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AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

TRADE MEASUREMENT BILL 1991

EXPLANATORY MEMORANDUM

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Attorney-General
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EXPLANATORY MEMORANDUM**Trade Measurement Bill 1991****GENERAL OUTLINE**

The Bill is designed to regulate the measurement of goods and commodities in trade and commerce, and is introduced pursuant to the Commonwealth-State-Territory Agreement on Uniform Trade Measurement Legislation. The Bill provides for the verification and inspection of measuring instruments, for the licensing of persons who service measuring instruments and for labelling requirements for pre-packaged articles.

FINANCIAL IMPACT

During the 1991/92 start-up phase, the present staffing resources in the Trading Standards Office of the Consumer Affairs Bureau will be used. Any additional resource requirements in subsequent years, when the legislation is fully operational, will be addressed as and when the need arises.

NOTES ON CLAUSES

Clauses 1 and 2 provide for the short title of the Bill and its commencement.

Clause 3 provides for the definition of terms used in the Bill.

Clause 4 defines the meaning of the key concept of the use of a measuring instrument for trade so that it covers

- . using an instrument to determine the amount payable in a transaction;
- . making an instrument available to consumers for use to determine the amount payable in a transaction.

Clauses 5 and 6 deal with the application of the Bill. It will apply to the Crown (except that it cannot be prosecuted). The Bill will not apply to bread. It will not, unless the regulations otherwise provide, apply to water, gas and electricity meters, telephones, taxi and hire car meters, tyre pressure gauges and parking meters.

Regulations to exempt classes of persons or transactions from the Bill or parts of the Bill will be permissible.

Clauses 7 to 9 are basic regulatory provisions. They make it an offence to use a measuring instrument for trade unless it bears an inspector's mark, to use an incorrect instrument or to supply an incorrect instrument. Maximum penalties: \$5,000 to \$20,000.

Clause 10 confers responsibility on the administering authority (which will be the Superintendent of Trade Measurement) to maintain primary measurement standards (Eg weights, rules etc) as a reference by which instruments can be tested. Persons licensed to service instruments are also to maintain appropriate reference standards.

Clauses 11 to 14 provide for the verification of instruments by inspectors and certification by licensed service-persons in accordance with national standards as to margin of error, approved pattern and legal metric units of measurement. Appropriate primary standards are to be used as the basis of verification.

Clause 15 confers responsibility on the administering authority to arrange for the verification of instruments. Verification of an instrument is signified by an authorised person making a special mark on it.

Clauses 16 to 21 enable inspectors to direct traders to make instruments available for inspection and to obliterate previous verification marks when an instrument fails to meet standards. It is an offence -

- . to use an instrument not verified;
- . to make a mark without having authority;
- . to possess a marking device without authority;

- . to not obliterate a mark after tampering with an instrument;
- . to make a mark intending to mislead as to verification or to sell or dispose of an instrument knowing it to have been unlawfully marked.

Maximum penalties \$5,000 to \$20,000.

Clause 22 obliges the person making measurements to determine the price in a transaction to do so in the presence of the other party or to furnish a written statement (Eg a docket) of the measurement. Maximum penalty: \$5,000.

Clauses 23 and 24 make it an offence

- . to use a measuring instrument to mislead the other party to a transaction;
- . to furnish less than the correct quantity.

Maximum penalty: \$20,000.

Clause 25 provides that in sales of meat -

- . the price must be determined by mass (weight);
- . the mass of each cut must be separately marked for the purposes of clause 22;
- . the price per kilogram must be prominently displayed.

Maximum penalty: \$5,000. Clause 25 does not apply to pre-packed meat (see Part V, clauses 28-41) rabbits, shellfish and offal.

Clause 26 enables articles or classes of articles to be prescribed for which it will be an offence not to sell in accordance with a prescribed measurement. Maximum penalty \$5,000.

Clause 27 makes provision for certain presumptions as to the accuracy of types of measurement of the weight of vehicles.

Clause 28 is the first in Part V of the Bill dealing with pre-packed articles, and enables regulations to be made which must be complied with in the packing of such articles. Maximum penalty: \$10,000.

Clause 29 provides for defences in proceedings relating to pre-packed articles if the article -

- . is to be consumed on the premises;
- . is for export;
- . was packed outside Australia; or
- . the general defence applies (see clause 35).

Clauses 30 to 32 provide for offences of -

- . using unauthorised expressions on labels on pre-packed articles;
- . incorrectly pricing articles;
- . packing or selling articles less than the correct measure.

Maximum penalties: \$5,000 to \$20,000.

Clause 33 enables the regulations to provide for permissible ranges of error of measurement.

Clause 34 provides for defences in proceedings when:

- . reasonable steps were taken to prevent short measure;
- . the short measure was caused by something not reasonably foreseeable;
- . the defendant identifies another person who packed the article.

These defences do not apply if an inspector has previously warned the defendant about such articles.

Clause 35 creates a general defence where the defendant did not pack or alter the packaging of the article and the offence results from something which the defendant could not have reasonably foreseen or made allowance for.

Clause 36 creates a general defence for employees.

Clause 37 enables regulations to provide for procedures and methods of measuring pre-packed articles.

Clauses 38 to 41 enable the Superintendent of Trade Measurement to issue permits for the sale of pre-packed articles if their sale would otherwise be illegal under clause 28 or 30 and if they were:

- . intended for export and are safe;
- . packed outside Australia; and

it is otherwise reasonable to issue a permit.

The permits may have a time limit and may include conditions. Permits given in other jurisdictions are recognised in the ACT unless the Minister issues a notice providing otherwise.

Clauses 42 and 43 require persons servicing measuring instruments and persons making weighbridges available as public weighbridges to hold a licence. Employees of weighbridge licensees have a defence if they can show the licensee failed to make them aware of a licence condition.

Clauses 44 and 45 enable the Superintendent of Trade Measurement to issue licences and oblige the refusal of a licence where -

- . the applicant is under 18;
- . the applicant's licence is suspended or he or she is disqualified by law;
- . the applicant is likely to be unfair or dishonest in the capacity of licensee or is otherwise not fit and proper.

Clauses 46 to 49 provide for the issuing of marks to licensed service-persons and for a register of licences to be kept by the Superintendent of Trade Measurement. Licensees must obey certain conditions for the proper carrying out of their functions and additional conditions may be imposed by the Superintendent (Eg that a licence relates only to a certain type of measuring instrument) or by regulation.

Clause 50 imposes on public weighbridge licensees conditions relating to the proper conduct of their functions.

Clauses 51 to 55 make provision in relation to licences for:

- . the effect of conditions;

- . periodic fees;
- . cancellation;
- . surrender;
- . non-transferability;
- . directions by the Superintendent relating to the employment of persons by licensees.

Clauses 56 to 59 make provision for disciplinary action against licensees and their rights of appeal to the Administrative Appeals Tribunal.

Clauses 60 to 63 provide for the powers of inspectors to

- . enter and inspect premises and vehicles, if an inspector reasonably believes an offence has been committed;
- . inspect measuring instruments and relevant documents, and if an inspector reasonably believes etc, seize the instrument;
- . examine or open articles and packages, examine relevant documents, and if an inspector reasonably believes etc, seize articles or packages;
- . require persons to give the name and address of persons who packed or supplied pre-packed articles.

Clause 64 provides for the return, forfeiture and disposal of seized goods and instruments.

Clause 65 makes provision for offences of hindering or obstructing an inspector, and impersonating an inspector. Maximum penalty: \$10,000.

Clause 66 does not permit a person to refuse to cooperate with an inspector on the grounds that he or she might be incriminated, but information given to an inspector is admissible only in proceedings for giving false statements (see clause 73).

Clause 67 requires an inspector to produce his or her certificate of authority on demand.

Clause 68 provides for penalties for bodies corporate to be a maximum of five times that for natural persons.

Clauses 69 and 70 enable courts convicting persons of an offence to award compensation to third parties suffering loss caused by the offence.

Clauses 71 and 72 deal with the liability of employers and companies vis a vis their agents.

Clause 73 makes it an offence to give false or misleading information to an inspector or in relation to applications for licences or permits, unless there are reasonable grounds for believing in the truth of the information. Maximum penalty: \$2,000.

Clauses 74 to 78 deal with matters relating to evidence in proceedings. Presumptions created by these provisions are rebuttable by evidence to the contrary.

The signature of the Superintendent of Trade Measurement or his or her delegate is presumed to be genuine, and the Superintendent may issue certificates which are evidence of certain routine matters (Eg that a person has authority as an inspector at a relevant time).

- . Names and dates etc on pre-packed articles are evidence of what they state (overriding the hearsay rule);
- . packaged articles are presumed to be pre-packed articles for the purposes of the Bill;
- . possession of a measuring instrument by a person carrying on a trade or the presence of an instrument on premises used by a person for trade is evidence that it is used by the person for trade.

Clause 79 requires records to be produced for the purposes of the Bill in English.

Clause 80 repeals the existing legislation relating to packaged goods, the *Weights and Measures (Packaged Goods) Act 1970* and the *Weights and Measures (Packaged Goods) Act 1973*. Transitional provision is made for goods packed before the commencement of the Bill's provisions.

Clause 81 enables the making of regulations for the purposes of the Bill.