed to by the Minister and the Amalgamated Milk Vendors' Association Inc.

Definition of “vehicle vendor”

35B. For the purposes of this Division, a **vehicle vendor** is a person who delivers milk by vehicle and who sells the milk so delivered.

SCHEDULE 1—AMENDMENTS RELATING TO DEREGULATION
OF VEHICLE VENDORS AND OF RETAIL AND CERTAIN
OTHER MILK PRICES—*continued*

Removal of zoning and other restrictions on supply of milk by vehicle vendors

35C. (1) On and from the deregulation date, the certificate of registration of a vehicle vendor is not to include any of the following conditions:

- (a) a condition restricting the places at which, the areas in which or the manner in which the holder of the certificate may distribute, supply or sell milk or dairy products;
- (b) a condition restricting the persons or places from which the holder of the certificate may obtain milk or dairy products for distribution, supply or sale;
- (c) a condition restricting the grade, class or description of milk or dairy products which the holder of the certificate may distribute, supply or sell;
- (d) a condition requiring the holder of the certificate:
 - (i) to deliver milk or dairy products on any particular day or days or on any number of days; or
 - (ii) to deliver milk or dairy products to any person requiring the holder to do so; or
 - (iii) to maintain milk at a particular temperature.

(2) A condition prohibited by this section that is included in the certificate of registration of a vehicle vendor ceases to have effect on the deregulation date.

(3) This section does not affect the requirement for a vehicle vendor to be registered under this Act.

Removal of power to refuse or cancel registration of vehicle vendor on certain economic and other grounds

35D. On and from the deregulation date, the Corporation may not refuse to issue to a person a certificate of registration as a vehicle vendor, or cancel any such certificate, on any ground referred to in section 33 (1) (cl), (e) or (f).

**SCHEDULE 1—AMENDMENTS RELATING TO DEREGULATION
OF VEHICLE VENDORS AND OF RETAIL AND CERTAIN
OTHER MILK PRICES—*continued***

Distribution Sector Rationalisation Scheme

35E. (1) A Distribution Sector Rationalisation Scheme (“**the Scheme**”) is to be established and operated in accordance with this section to encourage and facilitate the rationalisation of the vehicle vendor distribution sector of the dairy industry.

(2) The Scheme is to be established and operated by a private subsidiary corporation referred to in Division 2A of Part 8 (“**the Scheme manager**”), being a corporation in which the Conference has a controlling interest and in which the Corporation also has an interest.

(3) The Scheme manager is to arrange for offers to be made before the deregulation date to all vehicle vendors for the purchase of their businesses and for the sale of those businesses following their rationalisation.

(4) The Scheme is to be financed by the dairy industry. For that purpose, the Corporation may make payments on behalf of the dairy industry to the Scheme manager under section 91C and in accordance with the margin in respect of the Scheme specified in the regulations made under section 56.

Compensation for deregulation

35F. (1) The purpose of this section is to set out the cases in which compensation for deregulation is not payable by or on behalf of the Crown, but not to affect the compensation (if any) payable in other cases.

(2) Compensation for deregulation is:

- (a) compensation because of the enactment or operation of this Division, or for any consequence of that enactment or operation; or
- (b) compensation because of any statement or conduct relating to the enactment of this Division, or to the deregulation of, or the removal or continuation of restrictions on, vehicle vendors.

SCHEDULE 1—AMENDMENTS RELATING TO DEREGULATION
OF VEHICLE VENDORS AND OF RETAIL AND CERTAIN
OTHER MILK PRICES—*continued*

(3) Compensation for deregulation is not payable by or on behalf of the Crown in any of the following cases:

- (a) Where the person claiming compensation was not a registered vehicle vendor on 7 May 1992, or where the claim is in respect of a business that was not part of that person's registered business on that date.
- (b) Where the claim for compensation is in respect of:
 - (i) a vehicle vendor's business that was sold or purchased under the Distribution Sector Rationalisation Scheme; or
 - (ii) a vehicle vendor's business that the Scheme manager offered to purchase in accordance with that Scheme,

whether the person who sold or purchased the business or who received that offer is the person claiming compensation or is a person who previously or subsequently owned the business or is some other person.

- (c) Where legal proceedings for compensation are commenced before the deregulation date or are commenced more than 1 year after the deregulation date.

(4) In this section:

“compensation” includes damages or any other form of monetary compensation;

“conduct” includes any act or omission, whether unconscionable, misleading, deceptive or otherwise;

“statement” includes a representation of any kind:

- (a) whether made verbally or in writing; and
- (b) whether negligent, false, misleading or otherwise;

“the Crown” means the Crown within the meaning of the Crown Proceedings Act 1988, and includes:

- (a) the Corporation, the Conference or a private subsidiary corporation within the meaning of Division 2A of Part 8; or

SCHEDULE 1—AMENDMENTS RELATING TO DEREGULATION OF VEHICLE VENDORS AND OF RETAIL AND CERTAIN OTHER MILK PRICES—*continued*

- (b) the General Manager or a member of the Conference; or
- (c) an officer, employee or agent of the Crown, the Corporation, the Conference or any such subsidiary corporation.

This Division prevails

35G. This Division has effect despite any other provision of this Act.

(2) Section 60D:

After section 60C, insert:

Deregulation of retail and certain other milk prices

60D. (1) For the purposes of this section, the **deregulation date** is the deregulation date for the purposes of Division 1A of Part 4 (Deregulation of vehicle vendors of milk).

(2) On and from the deregulation date:

- (a) the Corporation may not fix prices under section 54(1) (b), (d), (d1) or (e), and any order of the Corporation fixing those prices ceases to have effect; and
- (b) a review under section 57 of the prices fixed under this Part is not required to be undertaken in the months of June and December each year.

SCHEDULE 2—AMENDMENTS RELATING TO MARGARINE

(Sec. 3)

(1) The whole Act:

Omit “milk, dairy products and margarine” wherever occurring, insert instead “milk and dairy products”.

(2) The whole Act:

Omit “milk, dairy products or margarine” wherever occurring, insert instead “milk or dairy products”.

(3) The whole Act:

Omit “milk, dairy product or margarine” wherever occurring, insert instead “milk or dairy product”.

SCHEDULE 2—AMENDMENTS RELATING TO MARGARINE—
continued

- (4) Section 4 (**Definitions**):
 - (a) From section 4 (l), omit “or margarine” wherever occurring.
 - (b) From section 4 (l), omit the definition of “margarine”.
- (5) Section 8 (**Principal responsibility**):

From section 8 (b), omit “and margarine”.
- (6) Section 10 (**Directions in the interests of health etc.**):
 - (a) From section 10 (1) (b), omit “milk, a dairy product or margarine”, insert instead “milk or a dairy product”.
 - (b) From section 10 (1) (c), (e) and (f), omit “any dairy product or margarine” wherever occurring, insert instead “any dairy product”.
- (7) Section 11 (**Directions to take remedial measures**):

From section 11 (1) (f) and (g), omit “milk, those dairy products or margarine” wherever occurring, insert instead “milk or those dairy products”.
- (8) Section 15 (**Taking of samples**):

Omit “or margarine” wherever occurring.
- (9) Section 20 (**Powers of certain authorised officers**):
 - (a) From section 20 (2) (a) (ii), (b), (c), (e) (i) (a) and (e) (ii) (b), omit “of dairy products or margarine” wherever occurring, insert instead “of dairy products”.
 - (b) From section 20 (2) (a), omit “dairy products, margarine”, insert instead “dairy products”.
 - (c) From section 20 (2) (c), (e) (i) (a) and (e) (ii) (b), omit “dairy product, margarine” wherever occurring, insert instead “dairy product”.
- (10) Part 4, heading:

Omit “, DAIRY PRODUCTS AND MARGARINE”, insert instead “AND DAIRY PRODUCTS”.
- (11) Section 83 (**Inspection of vehicles**):

From section 83 (l), omit the definition of “margarine”.

**SCHEDULE 2—AMENDMENTS RELATING TO MARGARINE—
*continued*****(12) Section 99A (Fees for testing etc. by Corporation):**

From section 99A (3) (a), omit “, a New South Wales dairy product or New South Wales margarine”, insert instead “or a New South Wales dairy product”.

(13) Section 103 (Regulations):

From section 103 (4), omit “cream, dairy products or margarine”, insert instead “cream or dairy products”.

SCHEDULE 3—MISCELLANEOUS AMENDMENTS

(Sec. 3.)

(1) Section 10 (Directions in the interests of health etc.):

After section 10 (1), insert:

(1A) The functions conferred or imposed by subsection (1) (f) may be exercised only to the extent that is reasonably necessary in order to ensure that, as far as practicable, the Corporation:

- (a) is able to account accurately for the use of milk; or
- (b) has available such information as may be appropriate for the fixing of prices for milk.

(2) Part 8, Division 2 [ss. 85–91] (Investigation of Complaints by Dairy Farmers):

Omit the Division.

*[Minister's second reading speech made in—
Legislative Assembly on 14 October 1993
Legislative Council on 18 November 1993]*