

TASMANIA

TRADE MEASUREMENT (REPEAL) BILL 2010

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TRADE MEASUREMENT (REPEAL) BILL 2010

(Brought in by the Minister for Corrections and Consumer Protection, the Honourable Nicholas James McKim)

A BILL FOR

An Act to repeal the *Trade Measurement Act 1999* and the *Trade Measurement (Tasmania) Administration Act 1999* as a consequence of the transfer of trade measurement responsibilities to the Commonwealth and to make provision for transitional and consequential matters

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Trade Measurement (Repeal) Act 2010*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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3. Interpretation

In this Act, unless the contrary intention appears –

“administering authority” has the same meaning as it had in the *Trade Measurement Act 1999* (as in force immediately before the commencement of this Act);

“Commonwealth trade measurement law” means the *National Measurement Act 1960* of the Commonwealth or any regulations made under that Act;

“continuing matter” means –

- (a) a penalty notice offence in respect of which a penalty notice is issued in accordance with section 4; or
- (b) disciplinary action taken in accordance with section 5; or
- (c) a review carried out, or an application for a review made, in accordance with section 6; or
- (d) a seized measuring instrument, record, article or other thing to which section 7 applies; or
- (e) a fee or charge to which section 8 applies; or

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- (f) a search warrant in respect of which an application is made, or that is issued, in accordance with section 9; or
 - (g) any thing done, or omitted to be done, under the *Trade Measurement Act 1999* or the *Trade Measurement (Tasmania) Administration Act 1999* in relation to a matter mentioned in paragraph (a), (b), (c), (d), (e) or (f);

“inspector” has the same meaning as it had in the *Trade Measurement (Tasmania) Administration Act 1999* (as in force immediately before the commencement of this Act);

“licensee” means a person who held a licence in force under Part 6 of the *Trade Measurement Act 1999* before the commencement of this Act;

“licensing authority” has the same meaning as it had in the *Trade Measurement Act 1999* (as in force immediately before the commencement of this Act);

“National Measurement Institute” means the National Measurement Institute established under section 17 of the Commonwealth trade measurement law.

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Part 2 – Legislation Repealed, Rescinded and Revoked

**PART 2 – LEGISLATION REPEALED, RESCINDED
AND REVOKED**

4. Legislation repealed

The legislation specified in Schedule 2 is repealed.

5. Legislation rescinded

The legislation specified in Schedule 3 is rescinded.

6. Legislation revoked

The legislation specified in Schedule 4 is revoked.

PART 3 – TRANSITIONAL PROVISIONS

7. Penalty notices

(1) An infringement notice may be issued and served on a person in relation to an infringement notice offence after the commencement of this Act if –

- (a) the person is alleged to have committed the infringement notice offence before that commencement; and
- (b) an infringement notice had not been served immediately before that commencement.

(2) In this section –

“infringement notice offence” means an offence prescribed under the *Trade Measurement (Tasmania) Administration Act 1999* for the purposes of section 8 of that Act.

8. Disciplinary action

(1) The licensing authority may take disciplinary action against a licensee after the commencement of this Act if –

- (a) the licensing authority served a written notice on the licensee in accordance with

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section 57 of the *Trade Measurement Act 1999* before that commencement; and

- (b) the licensing authority had not taken disciplinary action, or had decided not to take disciplinary action, against the licensee as at that commencement.

- (2) In this section –

“disciplinary action” means disciplinary action under section 58 of the *Trade Measurement Act 1999* (as in force immediately before the commencement of this Act).

9. Reviews

- (1) A person may apply to the Magistrates Court (Administrative Appeals Division) for the review of a decision of a licensing authority after the commencement of this Act if –
 - (a) the person could have lodged an appeal against the decision under section 59 of the *Trade Measurement Act 1999* immediately before that commencement; and
 - (b) the person had not lodged such an appeal.
- (2) The Magistrates Court (Administrative Appeals Division) may review a decision on the application of a person under subsection (1).

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- (3) The Magistrates Court (Administrative Appeals Division) may continue to review a decision of the licensing authority after the commencement of this Act and may determine an application for review if –
- (a) the lodgement of the appeal under section 59 of the *Trade Measurement Act 1999* was made before that commencement; and
 - (b) the appeal had not been finally determined immediately before that commencement.

10. Seized measuring instruments, records, articles and other things

- (1) This section applies if, before the commencement of this Act, an inspector seized –
- (a) a measuring instrument, or records concerning a measuring instrument or its use, under section 61 of the *Trade Measurement Act 1999*; or
 - (b) an article, a sample of an article, a package containing an article, or records concerning any such article or package, under section 62 of the *Trade Measurement Act 1999*.
- (2) Subject to subsection (3), the inspector may deal with the seized thing after the commencement of

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this Act as if the *Trade Measurement Act 1999* had not been repealed.

- (3) The National Measurement Institute may inspect a seized thing for the purposes of the administration or enforcement of the Commonwealth trade measurement law.

11. Unpaid fees

- (1) A fee or charge that is payable under regulations made under the *Trade Measurement (Tasmania) Administration Act 1999* immediately before the commencement of this Act, and that remains unpaid, continues to be recoverable as a debt due to the Crown.
- (2) A charge that would have been payable by a licensee in respect of certification under regulations made under the *Trade Measurement (Tasmania) Administration Act 1999* after the commencement of this Act in respect of a period that ended on or before that commencement continues to be payable and is recoverable as a debt due to the Crown.
- (3) Any information required by the administering authority in relation to the calculation of any charge referred to in subsection (2) must be provided by the licensee within 21 days after the end of the relevant period.

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12. Search warrants

- (1) An inspector may apply to an issuing officer for the issue of a search warrant, and the issuing officer may issue a search warrant, after the commencement of this Act if –
 - (a) the inspector believes on reasonable grounds that a provision of the *Trade Measurement Act 1999* or the *Trade Measurement (Tasmania) Administration Act 1999* or of the regulations under either of those Acts had been contravened in or on a part of any premises before that commencement; and
 - (b) a search warrant had not been issued as at that commencement in relation to those premises based on the inspector's belief.
- (2) The *Search Warrants Act 1997* applies to a search warrant under this section.
- (3) In this section –

“issuing officer” has the same meaning as it has in the *Search Warrants Act 1997*.

13. Application of repealed Acts

For the purposes of a continuing matter –

- (a) the *Trade Measurement Act 1999* and the *Trade Measurement (Tasmania) Administration Act 1999* continue to

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apply as if they had not been repealed by
this Act; and

- (b) the legislation specified in Schedule 1
continues to apply as if it had not been
amended by this Act.

14. References to repealed Acts

In any other Act or instrument, a reference to the
Trade Measurement Act 1999 or the *Trade*
Measurement (Tasmania) Administration Act
1999 extends to a reference to the
Commonwealth trade measurement law (except
in so far as the context or subject matter
otherwise indicates or requires).

PART 4 – MISCELLANEOUS

15. Provision of register and other information

- (1) The following may be provided to the National Measurement Institute for the purpose of the administration or enforcement of the Commonwealth trade measurement law:
 - (a) a copy of the register kept under section 47 of the *Trade Measurement Act 1999*;
 - (b) information obtained by the licensing authority under the *Trade Measurement Act 1999* and the *Trade Measurement (Tasmania) Administration Act 1999*;
 - (c) information obtained by the administering authority under the *Trade Measurement Act 1999* and the *Trade Measurement (Tasmania) Administration Act 1999*;
 - (d) information relating to a continuing matter or to any proceedings for an offence against the *Trade Measurement Act 1999* or the *Trade Measurement (Tasmania) Administration Act 1999* that are instituted or continued after the commencement of this Act.
- (2) Any such information or thing may be provided by the Secretary or by any person authorised by the Secretary.

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Part 4 – Miscellaneous

- (3) This section applies despite any other Act or law to the contrary.

16. Relationship to section 16 of the *Acts Interpretation Act 1931*

Except to the extent otherwise provided by this Act, nothing in this Act affects the operation of section 16 of the *Acts Interpretation Act 1931*.

17. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may make provision for or with respect to savings and transitional matters consequent on the repeal of the *Trade Measurement Act 1999* and the *Trade Measurement (Tasmania) Administration Act 1999*.

18. Consequential amendments

The legislation specified in Schedule 1 is amended as specified in that Schedule.

19. Repeal of Act

This Act is repealed on 1 July 2013.

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20. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Corrections and Consumer Protection; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

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SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Section 18

Fisheries (Processing and Handling) Rules 2001

1. Rule 3(1) is amended by omitting the definition of “weighing instrument” and substituting the following definition:

“weighing instrument” means a measuring instrument, as defined in the *National Measurement Act 1960* of the Commonwealth, used for weighing.

Justices Order 2004

1. Clause 4 is amended by omitting paragraphs (z) and (za).

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SCHEDULE 2 – LEGISLATION REPEALED

Section 4

Trade Measurement (Tasmania) Administration Act 1999 (No.
94 of 1999)

Trade Measurement Act 1999 (No. 104 of 1999)

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SCHEDULE 3 – LEGISLATION RESCINDED

Section 5

Trade Measurement (Measuring Instruments) Regulations
2000 (No. 163 of 2000)

Trade Measurement (Miscellaneous) Regulations 2000 (No.
164 of 2000)

Trade Measurement (Pre-packed Articles) Regulations 2000
(No. 165 of 2000)

Trade Measurement (Weighbridges) Regulations 2000 (No.
166 of 2000)

Trade Measurement (Tasmania) Administration Regulations
2000 (No. 203 of 2000)

Trade Measurement (Miscellaneous) Amendment Regulations
2003 (No. 14 of 2003)

Trade Measurement (Pre-packed Articles) Amendment
Regulations 2009 (No. 63 of 2009)

Trade Measurement (Pre-packed Articles) Amendment
Regulations (No. 2) 2009 (No. 140 of 2009)

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SCHEDULE 4 – LEGISLATION REVOKED

Section 6

*Proclamation under the Trade Measurement Act 1999 (No.
193 of 2000)*

*Proclamation under the Trade Measurement (Tasmania)
Administration Act 1999 (No. 194 of 2000)*