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AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

TRADE MEASUREMENT (ADMINISTRATION) BILL 1991

EXPLANATORY MEMORANDUM

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of the
Attorney-General
Terry Connolly, MLA

EXPLANATORY MEMORANDUM**TRADE MEASUREMENT (ADMINISTRATION) BILL 1991****GENERAL OUTLINE**

This Bill makes provision for the administration of the proposed *Trade Measurement Act* and its regulations (the uniform legislation). The Bill is a part of the package of legislation provided for by the Commonwealth-State-Territory Agreement on Uniform Trade Measurement Legislation and Administration.

The Agreement requires each jurisdiction to enact a uniform Trade Measurement Act and Regulations. In addition, the uniform legislation is to be administered on a uniform basis. The Administration Acts vary between jurisdictions only to the extent necessary to allow for the relevant procedural arrangements in each jurisdiction.

The Bill deals with the following:

- . the appointment of staff to carry out functions under the uniform legislation;
- . fees and charges for verification of measuring instruments;
- . the issuing of penalty notices and search warrants and procedures relating to the access to and return of seized records;
- . transitional provisions and regulation making powers.

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

Short Title

Clause 1 provides that the proposed Act may be cited as the *Trade Measurement (Administration) Act 1991*.

Commencement

Clause 2 provides that the standard commencement provision apply, except with respect to Clause 17, the purpose of which is described below. Clause 17 commences on the same day as the *Weights and Measures (Amendment) Act 1991*.

Interpretation

Clause 3 sets out the definitions of terms used in the Bill. Special provision is made so that terms which are used in this Bill will have the same meaning as those used in the *Trade Measurement Act 1991*. The term "trade measurement legislation" is used to refer to the proposed Act, the *Trade Measurement Act 1991*, the *Weights and Measures (Sale of Bread) Act 1929* and regulations made under these Acts.

Incorporation of Trade Measurement Act 1991

Clause 4 provides that the proposed Act and the *Trade Measurement Act 1991* are to be read together.

Superintendent

Clause 5 deals with the appointment of the Superintendent of Trade Measurement and persons to act in that office if he or she is absent or ill.

If the Minister consents, the Superintendent may also hold an appointment under the National Measurement Regulations and discharge the functions of that office.

Administering and licensing authorities

Clause 6 provides that the Superintendent is the administering authority and the licensing authority for the purposes of the *Trade Measurement Act 1991*.

Inspectors

Clause 7 permits the Superintendent to appoint inspectors for the purposes of the trade measurement legislation. The Superintendent has the same powers and functions as does an inspector. Inspectors exercise their powers and discharge their functions as directed by the Superintendent.

Certificates of authority

Clause 8 requires the Superintendent to issue inspectors with a photographic identification card.

Consent to entry of premises

Clause 9 ensures that an inspector acting in accordance with Section 60(2)(a) of the *Trade Measurement Act 1991* obtains the informed consent of a person to enter premises. The person giving consent must sign a written acknowledgement stating that he or she has been informed of their right to refuse consent, that he or she has consented and noting the date and time consent was given.

In any proceedings there is a rebuttable presumption that where a valid acknowledgement is not produced consent was not given.

Fee for verification or re-verification of instrument

Clause 10 imposes a fee for the verification by an inspector of a measuring instrument. The fee is payable to the Superintendent by the person who uses or proposes to use the instrument for trade.

Fees

Clause 11 provides that any fees prescribed under the trade measurement legislation shall be determined as provided for in Clause 12.

Power of Minister to make determination

Clause 12 provides for fees prescribed under the trade measurement legislation to be determined by the Minister by written notice which will be disallowable by the Assembly under the *Subordinate Laws Act 1989*.

Penalty notices

Clause 13 enables the regulations to prescribe an offence under the trade measurement legislation which may be disposed of by way of on-the-spot fines rather than prosecution. Fines are limited to the maximum available for the offence if a prosecution had otherwise been proved. If the fine is paid within 28 days then no conviction is recorded and no proceedings can be brought with respect to the alleged offence. Payment of the fine is not to be taken as an admission of liability. It does not, however, preclude any civil suit arising from the alleged offence.

Limitation of time for commencing prosecutions

Clause 14 provides that prosecutions in relation to pre-packed goods must be commenced within 1 year after the discovery of the offence. This provision is necessary to override a provision in the *Magistrates Court Ordinance 1930* which otherwise would require commencement within 1 year from the commission of an offence. Such a provision is impracticable for prosecutions relating to pre-packaged goods.

Section 38 of the *Interpretation Act 1967* provides that the limitation period for matters arising before the commencement of the proposed Act continues to be that applicable under the repealed legislation.

Search Warrants

Clause 15 relates to the obtaining and use of search warrants by inspectors in relation to suspected breaches of the trade measurement legislation. In particular it covers the procedure for the issue of a search warrant by a Magistrate, the form of the warrant and gives the inspectors power to exercise any of their powers under the trade measurement legislation during the course of a search carried out under the authority of a warrant.

Access to and return of seized records

Clause 16 ensures that when records, documents and articles are seized by inspectors exercising their powers under Sections 61 or 62 of the *Trade Measurement Act 1991* the business from which they are seized is not impaired by the seizure. Owners of documents and records are permitted to inspect, make copies of or take extracts from the records or documents. In addition, an owner's right under Section 64 of the *Trade Measurement Act 1991* to return of seized measuring instruments, articles and packages is extended to records seized.

Weights and Measures Act - transitional provisions

Clause 17 is a necessary transitional provision. It deems that valid verification and re-verification marks made for the purposes of the *Weights and Measures Act 1929* become inspector's marks for the purposes of the trade measurement legislation.

Regulations

Clause 18 enables regulations to be made for the purposes of the trade measurement legislation.