

TRADE MEASUREMENT ADMINISTRATION BILL 2005

EXPLANATORY MEMORANDUM

Overview of the Bill

The object of this Bill is to provide for the administration of Trade Measurement Bill 2005. This Bill is designed to accommodate the unique administrative requirements that apply in Western Australia and supports the principal Trade Measurement Bill.

In particular, the Bill:

- established the administrative framework through the appointment of a Commissioner and inspectors.
- Provides that fees and charges may be prescribed;
- provides for infringement notices that can be used for dealing with offence and applying modified penalties.
- provides for and imposes special conditions that must apply with respect search warrants;
- provides for a schedule of savings and transitional arrangements designed to accommodate the transition from the old regulatory regime to the new trade measurement system.

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CLAUSE	DESCRIPTION	EXPLANATION
	Part 1 - Preliminary	
1	Short title	Specifies the title of the proposed <i>Trade Measurement Administration Act 2005</i> ("TMA Act").
2	Commencement	Provides that the TMA Act comes into operation on the date of proclamation and allows for different dates to be set for different provisions while still allowing transitional provisions under Part 9 to apply regardless.
3	Act to be read with the <i>Trade Measurement Act 2005</i>	Provides that the TMA Act needs to be read in conjunction with the principal Act, which is the proposed <i>Trade Measurement Act 2005</i> .
4	Terms used in this Act	Provides definitions of various terms used in the TMA Act.
5	Crown bound	Provision binds the Crown in the State of Western Australia.
	Part 2 - Administration	
	Division 1 – The Commissioner:	
6	Minister to designate Commissioner and Deputy Commissioner	Provides for the Minister to designate a person (a senior public servant) as the Commissioner for the purposes the TMA Act and the proposed <i>Trade Measurement Act 2005</i> ("principal Act"). Also requires the Minister to designate another senior public servant as the Deputy Commissioner for the purposes of these two Acts to perform the functions of the Commissioner in the absence of the Commissioner. The Commissioner is responsible for undertaking all the functions expressly given to him or her under the TMA Act and the principal Act is effectively the administering authority and licensing authority under the principal Act.
7	Judicial notice	Provides that all courts and judges are required to take judicial notice by accepting the signatures of the Commissioner and the Deputy Commissioner and that such a person holds such an office.
8	Delegation by Commissioner	Provides that the Commissioner may delegate to any other officer employed in the administering Department any power or duty of the Commissioner specified under both the TMA Act and the principal Act. . Delegation must be in writing but a person who has received a delegated power cannot re-delegate that power or duty to another person.
	Division 2 – Inspectors:	
9	Inspectors	Provides that the Commissioner may, in writing, designate officers of the administering Department as inspectors. The Commissioner is also deemed to be an ex-officio inspector by virtue of holding that office.

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10	Inspectors from other jurisdictions	Provides that the Commissioner may, in writing, designate a person from another State or Territory as an inspector if that person has similar functions to an inspector under the corresponding laws of that jurisdiction.
11	Supervisory role of Commissioner	Provides that an inspector is subject to the direction and control of the Commissioner in the performance of the inspector's duties.
12	Inspectors' certificates of authority	Provides that the chief executive officer of the administering Department is responsible for issuing certificates of authority to the Commissioner while the Commissioner does likewise for inspectors. A certificates issued is evidence in a court of such designation.
	Division 3 – General:	
13	Information officially obtained to be confidential	Provides that it is an offence for an officer of the administering Department to misuse information that has been obtained in administering the relevant legislation t or to disclose that information to another person other than in the course of their duty or for the purposes of an investigation.
14	Protection from liability for wrong doing	Provides protection for a person who acts in good faith in performing the functions under the TMA Act and the principal Act.
	Part 3 - Fees and charges	
15	Fees and charges may be prescribed	Provides that regulations may be made to prescribe fees and charges that can be made under the TMA Act and the principal Act. . Also identifies the sorts of matters for which fees and charges may be applied.
16	Fixing of particular fees and charges	Allows for fees or charges imposed for storage of instruments to be calculated by reference to time or other specified manner.
17	Recovery of unpaid fees and charges	Provides that any fees or charges payable under the TMA Act and the principal Act are regarded as a debt due to the Crown and can be recovered through the courts.
18	Obliteration of marks if fees or charges are not paid	Provides that if a fee for a measuring instrument is not paid then an inspector may obliterate an inspector's or licensee's mark so the instrument can no longer be used for trade because of a lack of verification or certification.
	Part 4 - Infringement notice	
19	Definition	Defines a "prescribed offence" as an offence prescribed under clause 20.
20	Prescribed offences	Provides that regulations may be made to prescribe offences against the TMA Act and the principal Act for which infringement notices may be given under section 22 of the TMA Act.

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21	Modified penalties	Provides that regulations may prescribe a modified penalty for an offence for which an infringement notice may be issued, with the modified penalty not to exceed 20% of the maximum penalty that can be imposed by a court for such an offence.
22	Giving of notice	Provides that an inspector may give an infringement notice to an alleged offender but that notice must be given within 6 months after the offence is believed to have been committed.
23	Contents of notice	Provides that an infringement notice must be in a prescribed form and contain specified particulars about the offence and penalties that apply.
24	Extension of time	Provides that the Commissioner may extend the period within which a modified penalty may be paid.
25	Withdrawal of notice	Provides that the Commissioner may withdraw a notice and refund any modified penalty that has been paid.
26	Benefit of paying modified penalty	Provides that persons who pay modified penalties may not have court proceedings brought against them or be liable for higher penalties that would otherwise apply.
27	No admission implied by payment	Provides that payment of a modified penalty is not to be regarded as an admission for the purpose of any other proceedings, civil or criminal.
28	Application of penalties collected	Provides that money paid as a modified penalty is to be dealt with as if it was lawfully imposed by a court as a penalty for an offence, unless it is required to be refunded because an infringement notice is withdrawn.
	Part 5 - Search warrants	
29	Application for search warrant	Provides that an inspector may apply in writing to a justice for a search warrant.
30	Issue of warrant	Provides that a justice may issue a search warrant to an inspector if the justice is satisfied that an offence may have been committed and the inspector needs to search a premises as part of his duties and functions under the TMA Act. The justice is also required to record reasons or justification for issuing a warrant.
31	Duration of warrant	Provides that a search warrant remains in force for one month from date of issue.
32	Execution of warrant	Provides that any inspector may use or rely on the warrant to enter premises and may be accompanied by other persons. The inspector must produce the warrant if requested to do so by the person occupying the premises.

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	Part 6 Miscellaneous	
33	Proceedings	Provides that proceedings for an offence against the TMA Act must be: <ul style="list-style-type: none"> • commenced within 3 years of the offence being committed; and • initiated by the Commissioner or an authorised person.
34	Appointment of departmental officers under National Measurement Act	Provides the Commissioner or officers of the administering Department may hold an appointment made under the National Measurement Act or its regulations and perform applicable functions.
35	Regulations	Provides that the Governor may make regulations for carrying out or giving effect to the TMA Act but penalties must not exceed \$2000 for an offence.
36	Repeal, and savings and transitional provisions	Provides that: <ul style="list-style-type: none"> • the <i>Weights and Measures Act 1915</i> is repealed; and • savings or transitional provisions made under Schedule 1 apply,
37	Consequential amendment to <i>Consumer Affairs Act 1971</i>	Makes a consequential amendment to the <i>Consumer Affairs Act</i> by deleting the reference in this Act to the “ <i>Weights and Measures Act 1915</i> ” and inserting a reference to the proposed “ <i>Trade Measurement Act 2005</i> ”.
Schedule 1	Savings and transitional provisions	Provides for certain savings and transitional provisions to allow for the transformation from the old regime under the <i>Weights and Measures Act 1915</i> and associated regulations to the new legislative regime.
1	Terms used in this Schedule	Provides a definition of “commencement date” and “repealed Act” for the purposes of this Schedule.
2	<i>Interpretation Act 1984</i> not affected	Provides that this Schedule does not limit the application of the <i>Interpretations Act 1984</i> .
3	Office-holders under the repealed Act	Provides that the person who held the office of chief inspector of weights and measures under the repealed <i>Weights and Measures Act 1915</i> (“repealed Act”) is designated as the Commissioner under the TMA Act. A person who was an inspector under the repealed Act is designated as an inspector under the TMA Act.
4	Permit for sale of pre-packed articles	Provides that permits issued for the sale of pre-packed articles under the repealed Act will continue to be recognised under the TMA Act.
5	Marks of verification	Provides that marks of verification stamped on a measuring instrument under the repealed Act will continue to be recognised under the TMA Act.

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6	Identifying marks under the <i>Weights and Measures (Exemptions) Regulations 1997</i>	Provides that marks applied in accordance with the <i>Weights and Measures (Exemptions) Regulations 1997</i> will continue to be recognised under the TMA Act.
7	Provision for licensing before commencement of sections 53 and 54 of the principal Act	Provides mechanisms so that applications for new licences that will apply under the new legislative regime may be made in advance of the commencement of the principal Act to allow for a smooth transition so that new licences apply from the actual date that the new legislation comes into effect.
8	Continuation of things done and commenced	Provides that things done or commenced under the repealed Act prior to its repeal may be continue under the new regulatory regime established by the principal Act.
9	Further transitional provisions may be made	Provides that if the provisions of Schedule 1 are not adequate for dealing with various transitional issues that may arise, further transitional provisions may be made by regulation.