



AUSTRALIAN CAPITAL TERRITORY

# Trade Measurement (Administration) Act 1991

No. 57 of 1991

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## An Act relating to the administration of the *Trade Measurement Act 1991* and for related matters

[Notified in ACT Gazette S98 : 2 October 1991]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Trade Measurement (Administration) Act 1991*.

#### Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) Section 17 commences on the day on which the *Weights and Measures (Amendment) Act 1991* commences.

(3) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(4) If a provision referred to in subsection (3) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

### Interpretation

3. (1) In this Act, unless the contrary intention appears—

“inspector” means a person appointed under subsection 7 (1);

“Superintendent” means the Superintendent of Trade Measurement appointed under section 5 and includes a person appointed to act as Superintendent of Trade Measurement;

“the Measurement Act” means the *Trade Measurement Act 1991*;

“the trade measurement legislation” means—

- (a) this Act;
- (b) the Measurement Act;
- (c) the *Weights and Measures (Sale of Bread) Act 1929*; and
- (d) regulations under—
  - (i) this Act;
  - (ii) the Measurement Act; and
  - (iii) the *Weights and Measures (Sale of Bread) Act 1929*.

(2) An expression used in this Act that is also used in the Measurement Act has the same meaning as it has in that Act.

### Incorporation of *Trade Measurement Act 1991*

4. The Measurement Act is incorporated and shall be read as one with this Act.

## PART II—ADMINISTRATION

### Superintendent

5. (1) The Minister may, by instrument, appoint—

- (a) a Superintendent of Trade Measurement;
- (b) a person to act in the office of Superintendent of Trade Measurement during a vacancy in that office or during the illness or absence of the Superintendent.

(2) A person shall not be appointed under subsection (1) unless he or she is a public servant.

(3) The Superintendent, with the approval of the Minister—

- (a) may hold an appointment under the National Measurement Regulations of the Commonwealth; and

(b) may discharge any function conferred on the holder of the appointment.

(4) The Superintendent may delegate to a public servant any of his or her powers and functions other than the power to appoint a person to be an inspector.

### **Administering and licensing authorities**

6. For the purposes of the Measurement Act the Superintendent is the administering authority and the licensing authority.

### **Inspectors**

7. (1) The Superintendent may, in writing, appoint a public servant to be an inspector for the purposes of the trade measurement legislation.

(2) An inspector shall, subject to the trade measurement legislation, perform such duties as the Superintendent directs.

(3) The Superintendent may exercise the powers and discharge the functions that, under the trade measurement legislation, may be exercised or discharged by an inspector.

### **Certificates of authority**

8. The Superintendent shall issue to each inspector a certificate of authority that specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector.

### **Consent to entry of premises**

9. (1) An inspector who seeks a person's consent to the entering of premises under paragraph 60 (2) (a) of the Measurement Act shall inform the person that he or she may refuse to give the consent.

(2) Where an inspector obtains the consent of a person to enter premises under paragraph 60 (2) (a) of the Measurement Act, the inspector shall ask the person to sign a written acknowledgment—

- (a) that the person has been informed that he or she may refuse to so consent;
- (b) that the person has consented; and
- (c) of the day on which, and the time at which, the person consented.

(3) Where it is material, in any proceedings, for a court to be satisfied that a person has consented to the entry of premises by an inspector under paragraph 60 (2) (a) of the Measurement Act and an acknowledgment in accordance with subsection (2) signed by the person is not produced in evidence, it shall be presumed that the person did not consent, unless the contrary is established.

### **PART III—FEES AND CHARGES**

#### **Fee on verification or re-verification of instrument**

**10. (1)** The owner of a measuring instrument shall pay the appropriate fee prescribed under this Act upon the verification or re-verification of the instrument under the trade measurement legislation.

**(2)** A fee referred to in subsection (1) is payable to the Superintendent.

**(3)** In this section—

“owner” means the person who uses, or proposes to use, a measuring instrument for trade, or who proposes to make it available for use for trade.

#### **Fees**

**11.** A reference in the trade measurement legislation to a fee prescribed under this Act is a reference to a fee determined by the Minister under section 12 for the purposes of the provision where the reference occurs.

#### **Power of Minister to make determination**

**12. (1)** The Minister may, by notice in writing, determine fees for the purposes of the trade measurement legislation.

**(2)** A determination under this section is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### **PART IV—PROCEEDINGS**

#### **Penalty notices**

**13. (1)** The regulations may prescribe—

- (a)** an offence under the trade measurement legislation for the purposes of this section; and
- (b)** the pecuniary penalty payable for the offence if the offence is dealt with under this section.

**(2)** The penalty that may be prescribed under paragraph (1) (b) shall not exceed the highest penalty that a court could impose for the offence.

**(3)** Where an inspector has reason to believe that a person has committed a prescribed offence, he or she may serve on the person a penalty notice in accordance with this section.

**(4)** A penalty notice shall—

- (a)** specify the day on which, and the time and place at which, the prescribed offence is alleged to have been committed;
- (b)** specify the nature of the alleged prescribed offence;

- (c) contain a notification to the person on whom it is served that, if he or she does not wish the matter to be dealt with by the Court, he or she may pay the amount of the prescribed penalty in relation to that prescribed offence, being the amount specified in the notice, within the period of 28 days after the date of the notice; and
- (d) specify the place at which, and the manner in which, the prescribed penalty may be paid.

(5) Where a person who has been served with a penalty notice pays the penalty specified in the notice within the specified period—

- (a) any liability of the person in respect of the alleged prescribed offence is discharged;
- (b) no further proceedings shall be taken in respect of the alleged prescribed offence;
- (c) the person shall not be regarded as having been convicted of the alleged prescribed offence;
- (d) the person is not to be taken, by reason only of having made the payment, to have made any admission of liability in respect of the circumstances of the alleged offence; and
- (e) the making of the payment does not affect or prejudice any right of action or defence to a claim arising out of the circumstances of the alleged offence.

#### **Limitation of time for commencing prosecutions**

14. A prosecution for an offence against subsection 28 (1) or paragraph 32 (1) (a) of the Measurement Act shall not be commenced later than 1 year after the discovery by an inspector of the apparent commission of the alleged offence.

### **PART V—MISCELLANEOUS**

#### **Search warrants**

15. (1) Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that there may be on any premises a thing of a particular kind connected with a particular offence against the trade measurement legislation, and the information sets out those grounds, the magistrate may issue a search warrant authorising an inspector named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the premises;
- (b) to search those premises for things of that kind; and

- (c) to exercise any of the powers that, under the trade measurement legislation, may be exercised by an inspector.

(2) A magistrate shall not issue a warrant under subsection (1) unless—

- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) A warrant shall—

- (a) state the purpose for which it is issued;
- (b) specify the nature of the offence in relation to which the entry, search and exercise of the powers under the trade measurement legislation are authorised;
- (c) specify particular hours during which the entry is authorised or state that the entry is authorised at any time of the day or night;
- (d) include a description of the kind of things in relation to which the powers under the trade measurement legislation may be exercised; and
- (e) specify a day, not being later than 1 month after the day of the issue of the warrant, on which the warrant ceases to have effect.

(4) If, in the course of a search carried out under the authority of a warrant issued under this section—

- (a) an inspector finds anything that he or she believes on reasonable grounds to be connected with an offence specified in the warrant or any other offence under the trade measurement legislation; and
- (b) the inspector believes on reasonable grounds that, in order to prevent the continuation, commission or repetition of the offence, it is necessary to exercise any of the powers that, under the trade measurement legislation, may be exercised by an inspector;

the warrant is to be taken to authorise the exercise of that power in relation to that thing.

#### **Access to and return of seized records**

**16. (1)** Where a record or document is seized and retained under section 61 or 62 of the Measurement Act the inspector shall permit the person otherwise entitled to possession of it, or his or her agent, to inspect, make copies of or take extracts from the record or document.

(2) The provisions of subsections 64 (1) and (2) of the Measurement Act apply to a record seized and retained under section 61 or 62 of that Act as if such a record were an article.

**Weights and Measures Act—transitional provisions**

17. (1) A mark of verification or re-verification made on a measuring instrument pursuant to the *Weights and Measures Act 1929* as in force immediately before the date on which this section commences is to be considered to be an inspector's mark for the purposes of the trade measurement legislation.

(2) This section does not apply to a mark that was required to be re-verified prior to the commencement of this section but had not been so re-verified.

**Regulations**

18. The Executive may make regulations, not inconsistent with the trade measurement legislation, prescribing matters—

- (a) required or permitted by the trade measurement legislation to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to the trade measurement legislation.

*[Presentation speech made in Assembly on 12 September 1991]*