

[Act 2001 No 5]



New South Wales

Trade Measurement Amendment Bill 2001

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 (*MCCA*) 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 Victoria (*Trade Measurement (Amendment) Act 2000*), Tasmania (*Trade Measurement Act 1999*) and Queensland (*Trade Measurement Amendment Act 1999*).

The object of this Bill is to amend the *Trade Measurement Act 1989* of New South Wales (*the Principal Act*) to adopt the amendments concerned. The Bill also includes an additional amendment that was approved by *MCCA* in 2000. That

additional amendment enables the use of class 4 measuring instruments (a type of measuring instrument approved for use under the uniform legislation) for the determination of freight or haulage charges.

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 or days to be appointed by proclamation.

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

Schedule 1 Amendments

Amendments relating to definitions and interpretation of Act

Schedule 1 [1] defines *class 4 measuring instrument* by reference to possession of between 100 and 1,000 intervals of not less than 5 grams and of a certain mark.

Schedule 1 [2] amends the definition of *measurement* to ensure that it includes the determination of physical attributes such as number, mass, length, width and depth.

Schedule 1 [4] provides, among other things, that any packaging or other thing that is not part of an article is to be disregarded when determining a physical quantity.

Schedule 1 [3] makes a consequential amendment.

Enforcement provisions

Schedule 1 [6] enables an inspector to give the owner or user of a measuring instrument a notice allowing up to 28 days to correct an instrument that does not conform with requirements regarding marks or weighbridges under the Principal Act. **Schedule 1 [5]** makes a consequential amendment.

Schedule 1 [10] enables an inspector to give the owner or user of a measuring instrument a notice giving up to 28 days to correct an instrument that does not conform with requirements regarding incorrect measuring instruments or unjust use.

Schedule 1 [9] makes a consequential amendment.

Schedule 1 [21] gives an inspector the power, in investigating an offence against the Principal Act, to weigh a vehicle and its load.

Schedule 1 [22] makes it clear that, when examining or testing an instrument believed to be used for trade, an inspector may record the details of any measuring instrument in the way the inspector considers appropriate, including by filming or photographing.

Schedule 1 [23] makes an amendment to clarify that an inspector has power, when investigating an offence against the Principal Act, both to examine and measure articles.

Schedule 1 [24] makes it clear that, when inspecting or examining an article under section 62 of the Principal Act, an inspector may record the details of the article in the way the inspector considers appropriate, including by filming or photographing.

Offences relating to measuring

Schedule 1 [7] inserts proposed section 7A to make it an offence to use a class 4 measuring instrument for trade purposes other than those specified in the proposed section or prescribed by the regulations. The specified purposes are the following:

- (a) as airport baggage scales,
- (b) for the determination of freight or haulage charges,
- (c) for weighing garbage,
- (d) for weighing earth, sand, gravel or other similar material,
- (e) as a crane-weigher,
- (f) for weighing timber in log form.

A class 4 measuring instrument is the least accurate type of measuring instrument approved for use under the uniform trade measurement legislation.

Schedule 1 [7] also inserts proposed section 7B to make it an offence for a person to use a measuring instrument for measuring pre-packed articles on premises on which articles are pre-packed unless at least one measuring instrument on the premises is approved for use under the uniform trade measurement legislation and is suitable for measuring those articles.

Schedule 1 [8] and **[11]** remove inappropriate references to an unjust measuring instrument.

Schedule 1 [14] includes, in a provision creating an offence relating to the incorrect measurement of an article or the incorrect calculation of its price on the basis of a measurement, a reference to a person who determines the measurement of an article in addition to a person who operates a measuring instrument.

Schedule 1 [15] makes it clear that there can be more than one party to a sale of an article in a provision creating an offence of a person who operates a measuring instrument misleading a person as to the measurement of an article or the calculation of its price.

Schedule 1 [16] makes it clear that an offence is committed if the price of a pre-packed article exceeds the price correctly computed by reference to the actual measurement of the article (that is, excluding packaging) and the stated price.

Schedule 1 [18] requires a person who batch tests or certifies measuring instruments to be the holder of a servicing licence or the employee of a holder of a servicing licence and creates an offence where a licensee or an employee of a licensee fails to comply with the conditions of the licence. **Schedule 1 [17]** makes a consequential amendment.

Miscellaneous amendments

Schedule 1 [12] and **[13]** ensure that the administering authority under the Principal Act may determine classes and denominations of reference standards of measurement.

Schedule 1 [20] allows a single licence to be granted to persons who carry on business together as partners and who make a joint application. **Schedule 1 [19]** makes a consequential amendment.

Schedule 1 [25] amends evidentiary provisions that refer to certain matters being prima facie evidence in proceedings for an offence under the Principal Act so as to provide that those matters are merely evidence in those proceedings.

Schedule 1 [27] provides that batch numbers on pre-packed articles are evidence, in proceedings for an offence under the Principal Act, of the matters indicated by the number. **Schedule 1 [26]** makes a consequential amendment and **Schedule 1 [28]** includes a definition of *batch number*.

Schedule 1 [29] enables regulations to be made in relation to the sealing of a certified measuring instrument.