
Trade Measurement Administration Act 1990
Trade Measurement Administration Regulation 1991

NATIONAL COMPETITION POLICY (NCP) PUBLIC BENEFIT TEST REPORT

1.0 TITLE OF LEGISLATION

Trade Measurement Administration Act 1990 (the TMAA)
Trade Measurement Administration Regulation 1991 (the Regulation)

2.0 BACKGROUND AND LEGISLATIVE OBJECTIVES

2.1 Background:

The TMAA provides for the administration of the *Trade Measurement Act 1990* (“the Principal Act”), which regulates trade measurement in Queensland as part of the scheme for uniform trade measurement legislation throughout Australia. A national NCP review of Trade Measurement is currently underway which includes consideration of the Principal Act.

2.2 Legislative Scheme

The TMAA is split into a number of parts that each provide for different aspects of the administration process. In summary, the TMAA is divided into the following:

- Part 1 - Preliminary;
- Part 2 - Staff;
- Part 3 - Fees and Charges;
- Part 4 - Proceedings for Offences;
- Part 5 - Appeals;
- Part 6 – General; and
- Part 7 – Savings and Transitional Provisions.

The TMAA in Part 2 provides for the appointment of trade measurement inspectors and a chief inspector and grants authority to exercise functions as inspectors under the Principal Act.

Part 3 of the TMAA authorises the imposition, collection and recovery of fees and charges for applications, licences, charges for verification, re-verification or certification of measuring instruments, examination and testing of a measuring instrument under the Principal Act or the provision or use of specified labour or equipment necessary to perform inspection functions.

The TMAA in Part 5 provides for appeals and establishes the processes for taking proceedings under the TMAA or the Principal Act. Part 6 provides for obtaining search warrants, secrecy of inspector’s information and delegation of the chief inspector’s powers.

2.3 Objectives

The TMAA does not contain express objectives. There are no explanatory notes available and the Second Reading Speech does not directly refer to any particular objectives, other than to provide – *“the necessary administrative infrastructure for the efficient and effective working of the principal piece of legislation in this package, the Trade Measurement Bill. Unlike that Bill, the format of the Trade Measurement Administration Bill varies from State to State, depending on the various administrative structures already in place in each State.”*¹

Therefore it could be adduced that the objective of the TMAA is to facilitate and provide for the efficient and effective administration of the Principal Act. It does this by providing for the appointment and powers of inspectors, prescription of fees and charges, proceedings for offences and proceedings for appeals established under section 59 of the Principal Act.

It is noted that the objectives of the Principal Act are:

- to ensure the marketplace functions in a fair and equitable manner in terms of trade measurement; and
- to facilitate business transactions by providing a uniform and verifiable system for measurement.

3.0 POTENTIAL RESTRICTIONS ON COMPETITION

As indicated previously, the sole purpose of the TMAA is to provide for the administrative arrangements to facilitate operations of the Principal Act. These include the appointment and powers of inspectors, offence and appeal procedures, delegation of powers and secrecy of information and do not place restrictions on competition.

The legislation allows for private service licensees to repair, test and certify all measuring instruments covered by the Act provided they have the requisite equipment and skills. Inspectors for the Department perform an audit function, provide verification and re-verification services and act as the supplier of last resort (in areas where private operators choose not to operate). The inspectors also perform the legal enforcement functions. The level of auditing varies from sector to sector according to the level of risk of non-compliance and the size of the impact.

In some circumstances, the imposition of fees and charges has the potential to restrict competition if they are set in a manner or at levels which unreasonably deter new entrants. The fees and charges levied under the TMAA have been examined in this context.

Section 10(1) of the TMAA provides for the making of regulations in respect to the imposition, collection and recovery of fees and charges for the purposes of the Principal Act and the TMAA. Fees and charges apply for the following:

- a) Application fees;
- b) Licence fees;
- c) Fees payable for the issue of amended or duplicate licences or certificates;
- d) Charges for verification, re-verification or certification of measuring instruments;
- e) Charges for examination of weighbridges for suitability;

• ¹ Queensland Parliamentary Debates (Hansard) at Page 2617, 1 August 1990 – Second Reading - Hon. G.R. Milliner, Minister for Justice and Corrective Services

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- f) Charges payable where an inspector keeps an appointment to examine or test a measuring instrument but the instrument is not available, is inaccessible, or access is denied;
 - g) Charges to reimburse costs incurred in examining or testing an instrument under the Principal Act;
 - h) Charges payable where specified labour or equipment provided by the chief inspector is necessary for exercising the functions of an inspector;
 - i) Charges payable for the use of specified equipment provided by the chief inspector.

Fees and charges are prescribed in Schedules 1 to 5 of the Regulation (Copy attached). The following outlines the purpose of each Schedule.

Schedule 1	Fees for test and examination to verify or re-verify trade measurement instrument.
Schedule 2	Fees – Reference Standards under National Measurement Act.
Schedule 3	Licences and Certificates.
Schedule 4	Fees – Quality Assurance.
Schedule 5	Expenses.

Fees and charges vary according to the type and size of the measurement or instruments being tested or the service being provided. Examples include testing of masses, measures of lengths, measures of volume, weighing instruments, length measuring instruments, area measuring instruments, liquid measuring instruments, and the issue of certificates of test results. Fees apply to licence applications and annual renewals for public weighbridges and for certificates of suitability as a public weighbridge. Fees also apply for a servicing licence to permit a person to test measuring instruments. Quality assurance testing is not mandatory but fees are charged when services are provided. Expenses are payable for testing a measuring instrument and vary depending on whether the weighbridge testing unit is used.

4.0 OTHER JURISDICTIONS

Each State has its own Trade Measurement Administration Act or equivalent with separate means of administration achieving basically the same objectives, that is: ensuring that standard measurements are applied to goods in trade to avoid misdescription or fraud.

New South Wales, Victoria and South Australia did not consider that their Administration Acts contained restrictive provisions and consequently, their TMAA equivalents were not listed for NCP review. Western Australia does not participate in the national uniform trade measurement model but still operates under the 1915 Act. However, in 1999 that State considered introducing new trade measurement legislation based on the uniform model. Although the issue has not been formalised, Western Australia formed the view that their proposed TMAA equivalent did not contain specific provisions requiring a separate NCP review. The Tasmanian legislation was introduced in 1999 and was not listed for a separate NCP review. In formulating the new legislation, NCP principles were taken into consideration during the process. The Australian Capital Territory approach has been to hold the review in abeyance pending the outcome of the national principal Act review. The Northern Territory listed their equivalent Act for review but this has not proceeded pending the finalisation of the national review of the Principal Act.

Fees and charges are difficult to compare because of the lack of uniformity between the jurisdictions in terms of the matters covered by different categories of fees and charges. For example, Queensland's weighbridge testing charges have 6 categories based on weighbridge capacities. NSW and South Australia have 5 categories but the capacity levels

are not the same. Victoria does not have a laboratory or testing equipment and does not generally test weighbridges. This work is performed by service licensees who pay a standard fee to the government for each test conducted. Service licensees charge their own fees on top of the prescribed amount.

5.0 ASSESSMENT

The Trade Measurement Branch performs a number of functions. These include: licensing of service licensees, enforcement, re-verification of weighing instruments, and laboratory testing.

The following table sets out the fees for license applications in Queensland, NSW, Victoria and South Australia. These other States have determined that their equivalent Acts did not contain restrictions on competition and consequently they were not included in legislation to be reviewed under the NCP process.

PURPOSE	QLD	NSW	VIC	SA
Licence Application – service/weighbridge	\$62.50	\$58.00	\$46.00	\$62.00
Public Weighbridge annual fee	\$62.50	\$180.00	\$140.00	\$149.00
Servicing Licence annual fee – premises	\$162.00	\$243.00	\$395.00	\$149.00
Additional persons	\$40.50	N/A	N/A	\$41.00
Weighbridge suitability application	\$62.50	\$58.00	N/A	\$62.00

Queensland currently has a total of 150 service licensees with 515 certifiers employed by these licensees.

Licensing of service licensees and weighbridges are required under the Principal Act, which also provides that fees may be charged by the licensing authority for this purpose. Having regard to the level of fees listed above, Queensland charges are comparable with the other States which were held that their TMAA equivalent was not restrictive.

The Principal Act provides a substantial enforcement role and creates a range of offences. These include:

- using a measuring instrument for trade if that measuring instrument does not bear an inspector's or licensee's mark or if it is a weighbridge, it does not comply with the regulations concerning weighbridges.
- making a mark on an instrument without authorisation.
- possessing an instrument for making a mark or resembling a mark to create a false impression.
- selling or using for trade a measuring instrument marked in contravention with the Act.
- incorrect or unjust use of a measuring instrument used for trade.
- use of a measurement instrument unacceptable for trade.
- incorrect measurement or price calculation.
- variation of quantity ordered.

Such offences attract substantial fines up to a maximum of \$20,000.

Fees and charges set by service licensees are not prescribed by Regulation and are determined by the individual service licensee. The Principal Act prescribes the licensing requirements and conditions imposed on the granting of a license, however, the level of the licence fee is set under the TMAA. The Office of Fair Trading has a statutory role to ensure compliance with the Principal Act and the level of fines suggest that any such offences are

treated seriously. Compliance is achieved by auditing the work of service licensees (at no cost to industry), conducting re-verifications or examinations at the request of the owners of weighing instruments, or undertaking priority inspections and dealing with complaints. The Principal Act states that it is the responsibility of the administering authority to provide a means by which measuring instruments may be verified or re-verified and may charge a fee for this service. Overall, the revenue from such fees does not fully recover costs. There is some cross-subsidy in the sense that the same fee applies for most smaller instruments in any part of the State but there is no indication that the level of fees unreasonably inhibits entry to markets by businesses that rely on measuring instruments.

Queensland has about 900 large capacity weighing instruments 3 tonnes and over and it takes approximately 2 years for the weighbridge testing unit to test all of these instruments. The failure rate of weighbridges has been found to be as high as 26 percent of those tested. The accuracy of these weighbridges is important to Queensland from an economic perspective particularly in overseas trade in bulk sugar and grain. The costs of operating and maintaining the testing unit are high and fees have been set at a level to achieve cost efficiency.

While the demand for the services it provides is low, the Principal Act requires Queensland to provide a Measurement Laboratory and to charge for the services provided. Currently, charges are low with revenue from this facility of around \$125,000 per year. At present, no other organisation offers similar services. Measurement Laboratory fees are currently being reviewed by the Trade Measurement Branch of the Office of Fair Trading,

Most of the fees and charges have been in place for many years with increases being limited to cost of living adjustments. Fees for voluntary quality assurance testing have been introduced more recently and are more reflective of the costs involved than other charges which have only moved on an annual adjustment basis.

While there may be some unevenness in the levels of fee and charges, they do not restrict competition.

6.0 CONCLUSIONS

Analysis indicates that the *Trade Measurement Administration Act 1990* and *Trade Measurement Administration Regulation 1991* do not contain any provisions which restrict competition. On this basis, it is recommended that:

- there be no amendments to the existing legislation as a result of this review; and
- it be removed from the review timetable for the 10 year review.