



Government of Western Australia
Department of Commerce
Consumer Protection

EXPLANATORY MEMORANDUM

Trade Measurement Legislation (Amendment and Expiry) Bill 2010

A1529928

Trade Measurement (Amendment and Expiry) Bill 2010

Overview of the Bill

The *Trade Measurement Act 2006* (TM Act) provides for the regulation of measuring instruments used in trade, the measurement of articles and substances for determining their price, the packaging of 'pre-packed articles', the measurement and pricing of these articles, and for related purposes.

The *Trade Measurement Administration Act 2006* (TMA Act) provides for the administration of the TM Act.

In 2007 the Council of Australian Governments agreed to establish a national system of trade measurement to be funded and administered by the Commonwealth. A transition period of three years was agreed, with the Commonwealth taking responsibility from 1 July 2010. In 2008 the *National Measurement Act 1960 (Cth)* was amended to give effect to this decision

The *Trade Measurement (Amendment and Expiry) Bill 2010* (the Bill) will facilitate the transition of the regulation of trade measurement from the State to the Commonwealth.

The Bill will amend the TM Act and the TMA Act so that they do not apply after 1 July 2010 (the transition day), except to the extent that their continued application is necessary to enable various transitional matters to be dealt with.

The transitional arrangements that the Bill provides for enables the State to:

- investigate and prosecute offences committed before the transition day;
- issue, withdraw or receive payment for infringement notices for offences committed before the transition day ;
- take disciplinary action against licensees served with a written notice before the transition day;
- preserve the right to review decisions made under State legislation;
- recover fees or charges incurred before the transition date; and
- permit the Commonwealth to access information held by the State in relation to trade measurement regulation.

The Bill further provides for the expiry of both Acts on 1 July 2013 at the latest. This will provide sufficient time for any transitional matters to be addressed.

Part I – Preliminary

- Clause 1 Sets out the short title of the Act.
- Clause 2 Provides for the Act to commence upon Royal Assent except Part 4 of the Act (consequential amendments) to ensure that these amendments take effect no earlier than 1 July 2010.

Part 2 – Trade Measurement Act 2006 amended

- Clause 3 Provides for this Part to amend the *Trade Measurement Act 2006* (TM Act).
- Clause 4 Inserts sections 3A and 3B into the TM Act.

Section 3A makes it clear that the TM Act does not apply after the transition date of 1 July 2010 except as provided by this section, section 3B and Part 7 of the *Trade Measurement Administration Act 2006*.

Section 3B provides for the TM Act to expire on 1 July 2013 unless an earlier date is proclaimed.

Part 3 – Trade Measurement Administration Act 2006 amended

- Clause 5 Provides for this Part to amend the *Trade Measurement Administration Act 2006* (TMA Act).
- Clause 6 Inserts sections 3A and 3B into the TMA Act.

Section 3A makes it clear that the TMA Act does not apply after the transition date of 1 July 2010 except as provided by this section, section 3B and Part 7 of the TMA Act.

Section 3B provides for the TMA Act to expire on 1 July 2013 unless an earlier date is proclaimed.

- Clause 7 Inserts and defines two new terms: “NMI” which refers to the National Measurement Institute; and “transition day” which means 1 July 2010.

- Clause 8 Inserts a new Part 7 into the TMA Act “Transition of regulation of weights and measures from the State to the Commonwealth” including new sections 38, 39, 40, 41, 42 and 43.

Section 38 defines offence as an offence against the TM Act or TMA Act.

Section 39 provides for transitional arrangements in respect of:

- the investigation and prosecution of offences committed before the transition day;
- the issue or withdrawal of infringement notices;
- taking of disciplinary action against licensees who have been issued with a written notice before the transition day;
- preservation of the right to review decisions made under the State legislation; and
- the right of the State to recover any fees or charges incurred before the transition day.

Section 40 sets out when proceedings in respect of offences committed before the transition day can be commenced, the circumstances under which a person can be punished and the penalties that may be imposed. In particular, it provides that:

- proceedings for an offence committed before the transition day must be commenced within 12 months of transition day;
- a person charged after the transition day with an offence committed before the transition day can only be punished if the offence is also an offence under the National Measurement Act; and
- if a person is being sentenced for a State offence committed before the transition day and there is a difference between the Commonwealth penalty and the State penalty, the lesser penalty applies.

Section 41 provides for the NMI to inspect anything seized and retained under State legislation for the purpose of administering or enforcing the Commonwealth legislation.

Section 42 provides for the Commissioner for Consumer Protection to release a copy of the registers kept under the TM Act and TMA Act and any other information relating to the administration and enforcement of either Act, to the NMI. The section also makes it clear that, notwithstanding any enactment relating to secrecy or confidentiality, the provision of any such information cannot incur any civil or criminal liability, or be regarded as a breach of any duty of confidentiality or secrecy imposed by law, as a breach of professional ethics or standards, or as unprofessional conduct.

Section 43 defines “transitional matter” as any matter of a transitional or savings nature arising from the enactment of the Bill or the *National Measurement Amendment Act 2008* (Cth), and provides for the making of regulations necessary or convenient to be prescribed to deal with any transitional matter where there is not sufficient provision in sections 38-42 inclusive. Section 43 also makes it clear that any transitional regulation will not prejudice the rights of any person that existed before publication (of the regulation) or impose liabilities on any person in respect of anything done or omitted to be done before the publication date.

Part 4 – Consequential amendments

- Clause 9 This section makes a minor amendment to a Schedule of the *Consumer Affairs Act 1971* to remove an obsolete reference to the TM Act.
- Clause 10 This section makes minor amendments to the *Road Traffic (Administration) Act 2008* to remove obsolete references and insert correct references.