



New South Wales

Trade Measurement Legislation Amendment Bill 2007

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

In 1990, an agreement between the Commonwealth and most of the States and Territories was signed to enact uniform trade measurement legislation. In 1995, a Trade Measurement Advisory Committee (*TMAC*) was formed by the Ministerial Council on Consumer Affairs and one of its functions was the ongoing review of trade measurement legislation nationally. *TMAC* has recommended a number of amendments to the uniform legislation of a technical nature or to improve the administration of the legislation. The amendments have been adopted by Queensland (*Consumer Credit and Trade Measurement Amendment Act 2006*).

The object of this Bill is to amend the *Trade Measurement Act 1989* of New South Wales (*the Principal Act*) and the *Trade Measurement Administration Act 1989* of New South Wales to adopt the amendments concerned.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Trade Measurement Act 1989* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Trade Measurement Administration Act 1989* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Trade Measurement Act 1989

Schedule 1 [1] and [2] amend the definition of *class 4 measuring instrument* to improve the clarity of the definition.

Schedule 1 [3] inserts definitions of *firewood, pack* (for the purpose of deciding who packs or has packed an article as a pre-packed article), *use* (in relation to the use of a measuring instrument for trade) and *weighbridge suitability statement* (in relation to a public weighbridge licence) into the Principal Act.

Schedule 1 [4] amends the definition of *sell* so that it includes anything else (not already included in the definition) that is a sale.

Schedule 1 [5] amends section 7 (Measuring instruments used for trade must be marked) to make it clear that a person who complies with a written notice issued as a result of the person's use of a measuring instrument in contravention of section 7 may not be prosecuted for an offence against the section.

Schedule 1 [6] makes a minor amendment to section 7A to ensure the uniformity of trade measurement legislation.

Schedule 1 [7] amends section 7B by utilising the defined term *approved pattern* (which is used throughout the Principal Act) and removing superfluous information.

Schedule 1 [8] amends section 8 (Unjust measurement) to make it clear that a person who complies with a written notice issued as a result of the person's use of a measuring instrument in contravention of section 8 may not be prosecuted for an offence against the section.

Schedule 1 [9] makes a minor amendment to section 9 to remove superfluous words.

Schedule 1 [10] also amends section 9 (which holds the supplier of an incorrect measuring instrument guilty of an offence) by inserting a new subsection which provides that (subject to the defence in section 9 (3) (b)) it does not matter whether the person who used the measuring instrument purchased it or took it on lease, hire or loan for trade.

Schedule 1 [11] substitutes section 23 to provide more certainty as to when a person using a measuring instrument is guilty of an offence for misleading another party

about the measurement and price calculation of an article or not correctly determining the price by reference to the correct measurement of the article. In particular, the proposed new section 23 makes it clear that it does not matter whether the person using the measuring instrument is going to sell the article or the article will be sold by another person.

Schedule 1 [12] inserts proposed section 25A into the Principal Act. This section addresses the sale of firewood by volume. Until now, the provisions have been silent on a method of calculating the quantity of firewood when it is sold by volume. The proposed new section applies section 23 to firewood sales and requires that a volume of firewood stated for sale must be at least the volume that is worked out when the firewood is stacked with as few gaps as practicable. However, there is no requirement that the firewood must actually be stacked in this manner before sale.

Schedule 1 [13] amends section 44 so that the licensing authority may grant a public weighbridge licence for a single weighbridge (rather than granting a general weighbridge licence). **Schedule 1 [18]** makes a consequential amendment.

Schedule 1 [14] amends section 44 to require a licence granted to a partnership to state the names of all the partners and any registered business name and to provide that each partner stated in the licence is taken to be a holder of the licence.

Schedule 1 [15] makes a minor law revision amendment to section 44.

Schedule 1 [16] amends section 45 to make it clear that the grounds for refusing an application for a licence apply to each member of a partnership and also to require the licensing authority to refuse an application for a public weighbridge licence if the weighbridge is not suitable for use as a public weighbridge.

Schedule 1 [17] amends section 50 to provide that a public weighbridge licence is subject to a condition that the weighbridge must not be operated unless the licence has a weighbridge suitability statement (being a statement that the weighbridge is suitable for use as a public weighbridge). This replaces the current condition that the weighbridge must not be operated unless it is the subject of a "current certificate". A condition that the weighbridge suitability statement is in force only until the end of the period for which the fee payable in relation to the statement has been paid (or the period as extended under proposed section 52A) and a condition that the weighbridge mentioned in the licence be located at the place stated in the licence are also introduced.

Schedule 1 [19] inserts proposed sections 52A and 52B into the Principal Act. Proposed section 52A provides that a licensee may continue to operate a public weighbridge under the licence in certain circumstances even though the weighbridge suitability statement has expired. Proposed section 52B sets out the action that may be taken if the administering authority decides a public weighbridge is no longer suitable for use as a public weighbridge.

Schedule 1 [21] inserts proposed sections 54A, 54B, 54C and 54D into the Principal Act. Proposed section 54A applies if a licensee moves a weighbridge from the location at which it was inspected before the issue of a weighbridge suitability

statement to another location at the place stated in the licence. It requires the surrender of the licence after such a relocation (to ensure that the weighbridge is reinspected). Proposed section 54B allows a partnership to apply to the licensing authority to amend the licence if there is a change to the membership of the partnership. Proposed section 54C allows for the continuation of a licence in certain circumstances where the membership of a partnership holding the weighbridge licence has been changed. Proposed section 54D allows a licensee under a servicing licence to apply for an amendment to a condition of the licence which specifies the class or classes of measuring instruments which may be certified by the licensee. **Schedule 1 [20]** makes a consequential amendment.

Schedule 1 [22] amends section 56 to clarify that if a ground for disciplinary action under that section exists in relation to one or more of the members of a licensed partnership, it applies to the licensed partnership.

Schedule 1 [23] amends section 59 to provide a right of review in relation to an amendment of a licence as well as the existing right of review of a refusal of an application for a licence.

Schedule 1 [24] amends section 59 to provide a right of review in relation to a decision to cancel a licence because the weighbridge mentioned in the licence is no longer suitable as a public weighbridge.

Schedule 1 [25] amends section 80 to enable regulations to be made in relation to weighbridge suitability statements.

Schedule 1 [26] amends section 80 to enable regulations to be made in relation to the approval of forms for use under the Principal Act.

Schedule 1 [27] inserts a new Part IX (proposed sections 82 and 83) into the Principal Act. The new Part contains transitional provisions consequent on the enactment of the proposed Act. Proposed section 82 provides that a certificate issued by the administering authority for the purposes of section 50 (1) (a) of the Principal Act (to the effect that the weighbridge is suitable for use as a public weighbridge), immediately before the commencement of the proposed Act, is taken to be a weighbridge suitability statement, expiring when the certificate would otherwise have expired. Proposed section 83 deals with licensees who, immediately before the commencement of the proposed Act, operate more than one public weighbridge. Proposed section 83 provides that each public weighbridge is taken to be licensed under a separate public weighbridge licence on that commencement. However, a separate periodic licence fee is not payable until the day the periodic licence fee is payable under section 52.

Schedule 2 Amendment of Trade Measurement Administration Act 1989

Schedule 2 [1] amends section 13 to enable regulations to be made for the imposition, collection and recovery of fees for providing weighbridge suitability statements and duplicates of such statements.

Schedule 2 [2] amends section 13 to clarify that a prescribed fee for a public weighbridge licence and a weighbridge suitability statement may be a combined fee for the same period.

First print



New South Wales

Trade Measurement Legislation Amendment Bill 2007

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New South Wales

Trade Measurement Legislation Amendment Bill 2007

No. , 2007

A Bill for

An Act to amend the *Trade Measurement Act 1989* and the *Trade Measurement Administration Act 1989* to adopt changes to maintain uniform trade measurement legislation agreed between the States and Territories; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Trade Measurement Legislation Amendment Act 2007</i> .	3
2 Commencement	4
This Act commences on a day to be appointed by proclamation.	5
3 Amendment of Trade Measurement Act 1989 No 233	6
The <i>Trade Measurement Act 1989</i> is amended as set out in Schedule 1.	7
4 Amendment of Trade Measurement Administration Act 1989 No 234	8
The <i>Trade Measurement Administration Act 1989</i> is amended as set out in Schedule 2.	9 10
5 Repeal of Act	11
(1) This Act is repealed on the day following the day on which this Act commences.	12 13
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	14 15

Schedule 1	Amendment of Trade Measurement Act 1989	1
		2
	(Section 3)	3
[1] Section 3 Definitions		4
	Omit “pattern that” from the definition of <i>class 4 measuring instrument</i> in section 3 (1).	5
		6
	Insert instead “pattern that, in accordance with the approved pattern”.	7
[2] Section 3 (1), definition of “class 4 measuring instrument”		8
	Omit “is marked with a symbol” from paragraph (b) of the definition.	9
	Insert instead “has a symbol on it”.	10
[3] Section 3 (1)		11
	Insert in alphabetical order:	12
	<i>firewood</i> means any wood, including dockings, edgings, mill ends, offcuts and timber products, that:	13
		14
	(a) is intended for use as firewood, and	15
	(b) is in billets or lengths of not more than 2.4 m.	16
	<i>pack</i> , for the purpose of deciding who packs or has packed an article as a pre-packed article, includes authorise, direct, cause or permit a person to pack an article as a pre-packed article.	17
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	<i>use</i> , in relation to the use of a measuring instrument for trade, includes:	20
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	(a) have the measuring instrument in possession for use, and	22
	(b) make the measuring instrument available for use, and	23
	(c) authorise, direct, cause or permit a person to do an act mentioned in paragraph (a) or (b) or anything else that is the use of a measuring instrument for trade.	24
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	<i>weighbridge suitability statement</i> , for a public weighbridge licence, means a statement, signed by the administering authority, that the weighbridge mentioned in the licence is suitable for use as a public weighbridge.	27
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[4] Section 3 (1), definition of “sell”		31
	Omit “paragraph (a), (b), (c) or (d)” from paragraph (e) of the definition.	32
	Insert instead “paragraphs (a)–(d) or anything else that is a sale”.	33

[5] Section 7 Measuring instruments used for trade must be marked	1
Omit “is taken not to have committed” from section 7 (4).	2
Insert instead “may not be prosecuted for”.	3
[6] Section 7A Use of class 4 measuring instruments	4
Omit section 7A (b). Insert instead:	5
(b) for weighing a thing to decide freight or haulage charges for the thing, or	6 7
[7] Section 7B Use of measuring instruments for pre-packed articles	8
Omit “is approved for trade use under the National Measurement Act”.	9
Insert instead “is of an approved pattern”.	10
[8] Section 8 Unjust measurement	11
Omit “is taken not to have committed” from section 8 (5).	12
Insert instead “may not be prosecuted for”.	13
[9] Section 9 Supplying incorrect etc measuring instrument	14
Omit “for trade” from section 9 (2) where thirdly occurring.	15
[10] Section 9 (2A)	16
Insert after section 9 (2):	17
(2A) Subject to subsection (3) (b), it does not matter whether the person who used the measuring instrument purchased it or took it on lease, hire or loan for trade.	18 19 20
[11] Section 23	21
Omit the section. Insert instead:	22
23 Incorrect measurement or price calculation	23
(1) This section applies to a person who, for the purpose of the sale of an article at a price determined by reference to the measurement of the article, operates a measuring instrument to measure the article or decides the measurement of the article.	24 25 26 27
(2) For the purposes of this section:	28
(a) a reference to the person’s measurement of the article is a reference to the person’s operation of the measuring instrument or measurement of the article as mentioned in subsection (1), and	29 30 31 32

(b)	it does not matter whether the person's measurement of the article is for the article's sale by the person or by anyone else at any time.	1 2 3
(3)	For any sale of the article at any time, the person commits an offence if, because of the person's measurement of the article:	4 5
(a)	the person directly or indirectly misleads any party to the sale as to the measurement of the article or the calculation of the price, to the party's detriment, or	6 7 8
(b)	the price paid or required to be paid is not the price correctly determined by reference to the correct measurement of the article and as a result any party to the sale suffers or would suffer detriment.	9 10 11 12
	Penalty: \$20,000.	13
[12]	Section 25A	14
	Insert after section 25:	15
	25A Special provision for sale of firewood by volume	16
	To apply section 23 to a sale of firewood by volume, the volume stated for the sale of the firewood (<i>the stated volume</i>) is taken to comply with that section if, when the firewood is stacked with as few gaps as practicable, the volume worked out using the stack's dimensions is at least the stated volume.	17 18 19 20 21
[13]	Section 44 Application for licence	22
	Insert "for a single weighbridge" after "licence" in section 44 (1) (b).	23
[14]	Section 44 (2A) and (2B)	24
	Insert after section 44 (2):	25
	(2A) If the licensing authority grants a licence to a partnership, the licence must state:	26 27
	(a) the names of all the partners, and	28
	(b) if the partnership has a registered business name, the registered business name.	29 30
	(2B) Each partner stated in the licence, including the licence as amended under section 54B, is taken to be a holder of the licence.	31 32
[15]	Section 44 (3)	33
	Omit "The application". Insert instead "An application under this section".	34

[16] Section 45 Grounds for refusal	1
Insert after section 45 (1):	2
(1A) If the applicant is a partnership, subsection (1) applies to each member of the partnership.	3 4
(1B) Also, for a public weighbridge licence application for a weighbridge, the licensing authority must refuse the application if the administering authority considers the weighbridge is not suitable for use as a public weighbridge.	5 6 7 8
[17] Section 50 Conditions on all public weighbridge licences	9
Omit section 50 (1) (a). Insert instead:	10
(a) a condition that the licensee must not operate the weighbridge mentioned in the licence unless the licence or a copy of the licence has a weighbridge suitability statement written on it that is in force,	11 12 13 14
(aa) a condition that the weighbridge suitability statement is in force only until the end of:	15 16
(i) the period for which the fee payable in relation to the statement has been paid, or	17 18
(ii) the period as extended under section 52A,	19
(ab) a condition that the weighbridge mentioned in the licence is to be located at the place stated in the licence,	20 21
[18] Section 50 (1) (b)	22
Omit “a weighbridge operated pursuant to the licence”.	23
Insert instead “the weighbridge mentioned in the licence”.	24
[19] Sections 52A and 52B	25
Insert after section 52:	26
52A Continuation of weighbridge suitability statement in particular circumstances	27 28
(1) This section applies if:	29
(a) before the end of the period for which a weighbridge suitability statement is in force for a particular weighbridge, a licensee pays the fee for a new weighbridge suitability statement, and	30 31 32 33
(b) the administering authority has not caused the weighbridge to be examined for the purpose of providing a new weighbridge suitability statement.	34 35 36

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| (2) | The licensee may continue to operate the weighbridge under the licence until the administering authority: | 1
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| (a) | issues to the licensee a copy of the public weighbridge licence for the weighbridge with a weighbridge suitability statement on it in force for the period for which the fee payable in relation to the statement has been paid, or | 3
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| (b) | decides the weighbridge is no longer suitable for use as a public weighbridge and gives written notice of the decision to the licensee under section 52B (2). | 7
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| 52B If weighbridge no longer suitable for use as public weighbridge | | 10 |
| (1) | This section applies if the administering authority decides a public weighbridge is no longer suitable for use as a public weighbridge. | 11
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| (2) | The administering authority may give the licensee a notice stating: | 14
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| (a) | why the administering authority considers the public weighbridge is no longer suitable for use as a public weighbridge, and | 16
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| (b) | that the licensee may make written representations to the administering authority within 28 days stating why the licensee considers the public weighbridge licence for the public weighbridge should not be cancelled. | 19
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| (3) | After considering any representations made to the administering authority, the administering authority may: | 23
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| (a) | decide to take no further action against the licensee, or | 25 |
| (b) | recommend to the licensing authority that the public weighbridge licence for the public weighbridge be cancelled. | 26
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| (4) | The licensing authority may cancel the licence on the recommendation of the administering authority under subsection (3) (b). | 29
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| (5) | The administering authority must give the licensee a written notice stating: | 32
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| (a) | the decision and the reason for the decision, and | 34 |
| (b) | that if the licensing authority cancels the licensee's licence, the licensee may apply to the review tribunal under the Administration Act for a review of the decision of the licensing authority. | 35
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| (6) | This section does not limit section 7. | 39 |
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[20] Section 54 Surrender etc of licence	1
Omit “A licence” from section 54 (2).	2
Insert instead “Subject to section 54B, a licence”.	3
[21] Sections 54A–54D	4
Insert after section 54:	5
54A Effect of relocation of licensed weighbridge	6
(1) This section applies if a licensee moves a weighbridge from the location at which it was inspected before the issue of the weighbridge suitability statement for the weighbridge to another location at the place stated in the licence.	7 8 9 10
(2) The public weighbridge licence for the weighbridge is taken to have been surrendered under section 54.	11 12
54B Application to change licence holders due to change of partnership	13 14
(1) This section applies if:	15
(a) a partnership is the holder of a licence, and	16
(b) there is or is proposed to be a change to the membership of the partnership (<i>the change</i>) with at least one partner before the change continuing as a partner after the change.	17 18 19
(2) The partnership may apply to the licensing authority to amend the licence to state the partners who are or will be the partners after the change.	20 21 22
(3) To the extent the change consists of a person ceasing to be a partner, the licensing authority must grant the application and amend the licence to remove the name of the partner from the licence.	23 24 25 26
(4) To the extent the change involves a new partner being admitted to the partnership:	27 28
(a) the application must include the information about the new partner that the new partner would have to give to the licensing authority when applying for a licence of that kind, and	29 30 31 32
(b) after considering the application, the licensing authority must:	33 34
(i) grant the application and amend the licence to include the name of the new partner, or	35 36
(ii) refuse the application under subsection (5).	37

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| (5) | The licensing authority must refuse an application to which subsection (4) applies if it would be refused under section 45 were it an application by the new partner for the licence. | 1
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| (6) | If the licensing authority refuses the application, the licensing authority must notify the partnership of the grounds for the refusal and the right of review of the refusal under section 59. | 4
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| (7) | If an application is granted relating to a change that is to happen at a later time, the licensing authority must amend the licence in accordance with the application from the later time. | 7
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| (8) | To amend a licence under this section, the licensing authority may endorse the amendment on the licence held by the partnership, or replace the licence with a licence stating the membership of the partnership after the change. | 10
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| (9) | An application must be accompanied by the application fee prescribed under the Administration Act. | 14
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| 54C | Effect on licence of application under s 54B | 16 |
| (1) | This section applies if a change within the meaning of section 54B happens: | 17
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| (a) | not more than 28 days before an application under the section is made, or | 19
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| (b) | after the application is made but before it is decided. | 21 |
| (2) | From the day of the change, the relevant licence is taken to be held by the partnership as it exists after the change, and each partner is taken to be a holder of the licence, until: | 22
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| (a) | the application is granted, or | 25 |
| (b) | if the application is refused—the end of the period allowed under the <i>Administrative Decisions Tribunal Act 1997</i> for a review and, if the partnership applies for a review of the refusal, the end of the review. | 26
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| 54D | Application to amend condition of licence | 30 |
| (1) | A licensee under a servicing licence may apply to the licensing authority for an amendment to a condition of the licence of a kind mentioned in section 48 (2). | 31
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| (2) | The licensing authority may amend or refuse to amend the licence. | 34
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| (3) | An application must be accompanied by the application fee prescribed under the Administration Act. | 36
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[22] Section 56 Grounds for disciplinary action	1
Insert at the end of the section:	2
(2) A ground for disciplinary action under subsection (1) exists in relation to a licensee who is a partnership if the ground exists in relation to any one or more of the members of the partnership.	3 4 5
[23] Section 59 Rights of review	6
Insert “or an amendment of a licence” after “licence” in section 59 (a).	7
[24] Section 59 (ea)	8
Insert after section 59 (e):	9
(ea) to cancel a public weighbridge licence because the public weighbridge mentioned in the licence is no longer suitable for use as a public weighbridge, or	10 11 12
[25] Section 80 Regulations	13
Omit section 80 (2) (n). Insert instead:	14
(n) weighbridge suitability statements,	15
[26] Section 80 (2) (v)	16
Insert after section 80 (2) (u):	17
(v) the approval of forms for use under this Act.	18
[27] Part IX	19
Insert after section 81:	20
Part IX Transitional provisions for Trade Measurement Legislation Amendment Act 2007	21 22 23
82 Certificates of suitability	24
A certificate of suitability for a public weighbridge, that is in force immediately before the commencement of the <i>Trade Measurement Legislation Amendment Act 2007</i> , is taken to be a weighbridge suitability statement for the weighbridge’s public weighbridge licence expiring when the certificate of suitability would otherwise have expired.	25 26 27 28 29 30

83 Existing licensed public weighbridges	1
(1) This section applies if, immediately before the commencement of the <i>Trade Measurement Legislation Amendment Act 2007</i> , a licensee operates more than one public weighbridge under a public weighbridge licence.	2 3 4 5
(2) On the commencement:	6
(a) each public weighbridge is taken to be licensed under a separate public weighbridge licence, and	7 8
(b) a separate periodic licence fee is not payable because of paragraph (a) until the day the periodic licence fee is payable under section 52 after the commencement.	9 10 11
(3) Also, if, after the commencement:	12
(a) a licensee for a public weighbridge that is taken under subsection (2) (a) to be licensed under a separate public weighbridge licence pays a separate periodic licence fee for the public weighbridge, and	13 14 15 16
(b) the administering authority decides the weighbridge is still suitable for use as a public weighbridge,	17 18
the licensing authority must issue to the licensee a separate public weighbridge licence for the weighbridge with a weighbridge suitability statement on it in force for the period for which the fee payable in relation to the statement has been paid.	19 20 21 22

Schedule 2	Amendment of Trade Measurement Administration Act 1989	1
		2
	(Section 4)	3
[1] Section 13 Other fees and charges may be prescribed		4
Insert after section 13 (1) (c):		5
(ca) fees payable for providing weighbridge suitability		6
statements or duplicates of weighbridge suitability		7
statements, and		8
[2] Section 13 (4)		9
Insert after section 13 (3):		10
(4) For the purposes of this section, it does not matter whether the fee		11
prescribed for a public weighbridge licence and a weighbridge		12
suitability statement is a combined fee for the same period.		13