

NORTHERN TERRITORY OF AUSTRALIA

TRADE MEASUREMENT ADMINISTRATION ACT

As in force at 18 March 2003

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 18 March 2003. Any amendments that commence after that date are not included.

TRADE MEASUREMENT ADMINISTRATION ACT

An Act to make provision with respect to the administration of the *Trade Measurement Act*, and for related purposes

Part I Preliminary

1 Short title

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

2 Commencement

The provisions of this Act shall come into operation on such date or dates as is or are fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

(1) In this Act:

Chief Inspector means the Chief Inspector of Trade Measurement appointed under section 6(1)(a).

Commissioner means the Commissioner of Consumer Affairs, and includes a person for the time being acting in, or performing the duties of, the office of Commissioner.

inspector means the Chief Inspector, an Inspector of Trade Measurement appointed pursuant to section 6(1)(b), and the Superintendent as an Inspector of Trade Measurement by virtue of section 6(2).

Principal Act means the *Trade Measurement Act*.

regulations means regulations under section 20.

Superintendent means the Superintendent of Trade Measurement appointed under section 5(1), and includes the Chief Inspector when acting in the office of Superintendent pursuant to section 6(3).

this Act includes regulations under this Act.

- (2) Expressions used in this Act have the same meanings respectively as they have in the Principal Act.
- (3) In this Act:
 - (a) a reference to a function includes a reference to a power, authority and duty; and
 - (b) a reference to the performance of a function includes, where the function is a duty, a reference to the performance of the duty.

4 Administering authority and licensing authority for purposes of Principal Act

For the purposes of the Principal Act:

- (a) the Superintendent is the administering authority; and
- (b) the Commissioner is the licensing authority.

Part II Superintendent of Trade Measurement, Chief Inspector and Inspectors

5 Superintendent of Trade Measurement

- (1) The Minister shall appoint a Chief Executive Officer or employee, as defined in the *Public Sector Employment and Management Act*, to be the Superintendent of Trade Measurement.
- (2) The Superintendent is, in the performance of the functions conferred on the Superintendent by this Act and as the administering authority for the purposes of the Principal Act, subject to the control and direction of the Commissioner.
- (3) The Superintendent may, by instrument in writing, delegate to an employee as defined in the *Public Sector Employment and Management Act* any function referred to in subsection (2) other than this power of delegation; and a function so delegated shall, when performed by the delegate, be deemed for the purposes of this Act or, as the case may be, the Principal Act to have been performed by the Superintendent.
- (4) A delegation under subsection (3) does not prevent the performance of a function by the Superintendent.

- (5) The Superintendent may, with the approval of the Minister:
 - (a) hold an appointment made under the National Measurement Regulations of the Commonwealth; and
 - (b) perform any functions conferred on the holder of the appointment.

6 Chief Inspector and Inspectors of Trade Measurement

- (1) The Minister shall appoint:
 - (a) a Chief Executive Officer or employee, as defined in the *Public Sector Employment and Management Act*, to be Chief Inspector of Trade Measurement; and
 - (b) such number of employees as defined in the *Public Sector Employment and Management Act*, as the Minister thinks fit to be Inspectors of Trade Measurement.
- (2) The Superintendent is an Inspector of Trade Measurement.
- (3) The Chief Inspector shall act in the office of Superintendent whenever the Superintendent is absent from duty or from the Territory or is unable for any other reason to perform the functions of Superintendent.
- (4) The Chief Inspector and the Inspectors of Trade Measurement appointed under section 6(1)(b) are, in the performance of their functions under this Act or the Principal Act, subject to the control and direction of the Superintendent.
- (5) The Commissioner shall issue to the Chief Inspector and to each Inspector of Trade Measurement (including the Superintendent in that capacity) a certificate of authority in the form determined by the Commissioner.

Part III Fees and charges

6A Fees and charges

- (1) The Minister may, by notice in the *Gazette*, prescribe the fees and charges to be charged in connection with matters under the Principal Act and this Act.
- (2) The Minister may, in the circumstances of a particular case, in writing, waive a fee prescribed under subsection (1).

- (3) An amount may be charged for the provision of a service relating to a matter under the Principal Act or this Act for which a charge is not otherwise prescribed, commensurate with the reasonable cost of providing the service.

7 Charge payable in respect of verification or re-verification by inspector

- (1) When an inspector verifies or re-verifies a measuring instrument pursuant to the Principal Act, there is payable to the administering authority by the owner of the instrument the appropriate prescribed charge.
- (2) If a charge payable under this section is not paid, the administering authority is authorized by this section to obliterate the inspector's mark made in the course of the verification or re-verification concerned.
- (3) In subsection (1), **owner**, in relation to a measuring instrument, means the person who uses, or proposes to use, the measuring instrument for trade or who proposes to make it available for use for trade.

8 Special provision with respect to charges for batch testing

When a measuring instrument is marked with an inspector's mark pursuant to the provisions of regulations under the Principal Act concerning batch testing:

- (a) that marking is, for the purposes of section 7, to be regarded as constituting the verification of the instrument concerned; and
- (b) accordingly, the appropriate prescribed charge for verification in the course of batch testing is payable to the administering authority under that section.

9 Other fees and charges

- (1) A notice under section 6A may (in addition to prescribing charges for the purposes of section 7) make provision for and with respect to the imposition, collection and recovery of fees and charges generally for the purposes of the Principal Act and this Act, including:
- (a) application fees;
- (b) licence fees;

- (c) charges for the examination of public weighbridges for suitability;
 - (d) fees payable for the issue of amended licences and certificates and duplicate licences and certificates;
 - (e) charges payable where an inspector keeps an appointment to examine or test a measuring instrument but is unable to carry out the examination or testing because the measuring instrument is unavailable or inaccessible or access to it is unreasonably refused;
 - (f) charges to reimburse costs incurred in connection with the examination and testing of a measuring instrument under the Principal Act;
 - (g) charges payable by a person where the use of specified labour or equipment provided by the Superintendent is necessary for the performance of the functions of an inspector; and
 - (h) charges payable for the use by a person of specified equipment provided by the Superintendent.
- (2) A notice under section 6A may provide for a charge under subsection (1)(c) to (h) to be calculated on a time basis.
- (3) A notice under section 6A may provide for the fee for a licence payable under section 52 of the Principal Act to be a specified amount or an amount calculated in a specified manner.

10 Recovery of unpaid fees and charges

A fee or charge payable under this Act or the Principal Act is recoverable as a debt due to the Territory.

Part IV Proceedings for offences

11 Who may institute proceedings for an offence

- (1) Proceedings for an offence under the Principal Act or this Act may be taken only by the Superintendent or, in the name of the Superintendent, by a person acting with the authority of the Superintendent.
- (2) In proceedings for such an offence, an authority to prosecute purporting to have been signed by the Superintendent is evidence of that authority without proof of the signature of the Superintendent.

12 Time limit for instituting proceedings

Proceedings for an offence under the Principal Act or this Act may be instituted at any time before:

- (a) the expiration of the period of 3 years that next succeeds the commission of the offence; and
- (b) in the case of an offence under section 28(1) (requirements as to packaging of pre-packed articles) or 32(1)(a) (offence of packing short measure) of the Principal Act, the expiration of the period referred to in paragraph (a) of this section or the expiration of the period of one year that next succeeds the discovery by an inspector of the commission of the offence, whichever is the later.

13 Double jeopardy

- (1) If an act or omission is both an offence under the Principal Act or this Act and an offence under a law of the Commonwealth, of a State, or of a Territory of the Commonwealth other than the Territory, a person who:

- (a) is convicted of the offence under that law; or
- (b) is found by a court to have committed the offence under that law but is not convicted,

is not liable to be proceeded against for the offence under the Principal Act or this Act.

- (2) In proceedings under the Principal Act or this Act, a certificate that complies with subsection (3) in relation to a conviction or finding of a court is conclusive evidence of the conviction or finding unless it is proved:

- (a) that the conviction was quashed or set aside; or
- (b) that the finding was set aside or reversed.

- (3) A certificate complies with this subsection if it is signed by the registrar or other proper officer of the court that directed the conviction or made the finding and is to the effect:

- (a) that a named person was, on a stated date, convicted by that court of a specified offence; or
- (b) that a named person charged with a specified offence was, on a stated date, found by that court to have committed the offence but was not convicted.

Part V Appeals**14 Appeals tribunal**

For the purposes of section 59 of the Principal Act (rights of appeal), the appeals tribunal is the Local Court.

15 Determination of appeals

The Local Court may, in determining an appeal under section 59 of the Principal Act:

- (a) in the case of an appeal against a decision to refuse an application for a licence – make any decision that the licensing authority could have made on the application;
- (b) in the case of an appeal against a decision to make an order under section 55 of that Act (order preventing employment of certain persons) amend the order;
- (c) in the case of an appeal against a decision to impose or vary a condition of a licence – impose a different condition or vary the condition differently; and
- (d) in the case of an appeal against a decision to take disciplinary action against a licensee – remit the matter to the licensing authority and direct it to take specified disciplinary action under section 58(1) of that Act.

Part VI Miscellaneous**16 Superintendent may approve forms**

The Superintendent may approve forms that are to be used for the purposes of the Principal Act or this Act, or of regulations under either Act.

17 Search warrants

- (1) An inspector may apply to a justice for the issue of a search warrant if the inspector believes on reasonable grounds that a provision of this Act or the Principal Act, or of the regulations under this Act or the Principal Act, is being or has been contravened in or on a part of any premises.

- (2) A justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorizing an inspector named in the warrant:
- (a) to enter the premises; and
 - (b) to search the premises for evidence of a contravention of this Act or the Principal Act, or of the regulations under this Act or the Principal Act.
- (3) A warrant under subsection (2) is, for a period of one month from its issue, sufficient authority for the inspector to whom it is issued, and for all persons acting in aid of the inspector, to enter the premises specified in the warrant, to search them as mentioned in subsection (2)(b), and to seize and remove from the premises any thing which may be evidence of a contravention so mentioned.

18 Service of documents

- (1) A document required or permitted by the Principal Act or this Act to be served on a person (whether the expression "serve", "give" or "send" or any other expression is used) may, unless the contrary intention appears, be served:
- (a) on a natural person – by delivering it to the person personally or by leaving it at, or sending it by prepaid post to, the address of the place of residence or business of the person last known to the person serving the document; or
 - (b) on a body corporate – by leaving it at, or sending it by prepaid post to, the head office, a registered office or a principal office of the body corporate.
- (2) Nothing in this section affects:
- (a) the operation of any other law of the Territory or elsewhere that authorizes the service of a document in any other way; or
 - (b) the power of a court to authorize service of a document in any other way.

19 Secrecy

A person shall not divulge or communicate information which the person acquires by reason of being employed or engaged or otherwise concerned in or in connection with the administration or enforcement of the Principal Act or this Act except:

- (a) with the consent of the person from whom the information was obtained;

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- (b) in connection with the administration or enforcement of either Act;
 - (c) to the Commissioner of Police;
 - (d) for the purposes of legal proceedings; or
 - (e) with the approval of the Commissioner, to a person engaged in the administration or enforcement of a law of a State, or of a Territory of the Commonwealth other than the Territory, which corresponds to the Principal Act or this Act.

Penalty: 200 penalty units or imprisonment for 12 months.

20 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) 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 for or 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.
- (2A) The Regulations may provide for:
 - (a) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against the Principal Act or the regulations under the Principal Act or this Act; and
 - (b) the service of a notice in respect of payment of a prescribed amount on a person alleged to have committed an offence against the Principal Act or the regulations under the Principal Act or this Act and the particulars to be included in that notice.
- (3) A regulation may impose a penalty not exceeding 100 penalty units for an offence against the regulation.

Part VII Repeals, savings and transitional provisions

21 Repeals

The enactments specified in Schedule 1 are repealed.

22 Savings and transitional provisions

Schedule 2 has effect.

Schedule 1 Repeals

section 21

<i>Weights and Measures Ordinance 1978</i>	No. 75, 1978
<i>Weights and Measures Regulations (Regulations No. 25, 1979)</i>	
<i>Weights and Measures (Packaged Goods) Ordinance 1970</i>	No. 39, 1970
<i>Weights and Measures (Packaged Goods) Ordinance 1971</i>	No. 30, 1971
<i>Weights and Measures (Packaged Goods) Ordinance 1973</i>	No. 23, 1973
<i>Weights and Measures (Packaged Goods) Ordinance 1978</i>	No. 76, 1978
<i>Weights and Measures (Packaged Goods) Amendment Act 1981</i>	No. 85, 1981
<i>Weights and Measures (Packaged Goods) Regulations (Regulations No. 46, 1982)</i>	

Schedule 2 Savings and transitional provisions

section 22

1. Application of *Interpretation Act*

The provisions of this Schedule do not prejudice the operation in relation to the repeals effected by this Act of section 12 of the *Interpretation Act*.

2. Superintendent and Inspectors

The Superintendent of Weights and Measures and Inspectors of Weights and Measures holding office under the *Weights and Measures Ordinance 1978*, as amended, immediately before the day on which the repeal of that enactment takes effect shall, as from that day, be deemed to have been appointed under this Act as Superintendent of Weights and Measures or, as the case may be, Inspectors of Weights and Measures.

3. Verification Stamp

A verification stamp made on a measuring instrument pursuant to the *Weights and Measures Ordinance 1978* as amended is, on and after the day on which the repeal of that enactment takes effect, to be considered to be an inspector's mark for the purposes of the Principal Act.

4. Permit for Sale of Pre-packed Articles

A permit in force under section 10 of the *Weights and Measures (Packaged Goods) Ordinance 1970*, as amended, immediately before the day on which the repeal of that enactment takes effect is, on and after that day, to be considered to have been issued under section 38 of the Principal Act.

5. General

If anything:

- (a) done under an enactment specified in Schedule 1 and still having effect immediately before the day on which the repeal of that enactment takes effect; or
- (b) commenced under such an enactment but not completed by that day,

could have been done or commenced under the Principal Act or this Act had the Principal Act or this Act been in force when the thing was done or commenced, then the thing done continues to have effect, or the thing commenced may be completed, as if it had been done or commenced under the Principal Act or this Act as the case may require.

6. Regulations

- (1) Regulations may make further provision of a savings or transitional nature consequential on the repeal of any of the enactments specified in Schedule 1.
- (2) A provision referred to in subparagraph (1) shall, if the Regulations so provide, have effect despite any other paragraph of this Schedule.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2**LIST OF LEGISLATION*****Trade Measurement Administration Act 1990 (Act No. 41, 1990)***

Assent date	22 June 1990
Commenced	31 May 1991 (<i>Gaz</i> S27, 31 May 1991)

Statute Law Revision Act 1991 (Act No. 31, 1991)

Assent date	25 June 1991
Commenced	25 June 1991

Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)

Assent date	30 June 1993
Commenced	1 July 1993 (s 2, s 2 <i>Public Sector Employment and Management Act 1993</i> (Act No. 11, 1993) and <i>Gaz</i> S53, 29 June 1993)

Trade Measurement Administration Amendment Act 1995 (Act No. 34, 1995)

Assent date	12 September 1995
Commenced	12 September 1995

Trade Measurement Administration Amendment Act 2003 (Act No. 6, 2003)

Assent date	18 March 2003
Commenced	18 March 2003

3**LIST OF AMENDMENTS**

s 3	amd No. 31, 1991, s 14
ss 5 – 6	amd No. 28, 1993, s 3
s 6A	ins No. 34, 1995, s 2
s 9	amd No. 34, 1995, s 3
s 19	amd No. 6, 2003, s 2
s 20	amd No. 6, 2003, s 3