

TRADE MEASUREMENT BILL 2005 EXPLANATORY MEMORANDUM

Overview of the Bill

The object of this Bill is to modernise Western Australia's laws that deal with trade measurement by replacing the old, antiquated *Weights and Measures Act 1915* and its associated regulations with a package of new legislation that is more suited to the contemporary marketplace and twenty-first century. This Bill is the principal piece of legislation and will be supported by the Trade Measurement Administration Bill and associated regulations. This Bill is based substantially on nationally consistent or uniform model trade measurement legislation that applies in all other Australian States and Territories and the new Bill will help bring Western Australia into line with these jurisdictions.

In particular, the Bill:

- imposes conditions that apply to measuring instruments used for trade in weighing or measuring articles;
- imposes conditions for the measurement of articles and substances for determining their sale price;
- provides for standards and conditions and imposes duties with respect to the verification and certification of measuring instruments
- imposes special conditions that must apply with respect to transactions made by measurement;
- imposes conditions with respect to pre-packed articles including requirements for the packaging and sale of pre-packed articles.
- provides for the Commissioner to issue permits to sell certain pre-packed articles
- establishes licensing requirements for business entities or persons who operate within the weighing industry;
- provides for disciplinary action against licensee who transgress and rights for administrative decisions to be reviewed;
- provides for the appointment of inspectors and confers powers on inspectors so that they can undertake compliance functions;
- establishes evidence requirements and liabilities of employers, directors and bodies corporate; and
- provides for transitional arrangements that will apply for the measurement of alcoholic liquor.

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CLAUSE	DESCRIPTION	EXPLANATION
Part 1 - Preliminary		
1	Short title	Specifies the title of the proposed <i>Trade Measurement Act 2005</i> ("TM Act").
2	Commencement	Provides that the TM 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	Interpretation	Provides definitions for the various terminology used in the TM Act.
4	Determining certain quantities	Provides qualifications for: <ul style="list-style-type: none"> time intervals in relation to determining the physical quantity of a product; and packaging, so that the actual packing material is not included for measuring a physical quantity such as the mass of a product.
5	References to functions	Provides clarification of what "function" means for the purposes of the TM Act.
6	Use of measuring instrument for trade — meaning	Specifies the circumstances when a measuring instrument will be considered to be "used for trade".
7	Application of Act to Crown	Provision binds the Crown but does not render the Crown liable to be prosecuted for an offence.
8	Regulations may make this Act inapplicable to certain matters	Provides for regulations to be made so the TM Act, or any provision of the Act, does not apply to certain measurements or instruments used to make a measurement.
9	Regulations may provide for exemptions from this Act	Provides for regulations to be made to exempt certain persons or instruments, or classes of persons or instruments, from all or any of the provisions of the TM Act: <ul style="list-style-type: none"> for specific periods; or in specified circumstances; or for the purposes of a special event. This provision can be used for exemptions of a temporary rather than a permanent nature.
Part 2 – use of Measuring Instruments for Trade		
10	Measuring instruments used for trade to be marked	Provides that a person who uses a measuring instrument for trade (other than an instrument used to determine the quantity by the number of articles) commits an offence unless the instrument is marked to demonstrate that it has been verified by an inspector or certified by a licensee (licensed repairer). (Regulations can be made to permit an instrument that has been repaired or modified, or commissioned, to be used pending verification or certification.

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11	Notice to remedy breach of section 10 may be given	Provides for an inspector to issue a notice to remedy a breach of the requirements under clause 10. Also specifies the periods within which a person must remedy the breach and provides that a person who complies with a notice may not be prosecuted for an offence under clause 10.
12	Use of prescribed measuring instruments	Provides that a person commits an offence if the person uses a prescribed class of measuring instruments other than for the prescribed purposes and circumstances.
13	Use of measuring instruments for pre-packed articles	Provides that a person commits an offence if that person uses an instrument for measuring pre-packed articles unless that instrument is of an approved pattern or suitable.
14	Instruments that are incorrect or unjustly used	Provides that a person commits an offence if that person uses a measuring instrument incorrectly or in an unjust manner. Any contract to which the offence relates is voidable at the option of the other party.
15	Notice to remedy breach of section 14 may be given	Provides an inspector with the powers to issue a notice requiring the owner of a measuring instrument to stop using the instrument in an incorrect or unjust manner. Also permits the Commissioner to extend the period for compliance with the notice and protects the instrument owner who has complied with the notice from being prosecuted.
16	Supplying incorrect etc. measuring instruments	Provides that it is an offence to supply, sell, hire or lease an instrument used for trade that is incorrect or not of an approved pattern. Also identifies matters or circumstances that may be used as a defence in proceedings under this clause.
Part 3 – Verification and Certification of Measuring Instruments		
17	Provision and maintenance of standards	Provides that the Commissioner is responsible for providing and maintaining suitable standards of measurement in Western Australia, while licensees (licensed servicing companies) are responsible for providing and maintaining equipment necessary to carryout their functions under the TM Act.
18	Verification and re-verification by inspectors	Provides that measuring instruments that are verified or re-verified must contain an inspector's mark.
19	Certification and re-certification by licensees	Provides that a measuring instrument that is certified or re-certified by a licensee, or an employee of the licensee, must contain the licensee's mark and the licensee or employee must be satisfied that the instrument meets the standards expressed in clause 22 and issue a certificate to that effect.

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20	Provision of information to Commissioner by licensee	Provides that a licensee must give information to the Commissioner relating to the certification or re-certification by that licensee of a measuring instrument.
21	Duration of verification and certification	Provides that regulations may be made to set periods for verifications, re-verifications, certification and re-certifications of instruments. The regulations may provide for different periods to be set in respect to measuring instruments that are in use in different areas of the State.
22	Requirements for measuring instruments	Requires measuring instruments used for trade to be of an approved pattern and operate within appropriate tolerance standards and graduations set under the National Measurement Act.
23	Standards of measurement to be used	Specifies the appropriate standards for use in verification, re-verification, certification and re-certification.
24	Responsibilities of Commissioner concerning verification and certification.	Specifies the Commissioner's responsibilities for providing the means for reverifying and certifying instruments, including: <ul style="list-style-type: none"> • establishing and maintaining a register of measuring instruments; • arranging for audits of instruments certified or re-certified by licensees; and • monitoring compliance with the TM Act.
25	Keeping of register	Requires a register of measuring instruments to be established and maintained, which would be available for public inspection subject to the payment of a fee.
26	Instruments not covered by this Act	Provides that an instrument that is not required by the TM Act to bear an inspector's mark or a licensee's mark may be examined and its calibration checked: <ul style="list-style-type: none"> • for the purposes of another Act; or • at the request of the person in possession of the instrument, if the Commissioner so approves.
27	Rejection of instruments by an inspector — obliteration of marks	Provides that if an instrument is examined or tested by an inspector but fails to comply with the requirements specified in clause 22, then the inspector must obliterate any existing mark of an inspector or licensee.
28	Duty of persons doing certain work to obliterate marks or take other action	Provides that when major alterations or adjustments are made to the metrological performance of an instrument, a repairer must remove any existing mark of an inspector or licensee.
29	Marks on labels affixed to measuring instruments	Provides that where the mark of an inspector or a licensee appears on a label fixed to an instrument, this constitutes a "mark on an instrument".

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30	Making mark without authority.	Provides that it is an offence for an unauthorised person to make the mark of an inspector or licensee on a measuring instrument.
31	Other offences concerning marks	Creates a series of offences for the abuse or fraudulent use of an inspector's mark or licensee's mark.
Part 4 – Transactions by measurement		
32	Measurement to be open to scrutiny in certain cases	Provides that when an article (other than a pre-packed article) is sold at a price determined by reference to a measurement of that article (e.g. sausages sold for \$5.99 per kilogram), the article (sausage) must be weighed in the purchaser's presence or be supplied with a written statement or docket of the measurement (e.g. 2 kilograms of bacon @ \$5.99 = \$11.98). Failure to do so is an offence.
33	Incorrect measurement or price calculation.	Creates an offence if a person misleads any party to the sale of an article as to the measurement or calculation of the price of the article to the detriment of that party.
34	Variation of quantity ordered	Creates an offence if the seller sells goods that are short of the nominated contractual measure unless the seller so informs the purchaser before the completion of the sale.
35	Special provisions for the sale of meat	Provides special provisions for the sale of meat so that it must be sold by reference to weight. For the purposes of this clause, "meat" includes fish (other than shellfish) and poultry. Note this clause does not apply to cooked meat sold on the premises on which it is cooked (e.g. lunch bars, meat sandwiches).
36	Special provision for sale of firewood by volume	Provides that the "stated volume" of firewood is when the wood is stacked with as few gaps as practical, and the volume calculated using the stack's dimensions must be at least the stated volume.
37	Articles required to be sold by specific measurement	Provides for certain articles (other than pre-packed articles) prescribed by regulations to be sold by specific measurement. This could be paper sold by the ream, or carpets sold by the area or length. It is an offence if a person fails to comply with those regulations.
38	Presumptions concerning mass of vehicles	Provides the presumption that: <ul style="list-style-type: none"> • direct weighing of large multi axel trucks is more accurate than the mass determined by an end-to-end measurement of that mass; and • it is more accurate to determine the mass of a railway goods wagon when it is stationary rather than when it is in motion.

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Part 5 – Pre-packed articles		
Division 1 – Requirements for packaging and sale of pre-packed articles		
39	Requirements as to packaging of pre-packed articles	Provides that regulations may be made to make requirements relating to the packaging of pre-packed articles. A person who packs an article as a pre-packed article commits an offence unless the package complies with the provisions of the regulations.
40	Defences concerning packaging of pre-packed articles	Provides a series of defences for a person who packs articles should proceedings be brought against that person for allegedly committing an offence under regulations governing pre-packed articles.
41	Restrictions on use of certain expressions on packages	Creates an offence if a pre-packed article is marked with certain expressions that are prohibited by regulation or the package does not contain acceptable terminology or expressions that relate to the measurement of the article or size of the package.
42	Incorrect pricing of pre-packed article	Creates an offence if a person misleads any party to the sale of a pre-packed article as to the measurement or calculation of the price of the article to the detriment of that party.
43	Offence of packing or selling short measure	Provides that it is an offence to sell a pre-packed article that is short of its nominated measure.
44	Extent of deficiency necessary to constitute short measure.	Provides a means for determining when a measurement will be considered to constitute a “short measure” by permitting regulations to be made for pre-packed articles that prescribe the deficiency levels or tolerance levels that are acceptable and the method to be used to determine the measurement.
45	Defences concerning short measure	Provides a series of defences for a person who packs a pre-packed article should proceedings be brought against that persons for allegedly committing an offence relating to short measure.
46	Seller’s general defence	Provides a defence for a seller in proceedings if the seller did not pack, or alter the packaging of, a pre-packed article and could not have foreseen or made an allowance for that.
47	Employee’s general defence	Provides a defence in proceedings for a person who packs a pre-packed article if that person is an employee only.
48	Regulations concerning methods of measurement	Provides for regulations to be made to establish the methods that can be used for determining the measurement of pre-packed articles.

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Division 2 – Permit to sell certain pre-packed articles		
49	Commissioner may issue permits	Provides that the Commissioner may issue permits authorising the sale of a pre-packed article that may not have been packed in accordance with general requirements relating to the sale of such an article.
50	Requirements for issue	Specifies the requirements for the issue of a permit by the Commissioner.
51	Cancellation of permits	Provides for the cancellation of a permit by the Commissioner.
52	Recognition of permits under corresponding laws	Provides for the recognition of permits that are equivalent to permits made by other interstate jurisdictions.
Part 6 - Licensing		
Division 1 – Requirements for licences:		
53	Requirements for servicing licence	Provides that it is an offence for a person to batch test or certify a measuring instrument used for trade unless that person is the holder of a servicing licence or an employee of the holder of a servicing licence.
54	Requirement for public weighbridge licence	<p>Provides that it is an offence for a person to make a weighbridge available to the public unless that person:</p> <ul style="list-style-type: none"> holds a public weighbridge licence or is the employee of the holder of the licence; and complies with the conditions of the licence and the requirements of the TM Act. <p>This clause also:</p> <ul style="list-style-type: none"> contains a defence in proceedings against an employee if the licensee failed to make the employee aware of the conditions of the licence; and provides for regulations to be made in connection with the manner in which a public weighbridge can be used.
Division 2 – Granting of licences and related provisions		
55	Application for licence	Provides for the Commissioner to grant a servicing licence or a public weighbridge licence for a single weighbridge.
56	Grounds for refusal	Provides the grounds for the refusal of an application for a servicing licence or public weighbridge licence.
57	Licence to include reference to any registered business name	Provides that a licence must contain a reference to a business name and licensees must notify the Commissioner of any changes to the business name.
58	Licensee to be allotted a mark	Provides for the Commissioner to approve a mark for use by the holders of a servicing licence, and their employees, when they certify a measuring instrument.

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59	Register of licences	Provides that the Commissioner must keep a register of licences and make it available for public inspection.
60	Conditions may be imposed on licences	Provides that the Commissioner may impose conditions when a licence is granted or when the licence is in force, and may at any time vary or revoke any condition.
61	Conditions on all servicing licences	Provides general mandatory conditions that apply to all servicing licences, including requirements relating to: <ul style="list-style-type: none"> the competency of the licence holder and any employee to certify or re-certify measuring instruments; the marking of measuring instruments; and the reporting of certain matters to the Commissioner.
62	Conditions on all public weighbridge licences	Provides and specifies mandatory conditions placed on public weighbridges with respect to licences and the operation of public weighbridges.
63	Conditions need not be endorsed on licence	Provides that a condition of a licence has effect whether or not it is endorsed on the licence.
64	Periodic licence fee	Provides for a periodic licensing fee to be prescribed
65	Continuation of weighbridge suitability statement in particular circumstances.	Provides that if a licensee pays the fee for renewing a weighbridge suitability statement then the licensee may continue to operate the weighbridge (even if the latter has not been re-examined by the Commissioner) until such time as a new licence is issued or the Commissioner gives written notice that the weighbridge is no longer suitable for use as a public weighbridge.
66	If weighbridge no longer suitable for use as a public weighbridge	Specifies the requirements for a written notice to be provided by the Commissioner to a licensee should the Commissioner decide that a public weighbridge is no longer suitable for use as a public weighbridge.
67	Cancellation for non-payment of licence fee	Provides that the Commissioner may cancel the licence if the licence fee is not paid.
68	Surrender etc of licence	Provides that a licensee may surrender the licence and subject to clause 73 the license is not transferable.
69	Return of Licence	Provides that the licensee must return a licence that is cancelled or suspended to the Commissioner within 14 days of a written notice.
70	Effects of relocation of licensed weighbridge.	Provides that a public weighbridge licence is taken to have been surrendered if the licensee moves a weighbridge from the location at which it was inspected before the issue of the weighbridge suitability statement.
71	Application to amend condition of licence	Provides that a licensee may apply to the Commissioner to amend a condition of a licence and the latter can amend the licence or refuse to do so.

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CLAUSE	DESCRIPTION	EXPLANATION
72	Order preventing employment of certain persons	Provides and vest powers in the Commissioner to direct that a specified person not be employed to certify or re-certify measuring instruments or a class of instruments due to lack of competency or fitness to do so.
Division 3 – Changes in licensed partnership or management of licensed body corporate		
73	Change of licence holders due to change of partnership	Provides for a partnership that is the holder of a licence to apply to the Commissioner to amend the licence when there is a change in the membership of the partnership.
74	Inclusion of new person in management of body corporate	Provides that if a body corporate is the holder, or one of the holders, of a licence and a new person is to be included in the management of that body corporate, the body corporate may apply to the Commissioner for approval to so include that person.
75	Notice to applicant and amendment of licence	Provides that the Commissioner must notify the applicant if he refuses an application to amend a licence held by a partnership. Also requires the Commissioner to amend or replace the existing licence if approval is given to amend the licence.
76	Time allowed for making and determination of applications under this Division	Provides that certain time periods will apply when the Commissioner makes or determines applications about changes in licensed partnership or management of licensed body corporate.
77	Offence of failure by body corporate to take certain action without approval	Provides that where a body corporate is a licence holder it is an offence to include a new person in the management of the body corporate without making an application to the Commissioner. It is also an offence for a new person to continue to be part of the management of the body corporate if the Commissioner has refused any such application.
Division 4 – Disciplinary action against licensees:		
78	Grounds for disciplinary action	Provides details on what constitutes grounds for disciplinary action against a licensee.
79	Notice to licensee of grounds for disciplinary action.	Provides that where the Commissioner believes that grounds exist to take disciplinary action against a licensee, a written notice may be issued by the Commissioner to show cause why such action should not be taken.
80	Taking of disciplinary action	Provides for and prescribes the forms of disciplinary action that may be taken against a licensee.
Division 5 – Review of decisions		
81	Right to have certain decisions reviewed	Provides for rights of appeal by the licensee against a disciplinary decision made by the Commissioner. The State Administrative Tribunal is the court of competent jurisdiction for reviewing the Commissioner's decisions.

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Part 7 – Inspectors		
82	Powers of entry etc.	Specifies the powers of an inspector to enter and search buildings, places and vehicles that are apparently in use for the carrying out of a business.
83	Powers in relation to measuring instruments	Specifies the powers of an inspector in respect of measuring instruments, including the power to examine, test or seize an article and require persons to answer questions or produce records.
84	Powers in relation to articles	Specifies the powers of an inspector in respect of articles offered for sale, including the power to examine, test or seize an article and require persons to answer questions or produce records.
85	Pre-packed articles — special powers	Provides an inspector with special powers in respect of pre-packed articles, including requiring persons to supply the inspector with the name and address of a packer of pre-packed items and the premises where items are packed. This clause may apply in relation to generic or “home brand” pre-packed articles.
86	Return etc. of seized property	Provides the circumstances in which seized property may be returned, disposed of or forfeited to the Crown.
87	Obstruction etc. of inspector	Provides that it is an offence to hinder, obstruct, assault, threaten or comply with a requirement of an inspector made under the authority of the TM Act.
88	Self-incrimination	Provides that a person is not excused from answering questions or producing records on the grounds that it might be self-incriminating. However, any admissions or documents supplied in compliance with Part 7 is not admissible against the person in any criminal proceedings, other than offences under clause 89 that deals with false and misleading statements.
89	Inspector’s certificate of authority to be produced.	Provides that on request, an inspector must produce a certificate of authority (i.e. identification card) issued under the proposed <i>Trade Measurement Administration Act 2005</i> .
Part 8 - Miscellaneous		
90	Compensation for loss caused by offence	Provides that if a person is convicted of an offence under the TM Act and that action caused another person to suffer pecuniary loss, then the courts may order the convicted person to pay the other person compensation.
91	Offence by employee — liability of employer	Provides that if an employee contravenes any provision of the TM Act, the employer is taken to have contravened the same provision irrespective of whether or not the employee has been proceeded against or convicted under that provision. Also establishes defences for the employer if he or she has no knowledge of or could not have prevented the contravention.

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92	Offence by body corporate — liability of directors etc.	Provides that if a body corporate contravenes any provision of the TM Act, each person who is director or concerned in its management is taken to have contravened that same provision. A person may be proceeded against and convicted whether or not the body corporate is proceeded against or convicted.
93	False or misleading statements	Provides that it is an offence to make false or misleading statements.
94	Evidence — signatures of Minister and officials	Provides that signatures of the Minister and Commissioner are presumed to be legitimate unless proved to the contrary.
95	Certificate evidence	Specifies the certificates that can be used in evidence in any action taken under the TM Act.
96	Evidence — pre-packed articles	Provides that a marking on a package containing a pre-packed article that indicates who packed the article or the place and date that the article was packed, is evidence to that effect.
97	Package article presumed to be pre-packed in certain circumstances.	Provides that unless the contrary is established, an article that is found in premises where articles of the same kind are packed or kept for sale, is presumed to be a pre-packed article for the purposes of the TM Act, irrespective of whether or not the package is properly marked.
98	Evidence — use of measuring instrument for trade	Provides that if a person possess an instrument, or an instrument is located on premises or in a place used by a person for trade, this is deemed as evidence that the person uses the instrument for trade.
99	Records — English language	Provides that where a record is not wholly written in English, a written translation of the record must be produced in English.
100	Regulations	Provides for regulations to be made on all matters that are required or permitted by the TM Act. Also identifies some of the matters that may be the subject of regulations
101	Regulations may commence in different days	Provides that regulations may commence on different days and different provisions may come into operation on different days.
102	Operation of <i>Fair Trading Act 1987</i> not affected	Provides that nothing in the TM Act affects the operation of the <i>Fair Trading Act 1987</i> .
Part 9 – Transitional provisions for the measurement of certain alcoholic liquor		
103	Interpretation and application	Provides various definitions, including a definition of “alcoholic liquor” to which Part 9 of the TM Act applies. Also provides that Part 9 does not apply to alcoholic liquor that is packed as a pre-packed article.

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104	Delayed application of sections 10(1), 16 and 32	Provides that certain provisions relating to the measurement of alcoholic liquor will be delayed until a designated date.
105	Temporary continuation of certain provisions of repealed Act	Provides that certain provisions of the repealed <i>Weights and Measures Act 1915</i> will continue in operation temporarily for the purpose of the alcoholic liquor.
106	Further provisions may be made for under this Part.	Provides that further regulations may be made to permit transitional provisions to apply to alcoholic liquor.