

1991 - No. 316

TRADE MEASUREMENT ACT 1989 - REGULATION

(Trade Measurement (Measuring Instruments)
Regulations 1991)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Trade Measurement Act 1989, has been pleased to make the Regulations set forth hereunder.

PETER COLLINS

Minister for Business and Consumer Affairs.

PART I - PRELIMINARY

Citation

1. These regulations may be cited as the Trade Measurement (Measuring Instruments) Regulations 1991.

Definitions

2. In these regulations, unless the contrary intention appears:
- "**approved**" means approved by the administering authority;
 - "**licence**" means a servicing licence;
 - "**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;
 - "**the Act**" means the Trade Measurement Act 1989.

**PART II - VERIFICATION, RE-VERIFICATION AND
CERTIFICATION**

Marking of measuring instrument

3. (1) When an inspector's mark or licensee's mark is made on a measuring instrument, the person who makes the mark shall also mark, in the approved manner, the date on which the mark is made, unless the instrument is a glass measure.

(2) When an employee of a licensee certifies a measuring instrument, the employee shall in addition to making the licensee's mark on the measuring instrument also make such other mark in conjunction with the licensee's mark as will enable the licensee to identify the employee who made the mark

Certain measuring instruments not to be verified/certified

4. A measuring instrument must not be verified or certified if:
- (a) it bears a manufacturer's mark or trade mark that could be mistaken for an inspector's mark or a licensee's mark;
 - (b) it is of rough, crude or unworkmanlike construction or is constructed of inferior material;
 - (c) it is not reasonably clean or has wet paint on it; or
 - (d) it is so damaged as to be unsuitable for use for trade.

Measuring instrument to be clean

5. For the purpose of facilitating re-verification of a measuring instrument, an inspector may direct the person in possession of the instrument to clean the instrument.

Testing of measuring instrument

6. The testing of a measuring instrument for the purpose of verification, re-verification or certification shall:

- (a) if the measuring instrument is fixed - be carried out with the measuring instrument in its fixed position;
- (b) if the measuring instrument is movable and has a base - be carried out with the measuring instrument on a level plane or, if this is not practicable, on a plane that is as nearly level as possible; or

- (c) if the measuring instrument is transportable and the results obtained by its use are affected by gravity - be carried out so as to compensate for the conditions applicable in the region in which it is used or to be used.

Testing and marking of measure of length

7. If a measure of length is to be verified or certified, it shall be examined, tested and marked:

- (a) on both sides if it is calibrated on both sides and is not permanently fixed so that only one side is visible; or
- (b) on the visible side if it is permanently fixed so that only one side is visible.

Exemption from re-verification and from marking

8. (1) If a glass measure referred to in Part III has been marked in accordance with regulation 14, re-verification of it is not required.

(2) If a measure of length has been verified, re-verification of it is not required.

Restrictions on use for trade of certain small masses

9. (1) A mass of 0.2 metric carat or less, or of 58 mg or less, is exempt from section 7 of the Act (measuring instruments used for trade must be marked).

(2) A person who uses such a mass for trade is guilty of an offence unless the person is the holder of a certificate issued by the administering authority or the holder of a licence to the effect that the mass concerned complies with the requirements for verification specified in section 13 of the Act.

Penalty: \$2,000.

Dismantling of measuring instrument for testing

10. (1) If an inspector considers it to be necessary to examine or test a component part of a measuring instrument for the purpose of verifying or re-verifying the instrument and that cannot be done without dismantling the instrument, the inspector may require the owner of the measuring instrument to comply with clause (2).

(2) The owner of a measuring instrument complies with this clause if the owner:

- (a) dismantles the measuring instrument or causes it to be dismantled; or
- (b) consents to the measuring instrument being dismantled by the inspector and absolves the inspector from liability for any damage caused in the course of its dismantling or re-assembly.

(3) If the owner fails to comply with clause (2) when required to do so by an inspector, the measuring instrument must not be used for trade while the failure continues.

Owner to provide and pay for labour etc.

11. (1) An inspector may direct the owner of a measuring instrument to provide and pay for:

- (a) any labour, materials or equipment; or
- (b) the expeditious transportation to and from the site of the measuring instrument of any test masses, measures or equipment,

required by the inspector for the purpose of verifying or re-verifying the measuring instrument.

(2) If the owner fails to comply with such a direction, the measuring instrument concerned must not be used for trade while the failure continues.

(3) The owner of a measuring instrument while in possession of any test masses, measures or equipment referred to in clause (1) is liable for any loss of, or damage to, them and any costs and expenses incurred by the administering authority because of any such loss or damage is recoverable by the administering authority as a debt due by the owner of the measuring instrument.

PART III - BATCH TESTING AND MARKING

Definitions

12. In this Part:

"approval" means an approval given under regulation 13.

"glass", in relation to a container or drinking vessel, includes any other material permitted by the approval for its pattern issued under the National Measurement Regulations of the Commonwealth;

"glass measure" means:

- (a) a container made wholly or principally of glass in which it is intended that lubricating oil will be sold by volume of the quantity (otherwise than as a pre-packed article); or
- (b) a drinking vessel made wholly of glass in which it is intended that beer, ale or stout will be sold by volume of the quantity (otherwise than as a pre-packed article);

"testing facilities" means labour and equipment necessary for testing glass measures in accordance with regulation 16.

Approval for batch testing of glass measures

13. (1) The administering authority may give a manufacturer or importer of glass measures written approval for the glass measures to be tested and marked under this Part.

(2) An approval ceases to have effect if it is revoked by the administering authority or if the manufacturer or importer fails:

- (a) to comply with any requirements of the administering authority notified in the approval;
- (b) to take reasonable precautions to prevent the commission of an offence referred to in regulation 15;
- (c) to provide and pay for testing facilities as required by the administering authority;
- (d) to make the testing facilities available, without charge, for use by an inspector or licensee in order to carry out tests in accordance with regulation 16; or
- (e) to comply with regulation 17 relating to the keeping and examination of records.

Approval authorises making of marks

14. While an approval is in force, the manufacturer or importer is authorised to mark a glass measure with a mark consisting of:

- (a) the inspector's mark specified in the approval or the licensee's mark of the manufacturer or importer; and
- (b) the characters specified in the approval as those that are to form part of the approved mark, marked in the size and manner, and in the position on the measure, required by the approval.

Restrictions on removal of marked glass measure

15. If a glass measure is removed from the custody of the manufacturer or importer after being marked in accordance with an approval, the manufacturer or importer is guilty of an offence unless:

- (a) the measure is one of a batch that complies with regulation 16; and
- (b) an inspector or a licensee has given written approval for the removal of the batch from the custody of the manufacturer or importer.

Penalty: \$2,000.

Batch testing requirements

16. (1) A batch of glass measures complies with this regulation only if:

- (a) at least the appropriate test proportion of the batch is tested by an inspector or licensee; and
- (b) in each such test less than 2 per cent of the measures tested fail to comply with the requirements of section 13 of the Act for verification or certification.

(2) The appropriate test proportion of a batch of glass measures is the proportion determined by the administering authority from time to time.

(3) A batch of glass measures fails to comply with this regulation if the batch is not accompanied by a histogram detailing the results of tests made on the batch by or on behalf of the manufacturer or importer concerned.

Records to be kept and made available

17. A manufacturer or importer given an approval must:
- (a) keep such records relating to glass measures as are specified in the approval; and
 - (b) make the records available for examination if required to do so by an inspector.

PARTIV-LICENCES AND LICENSEES

Condition of licence

18. It is a condition of a licence that the licensee:
- (a) must do everything that these regulations require be done by the licensee; and
 - (b) must not do anything that these regulations require the licensee to refrain from doing.

Licensee to keep certain records or give certain notices

19. (1) The administering authority may direct a licensee to do any of the following:

- (a) make specified records relating to the certification of measuring instruments;
 - (b) retain those records for at least 2 years after making them;
 - (c) produce the retained records on demand made by an inspector;
 - (d) give the administering authority not later than 14 days after certifying a measuring instrument a written notice in an approved form;
 - (e) retain a copy of such a notice for at least 2 years after service of the notice;
 - (f) produce the retained copies on demand made by an inspector.
- (2) The licensee must comply with a direction given under clause (1).

Notification by licensee of changed particulars

20. A licensee must notify the licensing authority in writing of:
- (a) any change in the address for the service of notices on the licensee; and

- (b) the full name and residential address of each person who commences or ceases to be employed by the licensee to certify measuring instruments,
- and must do so not later than 14 days after the event.

Register of servicing licences

21. For the purposes of section 47 of the Act, the prescribed particulars to be kept in a register by the licensing authority in respect of each servicing licence are as follows:

- (a) the number of the licence and the date of its issue;
- (b) the name of the licensee and the address at which notices may be served personally on the licensee;
- (c) particulars of any conditions to which the licence is subject imposed under section 48 of the Act;
- (d) such other particulars as the licensing authority thinks desirable.

PART V - MISCELLANEOUS

Restrictions on use of measuring instrument for trade

22. (1) A person is guilty of an offence if:

- (a) in using for trade a measuring instrument of an approved pattern designed for measuring a liquid, the person purports to measure anything other than a liquid to which the approved pattern relates;
- (b) in using for trade a measuring instrument held in, or suspended from, the hand, the person purports to measure mass;
- (c) in using for trade a measuring instrument marked for a specific use, the person does so otherwise than in accordance with the marking;
- (d) in using for trade a measuring instrument marked for use with specified proportional masses, the person uses other proportional masses;
- (e) except for factory use or non-retail counter use, the person uses for trade a measuring instrument with a tare bar;
- (f) the person uses a measuring instrument for trade in order to determine mass greater than the mass permitted by the approved pattern for the instrument;

- (g) in using a measuring instrument for trade in order to determine the mass of any goods for therapeutic use within the meaning of the Therapeutic Goods Act 1966 of the Commonwealth, or the mass of precious metals, the person uses masses other than masses marked "A" (in accordance with a certificate of approval of pattern under the National Measurement Act); or
- (h) in using a measuring instrument for trade in order to determine the mass of anything other than precious stones, the person uses metric carat masses.

Penalty: \$2,000.

(2) A person who, on the same premises, is in possession of more than one measuring instrument that is used for trade and is marked ~~€~~ for use with proportional masses is guilty of an offence unless the proportional masses are readily identifiable with the measuring instrument on which they were tested.

Penalty: \$2,000.

(3) A person who uses for trade a measuring instrument fitted with a load receptor is guilty of an offence if:

- (a) it is one of 2 or more such measuring instruments on the premises and its load receptor is not clearly marked to identify it with the measuring instrument on which it is used;
- (b) the load receptor is removable and measures incorrectly in any position on its supports;
- (c) any latitude of movement of the load receptor on its supports causes it to foul any part of the measuring instrument; or
- (d) the load receptor is in the form of a scoop mounted so that a purchaser cannot readily see whether there is any foreign matter in the load receptor.

Penalty: \$2,000.

Subdivision of scale spacing

23. If the scale spacing on a measuring instrument that bears an inspector's mark or a licensee's mark is altered by being subdivided after the inspector's mark or licensee's mark was marked on the instrument:

- (a) the person who subdivided the scale spacing is guilty of an offence; and

- (b) a person who uses the measuring instrument for trade is guilty of an offence.

Penalty: \$2,000.

Measurement of liquid

24. If a measuring instrument is used for trade in order to measure a liquid, the person in possession of the measuring instrument or who makes it available for use for trade is guilty of an offence unless:

- (a) the measuring instrument is, at least to the extent necessary for the purpose of permitting proper observation of its operation, artificially illuminated between sunset and sunrise and at any other time when illumination is necessary for that purpose;
- (b) in the case of a flowmeter fitted with a zero re-setting device - the flowmeter is re-set to zero before the commencement of a measurement to be made by its use; and
- (c) in the case of a sale of liquid measured by a driveway flowmeter - the existing readings of volume, price per litre and price are not erased until the sale has been completed.

Penalty: \$2,000.

Measurement of precious stones

25. A person who, for the purpose of measuring diamonds or other precious stones, uses for trade a measuring instrument that:

- (a) has a verification scale interval greater than 10 mg;
- (b) has a capacity of less than 5000 CM and a verification scale interval greater than 0.01 CM; or
- (c) has a capacity of 5000 CM or more and a verification scale interval greater than 0.1 CM,

is guilty of an offence.

Penalty: \$2,000.

Measurement of precious metals

26. A person who, for the purpose of measuring gold, silver or other precious metals, uses for trade a measuring instrument that has a capacity specified in Column 1 of the Table to this regulation and a verification scale interval greater than that specified in Column 2 opposite the capacity is guilty of an offence.

Penalty: \$2,000.

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<i>Column 1</i>	TABLE	<i>Column 2</i>
Less than 1 kg		10 mg
1 kg or more but less than 10 kg		100 mg
10 kg or more		1g

Offence of using instrument for trade when prohibited

27. A person who uses a measuring instrument for trade in contravention of a provision of these regulations is guilty of an offence where no other penalty is provided.

Penalty \$2,000.

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EXPLANATORY NOTE

The object of these regulations is to make provision under the Trade Measurement Act 1989 concerning measuring instruments as part of the scheme for uniform trade measurement legislation throughout Australia.

The regulations deal with:

- the testing and stamping of measuring instruments for the purpose of their verification or re-verification (by inspectors) or certification (by the holders of servicing licences);
 - batch testing and marking (stamping) of certain glass measures (including the need for approvals and the standards of quality control required);
 - conditions of servicing licences and the duties of the holders of servicing licences to keep records and notify changes of particulars;
 - prohibiting various improper practices in the usage of measuring instruments; imposing special requirements for the illumination and automatic resetting of instruments that measure liquids;
 - imposing special requirements on the use of measuring instruments to measure precious stones.
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