

SOUTH AUSTRALIA

TRADE MEASUREMENT ADMINISTRATION ACT 1993

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **10 March 1997**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Definitions, etc.

PART 2 ADMINISTRATION

4. Declaration for the purposes of the principal Act
5. Administration of Acts
6. Inspectors
7. Use of other staff and facilities
8. Functions of Commissioner under Commonwealth regulations

PART 3 FEES AND CHARGES

9. Fees and charges may be prescribed
10. Recovery of unpaid fees and charges

PART 4 PROCEEDINGS FOR OFFENCES

11. Time for instituting proceedings
12. Double jeopardy

PART 5 APPEALS

13. Appeals court
14. Determination of appeal
- 14A. Participation of assessors in determination of appeals

PART 6 GENERAL

15. Search warrants
16. Service of documents
17. Regulations—General

PART 7 REPEAL AND TRANSITIONAL PROVISIONS

18. Repeal of Trade Measurement Act
19. Repeal of Packages Act
20. Marks under repealed Act
21. Exemptions
22. References to the repealed Act, etc.
23. General
24. Regulations—Transitional

SCHEDULE *Appointment and Selection of Assessors for District Court*

APPENDIX LEGISLATIVE HISTORY

TRADE MEASUREMENT ADMINISTRATION ACT 1993

being

Trade Measurement Administration Act 1993 No. 43 of 1993
[Assented to 20 May 1993]¹

as amended by

Statutes Repeal and Amendment (Commercial Tribunal) Act 1995 No. 82 of 1995 [Assented to 30 November 1995]²

¹ Came into operation 1 October 1993: *Gaz.* 30 September 1993, p. 1554.

² Came into operation 10 March 1997: *Gaz.* 6 March 1997, p. 1114.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix.

An Act relating to the administration of the Trade Measurement Act 1993; to repeal the Trade Measurements Act 1971 and the Packages Act 1967; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Trade Measurement Administration Act 1993*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Definitions, etc.

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

"the Commissioner" means the person holding or acting in the office of the Commissioner for Consumer Affairs under the *Fair Trading Act 1987*;

"corresponding law" means a law of another State or a Territory of the Commonwealth that corresponds with this Act;

"inspector"—see section 6;

"the principal Act" means the *Trade Measurement Act 1993*;

"the repealed Act" means the *Trade Measurements Act 1971* repealed by this Act.

(2) This Act and the principal Act will be read together and construed as if the two Acts constituted a single 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 exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2 ADMINISTRATION

Declaration for the purposes of the principal Act

4. For the purposes of the principal Act, the Commissioner is the administering authority and the licensing authority.

Administration of Acts

5. (1) The Commissioner has the administration of this Act and the principal Act.

(2) In the administration of this Act and the principal Act, the Commissioner is subject to direction by the Minister.

(3) This Act and the principal Act are related Acts for the purposes of the *Fair Trading Act 1987*.

Inspectors

6. (1) The following are inspectors for the purposes of this Act and the principal Act:

- (a) the Commissioner;
- (b) a person appointed by the Minister to be an inspector;
- (c) a person who is available to act under section 7 and who is authorised by the Commissioner to exercise the powers of an inspector under this Act and the principal Act;
- (d) a person appointed as an inspector under or for the purposes of the *National Measurement Act* (or the regulations under that Act) or a corresponding law who is authorised by the Commissioner to exercise the powers of an inspector under this Act and the principal Act.

(2) An appointment or authorisation under subsection (1) may be subject to conditions.

(3) The Minister must issue a certificate of authority to each inspector.

(4) A person (other than the Commissioner) who exercises the functions of an inspector is, in the exercise of the functions, subject to the control and direction of the Commissioner.

Use of other staff and facilities

7. The Commissioner may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

Functions of Commissioner under Commonwealth regulations

8. The Commissioner may, with the approval of the Minister—

- (a) hold an appointment made under the *National Measurement Regulations* of the Commonwealth; and
- (b) exercise any functions conferred on the holder of the appointment.

**PART 3
FEES AND CHARGES**

Fees and charges may be prescribed

9. (1) Regulations may be made 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; and
- (b) licence or permit fees; and
- (c) fees payable for the issue of amended licences, permits or certificates and for the issue of duplicate licences, permits or certificates; and
- (d) charges for, or in relation to, the verification or re-verification of measuring instruments; and
- (e) charges for the examination of public weighbridges for suitability; and
- (f) 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; and
- (g) charges to reimburse costs incurred in connection with the examination and testing of a measuring instrument under the principal Act; and
- (h) charges payable by a person where the use of specified labour or equipment provided by the Commissioner is necessary for the exercise of the functions of an inspector; and
- (i) charges payable for the use by a person of specified equipment provided by the Commissioner; and
- (j) other matters associated with the administration or enforcement of this Act or the principal Act.

(2) The regulations may provide that a charge imposed under subsection (1) is to be calculated on a time basis.

(3) The regulations may provide that a licence or permit fee be a set amount or an amount calculated in a specified manner.

(4) The regulations may provide for the imposition of a penalty if a fee or charge is not paid in accordance with the regulations.

(5) The Commissioner may, in his or her absolute discretion, remit a penalty payable under the regulations wholly or in part.

Recovery of unpaid fees and charges

10. A fee or charge payable under this Part is recoverable as a debt due to the Crown.

PART 4
PROCEEDINGS FOR OFFENCES

Time for instituting proceedings

11. (1) A prosecution for an offence under this Act or the principal Act may be commenced at any time within two years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within three years after the date of the alleged commission of the offence.

(2) An apparently genuine document purporting to be signed by the Attorney-General and to authorise the commencement of proceedings for an offence under this Act or the principal Act will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

Double jeopardy

12. (1) If an act or omission is both an offence under the principal Act and an offence under a law of the Commonwealth, or of another State, or of a Territory of the Commonwealth, 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.

(2) In proceedings under the principal 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 5
APPEALS**

Appeals court

13. For the purposes of section 59 of the principal Act, the appeals court is the Administrative and Disciplinary Division of the District Court.

Determination of appeal

14. (1) The appeals court is vested with jurisdiction to hear and determine every appeal duly made to it under the Principal Act.

(2) An appeal to the appeals court is by way of rehearing and is not limited to the material upon which the decision appealed against was made.

(3) In determining an appeal the appeals court may—

- (a) affirm, vary or set aside the decision appealed against;
- (b) 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;
- (c) in the case of an appeal against a decision to make an order under section 55 (Order preventing employment of certain persons) of the principal Act—amend the order;
- (d) 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;
- (e) 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 the authority to take specified disciplinary action under section 58(1) of the principal Act.

Participation of assessors in determination of appeals

14A. In any proceedings under this Part, the appeals court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with the schedule.

PART 6
GENERAL

Search warrants

15. (1) An inspector may apply to a magistrate for the issue of a search warrant in respect of any premises.

(2) If a magistrate to whom application for a search warrant under subsection (1) is made is satisfied that the inspector reasonably believes that in the premises to which the application relates there is anything with respect to which an offence against the principal Act is being or has been committed, or with respect to which the inspector may exercise a function conferred on him or her under the principal Act, the magistrate may, subject to subsection (5), issue a search warrant directed to the inspector to enter the premises specified in the warrant for the purpose of exercising therein the powers conferred on an inspector under the principal Act.

(3) A search warrant remains in force for the period of one month from the date of its issue and is lawful authority for the inspector to whom it is directed—

- (a) to enter the premises specified in the search warrant using such force as is reasonably necessary for the purpose; and
- (b) to exercise therein the powers conferred on an inspector under the principal Act.

(4) An inspector executing a search warrant must produce the warrant for inspection by the occupier of the premises if requested by that occupier to do so.

(5) A magistrate is not to issue a search warrant under subsection (1) unless—

- (a) the application for the warrant is made on oath or affirmation and sets out the grounds on which the inspector's suspicion is based; and
- (b) the magistrate has been furnished (by the inspector or other person) with such further information relating to those grounds as the magistrate requires; and
- (c) the magistrate is satisfied that the issue of the search warrant is justified.

(6) A magistrate who issues a search warrant under subsection (1) is to cause to be made (on the warrant or otherwise) a record of the matters of fact on which the magistrate has relied to justify the issue of the warrant.

Service of documents

16. (1) A document required or permitted by this Act or the principal 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 by sending it by pre-paid 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 pre-paid post to, the head office, a registered office or a principal office of the body corporate.

(2) Nothing in this section—

- (a) affects the operation of any other law of the State or elsewhere that authorises the service of a document in any other way; or
- (b) affects the power of a court to authorise service of a document in any other way.

Regulations—General

17. (1) The Governor 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) The regulations may prescribe a penalty not exceeding \$2 000 for any offence against the regulations.

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently, according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by the Commissioner.

Trade Measurement Administration Act 1993

**PART 7
REPEAL AND TRANSITIONAL PROVISIONS****Repeal of Trade Measurement Act**

18. The *Trade Measurements Act 1971* is repealed.

Repeal of Packages Act

19. The *Packages Act 1967* is repealed.

Marks under repealed Act

20. (1) A mark of verification or re-verification made on a measuring instrument pursuant to the repealed Act is to be taken to be an inspector's mark for the purposes of the principal Act.

(2) A licensee's mark placed on a measuring instrument pursuant to the repealed Act is to be taken to be a licensee's mark for the purposes of the principal Act.

Exemptions

21. (1) Where a requirement under the repealed Act did not apply to a person by virtue of an exemption granted under that Act and a similar requirement exists under the principal Act, the person will, subject to subsection (2), be taken to be exempt from the relevant requirement under this Act.

(2) The Commissioner may, by notice in writing to the person—

- (a) make arrangements of a transitional nature in connection with the appropriate administration of an exemption under subsection (1); or
- (b) if the Commissioner considers that it is inappropriate that the exemption continue under this Act—revoke the exemption,

(and the notice will have effect according to its terms).

References to the repealed Act, etc.

22. (1) A reference in any other Act, or in any instrument, to the repealed Act is to be read as a reference to this Act or the principal Act, as appropriate.

(2) A reference in any other Act, or in any instrument, to the Commissioner for Standards will be taken to be a reference to the Commissioner for Consumer Affairs.

General

23. (1) If anything done or commenced under the repealed Act before the commencement of this Act and still having effect, or not completed, immediately before that commencement 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—

- (a) the thing done continues to have effect; or
- (b) the thing commenced may be completed,

as if it had been done or commenced under the principal Act.

(2) Subsection (1) does not apply to anything in relation to which other provision is made by or under this Part.

Regulations—Transitional

24. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of the principal Act or this Act.

(2) A provision referred to in subsection (1) may, if the regulations so provide, take effect from a day which is antecedent to the day on which the regulations are made.

(3) To the extent to which a provision referred to in subsection (1) takes effect from a date that is earlier than the date of its publication in the *Gazette*, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Trade Measurement Administration Act 1993

SCHEDULE

Appointment and Selection of Assessors for District Court

(1) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of licensees under the principal Act.

(2) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of members of the public who deal with licensees under the principal Act.

(3) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(4) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(5) Subject to subclause (6), if assessors are to sit with the District Court in proceedings under Part 5, the judicial officer who is to preside at the proceedings must select one member from each of the panels to sit with the Court in the proceedings.

(6) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the District Court is disqualified from participating in the hearing of the matter.

(7) If an assessor dies or is for any reason unable to continue with any proceedings, the District Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

APPENDIX

LEGISLATIVE HISTORY

Section 3(1):	definition of "the Commercial Tribunal" repealed by 82, 1995, s. 33
Section 13:	substituted by 82, 1995, s. 34
Section 14(1):	amended by 82, 1995, s. 35(a)
Section 14(2):	amended by 82, 1995, s. 35(b)
Section 14(3):	amended by 82, 1995, s. 35(c)
Section 14A:	inserted by 82, 1995, s. 36
Schedule:	inserted by 82, 1995, s. 37 (Sched. 2)