



New South Wales

Trade Measurement (Repeal) Act 2009 No 108

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New South Wales

Trade Measurement (Repeal) Act 2009 No 108

Act No 108, 2009

An Act to repeal the *Trade Measurement Act 1989* and the *Trade Measurement Administration Act 1989* as a consequence of the transfer of trade measurement responsibilities to the Commonwealth; and to make provision for transitional and consequential matters. [Assented to 14 December 2009]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Trade Measurement (Repeal) Act 2009*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on a day to be appointed by proclamation.
- (2) Sections 1, 2, 13 and 15 and Schedule 1.1 commence on the date of assent to this Act.

3 Definitions

- (1) In this Act:

administering authority has the same meaning as it had in the *Trade Measurement Act 1989* (as in force immediately before the commencement date).

commencement date means the date of commencement of this Act (except sections 1, 2, 13 and 15 and Schedule 1.1).

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 5, or
- (b) disciplinary action taken in accordance with section 6, or
- (c) a review carried out, or an application for a review made, in accordance with section 7, or
- (d) a seized measuring instrument, record, article or other thing to which section 8 applies, or
- (e) a fee or charge to which section 9 applies, or
- (f) a search warrant in respect of which an application is made, or that is issued, in accordance with section 10, or
- (g) any thing done, or omitted to be done, under the *Trade Measurement Act 1989* or the *Trade Measurement Administration Act 1989* 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 Administration Act 1989* (as in force immediately before the commencement date).

licensee means a person who held a licence in force under Part VI of the *Trade Measurement Act 1989* before the commencement date.

licensing authority has the same meaning as it had in the *Trade Measurement Act 1989* (as in force immediately before the commencement date).

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

- (2) Notes included in this Act do not form part of this Act.

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Part 2 Repeals

Part 2 Repeals

4 Repeal of Acts

The Trade Measurement Act 1989 and the *Trade Measurement Administration Act 1989* are repealed.

Part 3 Transitional provisions

5 Penalty notices

- (1) A penalty notice may be issued and served on a person in relation to a penalty notice offence after the commencement date if:
 - (a) the person is alleged to have committed the penalty notice offence before the commencement date, and
 - (b) a penalty notice had not been served immediately before the commencement date.
- (2) In this section:

penalty notice offence means an offence prescribed as a penalty notice offence by the regulations under the *Trade Measurement Administration Act 1989* immediately before the commencement date.

6 Disciplinary action

- (1) The licensing authority may take disciplinary action against a licensee after the commencement date if:
 - (a) the licensing authority served a written notice on the licensee in accordance with section 57 of the *Trade Measurement Act 1989* before the commencement date, and
 - (b) the licensing authority had not taken disciplinary action, or had decided not to take disciplinary action, against the licensee as at the commencement date.
- (2) In this section:

disciplinary action means disciplinary action under section 58 of the *Trade Measurement Act 1989* (as in force immediately before the commencement date).

7 Reviews

- (1) A person may apply to the Administrative Decisions Tribunal for the review of a decision of a licensing authority after the commencement date if:
 - (a) the person could have applied for the review of the decision under section 59 of the *Trade Measurement Act 1989* immediately before the commencement date, and
 - (b) the person had not made such an application.
- (2) The Administrative Decisions Tribunal may review a decision on the application of a person under subsection (1) and may determine the application in accordance with section 20 of the *Trade Measurement*

Administration Act 1989 (as in force immediately before the commencement date).

- (3) The Administrative Decisions Tribunal may continue to review a decision of the licensing authority after the commencement date and may determine an application for review in accordance with section 20 of the *Trade Measurement Administration Act 1989* (as in force immediately before the commencement date) if:
- (a) the application for the review under section 59 of the *Trade Measurement Act 1989* was made before the commencement date, and
 - (b) the review had not been finally determined immediately before the commencement date.

8 Seized measuring instruments, records, articles and other things

- (1) This section applies if, before the commencement date, an inspector seized:
- (a) a measuring instrument, or records concerning a measuring instrument or its use, under section 61 of the *Trade Measurement Act 1989*, 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 1989*.
- (2) Subject to subsection (3), the inspector may deal with the seized thing after the commencement date as if the *Trade Measurement Act 1989* 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.

9 Unpaid fees

- (1) A fee or charge that is payable under Part 3 of the *Trade Measurement Administration Act 1989* (or the regulations under that Part) immediately before the commencement date, 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 under section 11 of the *Trade Measurement Administration Act 1989* (and the regulations under that section) after the commencement date in respect of a period that ended on or before the commencement date continues to be payable and is recoverable as a debt due to the Crown. Any information required by the administering authority in relation to the calculation of any such charge must be provided by the licensee within 21 days of the end of the relevant period.

10 Search warrants

- (1) An inspector may apply to an authorised officer for the issue of a search warrant, and the authorised officer may issue a search warrant, after the commencement date if:
 - (a) the inspector believes on reasonable grounds that a provision of the *Trade Measurement Act 1989* or the *Trade Measurement Administration Act 1989* or of the regulations under either of those Acts had been contravened in or on a part of any premises before the commencement date, and
 - (b) a search warrant had not been issued as at the commencement date in relation to those premises based on the inspector's belief.
- (2) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant under this section.
- (3) In this section:
authorised officer has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

11 Application of repealed Acts

- (1) For the purposes of a continuing matter:
 - (a) the *Trade Measurement Act 1989* and the *Trade Measurement Administration Act 1989* continue to apply as if they had not been repealed by this Act, and
 - (b) the Acts and instruments specified in Schedule 1 (except Schedule 1.1) continue to apply as if they had not been amended by this Act.

Note. In relation to proceedings for an offence against the *Trade Measurement Act 1989* or the *Trade Measurement Administration Act 1989* that are instituted or continued after those Acts are repealed, see section 14.
- (2) Without limiting subsection (1) and for the avoidance of doubt:
 - (a) a person may be authorised to take proceedings for an offence under section 16 of the repealed *Trade Measurement Administration Act 1989*, and
 - (b) an authority to prosecute given under section 16 of the *Trade Measurement Administration Act 1989* and in force immediately before the commencement date continues in force until it terminates, and
 - (c) section 25 of the *Trade Measurement Administration Act 1989* continues in force in relation to any function continued in force by this Act, and

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Part 3 Transitional provisions

- (d) a delegation in force immediately before the commencement date under section 25 of the *Trade Measurement Administration Act 1989* continues in force until it terminates.

12 References to repealed Acts

In any other Act or instrument, a reference to the *Trade Measurement Act 1989* or the *Trade Measurement Administration Act 1989* 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

13 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 1989*,
 - (b) information obtained by the licensing authority under the *Trade Measurement Act 1989* and the *Trade Measurement Administration Act 1989*,
 - (c) information obtained by the administering authority under the *Trade Measurement Act 1989* and the *Trade Measurement Administration Act 1989*,
 - (d) information relating to a continuing matter or to any proceedings for an offence against the *Trade Measurement Act 1989* or the *Trade Measurement Administration Act 1989* that are instituted or continued after the commencement date.
- (2) Any such information or thing may be provided by the Director-General of the Department of Services, Technology and Administration or by any member of staff of that Department authorised by the Director-General of that Department.
- (3) This section applies despite any other Act or law to the contrary.

14 Relationship to section 30 of Interpretation Act 1987

Except to the extent otherwise provided by this Act, nothing in this Act affects the operation of section 30 of the *Interpretation Act 1987*.

Note. Section 30 of the *Interpretation Act 1987* provides that the repeal of an Act or statutory rule does not, among other things:

- (a) affect the previous operation of the Act or statutory rule or anything duly suffered, done or commenced under the Act or statutory rule, or
- (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act or statutory rule, or
- (c) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability (any such investigation, legal proceeding or remedy may be instituted, continued or enforced, as if the Act or statutory rule had not been amended or repealed).

15 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to

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Part 4 Miscellaneous

be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) In particular, the regulations may make provision for or with respect to savings and transitional matters consequent on the repeal of the *Trade Measurement Act 1989* and the *Trade Measurement Administration Act 1989*.

16 Repeal of Act

This Act is repealed on 1 July 2013.

Schedule 1 Amendment of Acts and instruments

1.1 Fair Trading Act 1987 No 68

[1] Section 9A Exchange of information

Insert “, or approve of,” after “enter into” in section 9A (1).

[2] Section 9A (2) (d)

Insert after section 9A (2) (c):

- (d) any other information of a type prescribed by the regulations.

1.2 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Omit “*Trade Measurement Administration Act 1989*, section 23”.

1.3 Fisheries Management (General) Regulation 2002

Clause 53A Beach safety meshing net

Omit “*Trade Measurement Act 1989*” from clause 53A (3) (e).

Insert instead “*National Measurement Act 1960* of the Commonwealth”.

1.4 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Omit “*Trade Measurement Administration Act 1989*, section 22”.

1.5 Licensing and Registration (Uniform Procedures) Act 2002 No 28

[1] Schedule 1 Licences to which Part 2 of Act applies

Omit the heading “**Trade Measurement Act 1989**” and the matter under that heading.

[2] Schedule 4 Amendment of other Acts and statutory rules

Omit Schedule 4.13.

1.6 Protection of the Environment Operations (Waste) Regulation 2005

Clause 15 Weighbridges

Omit “*Trade Measurement Act 1989*” from clause 15 (2) (e).

Insert instead “*National Measurement Act 1960* of the Commonwealth”.

1.7 Road Transport (General) Act 2005 No 11

[1] Section 234 Evidence regarding measuring and weighing

Omit “an inspector within the meaning of the *Trade Measurement Administration Act 1989*”.

Insert instead “a trade measurement inspector within the meaning of the *National Measurement Act 1960* of the Commonwealth”.

[2] Section 234

Omit “the *Trade Measurement Act 1989*”.

Insert instead “that Act”.

1.8 Road Transport (Mass, Loading and Access) Regulation 2005

Clause 67 Weighing devices

Omit “*Trade Measurement Act 1989*”.

Insert instead “*National Measurement Act 1960* of the Commonwealth”.

1.9 Roads Act 1993 No 33

[1] Section 248 Evidentiary certificates

Omit “an inspector within the meaning of the *Trade Measurement Administration Act 1989*” from section 248 (3).

Insert instead “a trade measurement inspector within the meaning of the *National Measurement Act 1960* of the Commonwealth”.

[2] Section 248 (3)

Omit “the *Trade Measurement Act 1989*”.

Insert instead “that Act”.

[Second reading speech made in Legislative Council on 11 November 2009
Agreement in principle speech made in Legislative Assembly on 2 December 2009]

BY AUTHORITY