

DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill to provide for the administration of the *Trade Measurement Act 2004*.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.

**Trade Measurement Administration
Bill 2004**

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Western Australia

Trade Measurement Administration Bill 2004

**A draft for public comment of
A Bill for**

An Act to provide for the administration of the *Trade Measurement Act 2004*, to repeal the *Weights and Measures Act 1915*, to consequentially amend the *Consumer Affairs Act 1971*, and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Trade Measurement Administration Act 2004*.

5 2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Act to be read with *Trade Measurement Act 2004*

10 This Act is to be read as one with the principal Act.

4. Terms used in this Act

- (1) In this Act —

“**Commissioner**” means the person for the time being designated as the Commissioner under section 6;

15 “**Department**” means the department of the Public Service principally assisting the Minister in the administration of this Act and the principal Act;

“**inspector**” means —

- 20 (a) a person designated as an inspector under section 9(1);
- (b) subject to section 10(4), a person designated as an inspector under section 10(2); and
- (c) the Commissioner as provided by section 9(2);

“**principal Act**” means the *Trade Measurement Act 2004*.

- 25 (2) Words and expressions in this Act that are defined in the principal Act have the same meaning in this Act.

5. Crown bound

This Act binds the Crown in right of the State and, so far as the legislative power of the Parliament permits, in all its other capacities.

Part 2 — Administration

Division 1 — The Commissioner

6. Minister to designate Commissioner and Deputy Commissioner

- 5 (1) In this section —
“**executive officer**” has the meaning given by section 3(1) of
the *Public Sector Management Act 1994*.
- (2) The Minister is required to designate a person who is an
10 executive officer of the Department as the Commissioner for the
purposes of this Act and the principal Act.
- (3) The person designated under subsection (2) has the functions
expressed to be given to the Commissioner by or under this Act
and the principal Act.
- 15 (4) The Minister is required to designate a person who is an
executive officer of the Department as the Deputy
Commissioner for the purposes of this Act and the principal
Act.
- (5) The person designated under subsection (4) has the functions of
the Commissioner under this Act and the principal Act —
20 (a) during the absence or illness of the Commissioner; or
(b) when the Commissioner is otherwise unavailable to
perform those functions.
- (6) The Minister may at any time revoke a designation made under
25 subsection (2) or (4) and make another designation in place of
that designation.
- (7) A designation under this section is to be made by order
published in the *Gazette*.

7. Judicial notice

All courts, judges and persons acting judicially are to take judicial notice —

- 5 (a) of the official signature of every person who is for the time being, or has at any time been, the Commissioner and the Deputy Commissioner; and
- (b) of the fact that such person holds or has held such office.

8. Delegation by Commissioner

- 10 (1) The Commissioner may delegate to any other officer employed in the Department any power or duty of the Commissioner under —
- (a) a provision of the principal Act; or
- (b) a provision of this Act other than —
- 15 (i) this power of delegation; or
- (ii) a function or power conferred on the Commissioner by section 23(2)(c), 24 or 25.
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- 20 (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- 25 (5) A function performed by a delegate of the Commissioner is taken to be performed by the Commissioner.
- (6) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

Division 2 — Inspectors

9. Inspectors

- 5 (1) The Commissioner, by instrument in writing, is to designate as inspectors such officers employed in the Department as the Commissioner considers to be necessary for the purposes of this Act and the principal Act.
- (2) The person who is the Commissioner, by virtue of holding or acting in that office, is also an inspector.

10. Inspectors from other jurisdictions

- 10 (1) In subsection (2) —
“**corresponding law**” means a law of another State or Territory that corresponds with this Act.
- (2) The Commissioner may also, by instrument in writing, designate as an inspector a person who under a corresponding law has functions similar to those of an inspector designated under section 9(1).
- 15 (3) A designation under subsection (2) may be —
(a) for a specified period;
(b) for the purposes of a specified investigation; or
20 (c) for any other specified purpose,
or may be subject to 2 or more of those kinds of restrictions.
- (4) A person designated under subsection (2) has such of the functions of an inspector referred to in section 9 as are specified in the instrument of designation.
- 25 (5) The Commissioner may at any time revoke a designation under subsection (2).

11. Supervisory role of Commissioner

An inspector under section 9(1) or 10 is subject to the direction and control of the Commissioner in the performance of the inspector's functions.

5 12. Inspectors' certificates of authority

- (1) The Commissioner is to issue a certificate of authority to each inspector under section 9(1) or 10.
- (2) The chief executive officer of the Department is to issue a certificate of authority to the Commissioner in his or her capacity as an inspector.
- 10 (3) A certificate purporting to have been issued under subsection (1) or (2) is, without proof of the signature of the person purporting to have signed it, evidence in a court —
- 15 (a) of the designation to which the certificate purports to relate; and
- (b) of any other matter specified in the certificate.

Division 3 — General**13. Information officially obtained to be confidential**

- (1) In this section —
- 20 **“information”** means information concerning the affairs of a person;
- “relevant Act”** means this Act, the principal Act or the Act repealed by section 36(1).
- (2) A person who misuses information obtained by reason of any function that person has, or at any time had, in the administration of a relevant Act commits an offence.
- 25 Penalty: \$20 000.

- (3) A person misuses information if it is, directly or indirectly, recorded, used, or disclosed to another person, other than —
- (a) in the course of duty;
 - (b) under a relevant Act;
 - 5 (c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence;
 - (d) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information refers; or
 - 10 (e) with the consent of the person to whom the information relates, or of each of them if there is more than one.

14. Protection from liability for wrongdoing

- (1) A person is not liable for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act or the principal Act.
- 15
- (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act or the principal Act had been enacted.
- 20
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.
- 25

Part 3 — Fees and charges

15. Fees and charges may be prescribed

- (1) In subsection (2)(n) —

“**National Standards Commission**” means the body corporate
continued in existence by section 16 of the National
Measurement Act.

- (2) Regulations may be made under section 35 for and with respect
to the imposition, collection and recovery of fees and charges
for the purposes of this Act and the principal Act, including —

- (a) application fees;
- (b) licence fees;
- (c) fees payable for the issue of —
 - (i) amended licences or certificates; and
 - (ii) duplicate licences or certificates;
- (d) charges for —
 - (i) the verification and re-verification of measuring instruments; and
 - (ii) the examination and testing of measuring instruments that fail to comply with the requirements for verification or re-verification;
- (e) fees payable by the holders of servicing licences to allow the recovery of the expenditure involved in relation to the performance of the functions described in section 24(1)(b), (c) and (d) of the principal Act;
- (f) fees payable for the inspection of, or the provision of an extract from, a register referred to in section 24(1)(b) or 58(1) of the principal Act;
- (g) charges for the examination of public weighbridges for suitability;

s. 15

- (h) fees payable for providing —
- (i) weighbridge suitability statements; and
 - (ii) duplicates of weighbridge suitability statements;
- (i) charges payable if —
- (i) an inspector keeps an appointment to examine or test a measuring instrument; but
 - (ii) is unable to carry out the examination or testing because the measuring instrument is —
 - (I) unavailable or inaccessible; or
 - (II) access to it is unreasonably refused;
- (j) charges to allow the recovery of the costs, including travelling costs, incurred by an inspector in connection with anything carried out in relation to a measuring instrument for which a charge is payable under paragraph (d), (n) or (o);
- (k) charges to allow the recovery of the costs and expenditure involved in connection with the provision by an inspector of technical advice or training relating to any matter provided for by the principal Act;
- (l) charges payable if the use of —
- (i) specified labour; or
 - (ii) specified equipment,
- provided by the Commissioner is necessary for the performance of the functions of an inspector;
- (m) charges payable for the use of —
- (i) specified equipment; or
 - (ii) specified standards of measurement,
- provided by the Commissioner;
- (n) charges for the examination and testing of a measuring instrument on behalf of the National Standards Commission for the purposes of pattern approval;

- 5 (o) charges payable for the calibration or testing of a measuring instrument;
- (p) additional charges payable for the late payment of the fees and charges referred to in this section;
- 5 (q) charges for the storage by the Commissioner, for the purposes of this Act or the principal Act, of —
- (i) a measuring instrument; or
- (ii) anything associated with a measuring instrument,
- 10 not collected by a person within the specified period after the person is requested in writing by the Commissioner to collect the instrument or thing.

16. Fixing of particular fees and charges

- (1) The regulations may provide for a fee or charge imposed under section 15(2)(d) to (q) to be calculated —
- 15 (a) by reference to a period of time; or
- (b) in any other specified manner.
- (2) The regulations may provide for a combined fee for a public weighbridge licence and a weighbridge suitability statement in respect of the same period.
- 20 (3) The regulations may provide for the fee payable under section 54 of the principal Act for a licence to be —
- (a) a specified amount; or
- (b) an amount calculated in a specified manner.

17. Recovery of unpaid fees and charges

- 25 Any fee or charge payable under this Act or the principal Act is recoverable by the Commissioner in a court of competent jurisdiction as a debt due to the Crown.

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18. Obliteration of marks if fees or charges are not paid

Without limiting section 17, if a fee or charge payable in relation to a measuring instrument is not paid within the prescribed period, an inspector may obliterate any inspector's mark or licensee's mark that the instrument bears.

5

Part 4 — Infringement notices

19. Definition

In this Part —

5 “**prescribed offence**” means an offence prescribed under
 section 20.

20. Prescribed offences

The regulations may prescribe offences against this Act or the principal Act for which an infringement notice may be given under section 22.

10 21. Modified penalties

- (1) For each prescribed offence the regulations must prescribe —
- (a) a modified penalty; or
 - (b) a different modified penalty according to the circumstances of the offence.

- 15 (2) The modified penalty for an offence cannot exceed 20% of the maximum penalty that could be imposed for that offence by a court.

22. Giving of notice

- 20 (1) An inspector who has reason to believe that a person has committed a prescribed offence may give an infringement notice to the alleged offender.
- (2) The notice must be given within 6 months after the alleged offence is believed to have been committed.

23. Contents of notice

- 25 (1) An infringement notice is to be in the prescribed form.

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- (2) An infringement notice is to —
- (a) contain a description of the alleged offence;
 - (b) specify the amount of the modified penalty for the offence; and
 - (c) advise the alleged offender that, if he or she does not wish to have a complaint of the alleged offence heard and determined by a court, that amount may be paid to the Commissioner within 28 days after the giving of the notice.
- (3) The amount referred to in subsection (2)(b) is to be the amount that was the prescribed modified penalty at the time when the alleged offence is believed to have been committed.

24. Extension of time

- (1) The Commissioner may, in a particular case, extend the period of 28 days within which the modified penalty may be paid.
- (2) An extension may be granted under subsection (1) either before or after the period of 28 days has elapsed.

25. Withdrawal of notice

- (1) The Commissioner may, within 60 days after the day on which an infringement notice was given, withdraw the notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (2) Subsection (1) applies even if the modified penalty has been paid.
- (3) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

26. Benefit of paying modified penalty

(1) This section applies if —

- (a) the modified penalty specified in an infringement notice
has been paid within 28 days or such further time as is
allowed; and
- (b) the notice has not been withdrawn.

(2) The payment prevents —

- (a) the bringing of proceedings; and
- (b) the imposition of penalties,

to the same extent that they would be prevented if the alleged
offender had been convicted by a court of, and punished for, the
alleged offence.

27. No admission implied by payment

Payment of a modified penalty is not to be regarded as an
admission for the purposes of any proceedings, whether civil or
criminal.

28. Application of penalties collected

An amount paid as a modified penalty is to be dealt with as if it
were imposed by a court as a penalty for an offence, unless
section 25(3) requires that the amount be refunded.

Part 5 — Search warrants

29. Application for search warrant

- (1) An inspector may apply to a justice for a search warrant in respect of any premises.
- 5 (2) The application is to be in writing and is to be made by the inspector in person.

30. Issue of warrant

- (1) The justice may issue a search warrant to the inspector if subsection (2) applies.
- 10 (2) The justice must be satisfied by evidence on oath that there are reasonable grounds to suspect that there is in the premises to which the application relates anything with respect to which —
 - (a) an offence under the principal Act is being or has been committed; or
 - 15 (b) the inspector may exercise a function conferred on the inspector by the principal Act.
- (3) The justice is to cause a record to be made (on the warrant or otherwise) of the matters of fact on which the justice has relied to justify the issue of the warrant.

31. Duration of warrant

A search warrant remains in force for one month from the date of its issue.

32. Execution of warrant

- 25 (1) A search warrant may be executed by the inspector to whom it was issued or by any other inspector.
- (2) A search warrant authorises an inspector —
 - (a) to enter the premises specified in the warrant using any force that is reasonably necessary to do so; and

- (b) to exercise in those premises the powers conferred on an inspector by the principal Act.

- (3) An inspector executing a search warrant —

- 5 (a) may be accompanied by such other persons as are
 necessary for the effective exercise of the powers
 conferred by the warrant, this section or the principal
 Act; and
- 10 (b) is to produce the warrant for inspection by a person
 occupying the premises concerned if requested by the
 person to do so.

Part 6 — Miscellaneous

33. Proceedings

- 5 (1) Proceedings for an offence against this Act or the principal Act must be commenced within 3 years after the offence was committed.
- (2) Proceedings for an offence against this Act or the principal Act may be taken by —
- (a) the Commissioner; or
- 10 (b) any person authorised in writing by the Commissioner to do so.
- (3) Unless evidence is given to the contrary, proof is not required in any proceedings for an offence —
- (a) of the authority of a person to take the proceedings; or
- 15 (b) that a signature on a complaint is the signature of a person authorised to take the proceedings.

34. Appointment of departmental officers under National Measurement Act

- With the approval of the Minister, the Commissioner or an officer employed in the Department —
- 20 (a) may hold an appointment made under the National Measurement Act (including regulations made under that Act); and
- (b) may perform any function conferred on the holder of the appointment.

25 35. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without limiting the generality of subsection (1), the regulations may make provision with respect to —
- (a) any matter required or permitted by the principal Act to be prescribed by regulations made under this Act; or
 - (b) the administration of the principal Act.
- (3) The regulations may prescribe a penalty not exceeding \$2 000 for any offence against the regulations.

36. Repeal, and savings and transitional provisions

- (1) The *Weights and Measures Act 1915* is repealed.
- (2) Schedule 1 has effect to make savings and transitional provisions.

37. Consequential amendment to *Consumer Affairs Act 1971*

- (1) The amendments in this section are to the *Consumer Affairs Act 1971**.
- [* Reprinted as at 9 July 2004.]
- (2) The Schedule is amended as follows:
- (a) by deleting the item “*Weights and Measures Act 1915*.”;
 - (b) by inserting after the item “*Spear-guns Control Act 1955*.” the following item —
- “ *Trade Measurement Act 2004*. ”.

Schedule 1 — Savings and transitional provisions

[s. 36]

1. Terms used in this Schedule

In this Schedule —

5 “**commencement day**” means the day on which this Schedule comes into operation;

“**repealed Act**” means the Act repealed by section 36(1).

2. *Interpretation Act 1984* not affected

10 Nothing in this Schedule limits the application of the *Interpretation Act 1984* to the repeal effected by section 36(1).

3. References to repealed Act

Unless the contrary intention appears, a reference in a written law or a document to the repealed Act is to be read as if it were a reference to this Act or the principal Act, as the case requires.

15 4. Office-holders under the repealed Act

(1) The person who, immediately before the commencement day, held office as the chief inspector of weights and measures under section 6 of the repealed Act is taken, on and from that day, to have been designated as the Commissioner under section 6(2).

20 (2) A person who, immediately before the commencement day, held office as an inspector of weights and measures under section 6 of the repealed Act is taken, on and from that day, to have been designated as an inspector under section 9(1).

(3) The operation of this clause in relation to a person does not —
25 (a) unless the person agrees otherwise, affect the person’s remuneration or terms and conditions of employment;
(b) prejudice the person’s existing or accruing rights;
(c) affect any rights under a superannuation scheme; or
(d) interrupt continuity of service.

5. Permits for sale of pre-packed articles

A permit —

- (a) granted under section 27F of the repealed Act; and
- (b) in force immediately before the commencement day,

5 is taken, on and from that day, to be a permit issued under section 48 of the principal Act.

6. Marks of verification

A mark of verification stamped on a measuring instrument under section 28(1) or 29(1) of the repealed Act —

- 10 (a) is taken, on and from the commencement day, to be an inspector's mark for the purposes of the principal Act; and
- (b) continues in effect as provided by section 21(3) or (4) of the principal Act, as the case may be.

7. Identifying marks under *Weights and Measures (Exemptions) Regulations 1997*

15

An identifying mark applied to a measuring instrument by an approved person in accordance with regulation 4 or 5 of the *Weights and Measures (Exemptions) Regulations 1997* —

- 20 (a) is taken, on and from the commencement day, to be a licensee's mark for the purposes of the principal Act; and
- (b) continues in effect as provided by section 21(3) or (4) of the principal Act, as the case may be.

8. Certificates of registration for public weighbridges

25 A certificate of registration for a public weighbridge in force under Part X of the *Weights and Measures Regulations 1927* immediately before the commencement day —

- (a) is taken, on and from that day, to be a public weighbridge licence granted under section 54 of the principal Act; but
- 30 (b) the operation of the public weighbridge may only be continued as provided by section 21(3) or (4) of the principal Act, as the case may be.

Schedule 1 Savings and transitional provisions

9. Approved persons under *Weights and Measures (Exemptions) Regulations 1997*

- 5 (1) An approval in force under regulation 3 of the *Weights and Measures (Exemptions) Regulations 1997* immediately before the commencement day is taken, on and from that day, to be a servicing licence (the “**transitional licence**”) issued under section 54 of the principal Act until the first to occur of the following —
- (a) the expiry of 12 months after that day; or
- 10 (b) either —
- (i) a servicing licence is granted under that section to the holder of the transitional licence; or
- 15 (ii) a servicing licence is refused and —
- (I) the time for making application under section 75 of the principal Act for a review of the refusal has expired without an application for review being duly made; or
- (II) an application so made has been unsuccessful.
- 20 (2) For the purposes of subclause (1)(b) an application for review is unsuccessful if —
- (a) the application results in the refusal of a servicing licence being confirmed; or
- (b) the application is dismissed or struck out.

10. Continuation of things done and commenced

- 25 (1) If anything done or commenced under the repealed Act before the commencement day —
- (a) still has effect or has not been completed immediately before that day; and
- 30 (b) could have been done or commenced under this Act or the principal Act if it had been in force at the time the thing was done or commenced,
- then —
- (c) the thing done continues to have effect; or

(d) the thing commenced may be completed,

as if it had been done or commenced under this Act or the principal Act, as the case requires.

- 5 (2) Subclause (1) does not apply to anything in relation to which other provision is made by or under this Schedule.

11. Further transitional provisions may be made

- 10 (1) If there is no sufficient provision made in this Schedule for any matter or thing necessary or convenient to give effect to the transition from the repealed Act to this Act and the principal Act, that provision may be made by regulations under section 35.

- (2) If regulations under subclause (1) provide that a state of affairs is to be taken to have existed, or not to have existed, on and from a day that is —

- 15 (a) earlier than the day on which the regulations are published in the *Gazette*; but
(b) not earlier than the day on which this Schedule came into operation,

the regulations have effect according to their terms.

- 20 (3) A provision referred to in subclause (2) does not operate so as —
(a) to affect in a manner prejudicial to any person (other than the State) the rights of that person existing; or
(b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done,

before the day of publication of the regulations.

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WESTERN AUSTRALIA

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