

TRADE MEASUREMENT BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Trade Measurement Administration Bill 1989 is cognate with this Bill.

The object of this Bill is to make provision for the following matters as part of proposed uniform trade measurement legislation throughout Australia:

- (a) regulation of the use of measuring instruments for trade;
- (b) regulation of sales and other transactions based on measure;
- (c) the verification, re-verification and certification of measuring instruments used for trade;
- (d) imposing requirements on the packaging of articles sold as pre-packed articles;
- (e) the licensing of persons to service and certify the accuracy of measuring instruments used for trade;
- (f) other miscellaneous matters.

PART I - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 contains definitions used in the proposed Act.

Clause 4 explains what is meant by use of a measuring instrument "for trade". It includes use in determining the consideration for a transaction or the amount payable as a tax, rate or other charge.

Clause 5 provides that the proposed Act is to bind the Crown.

Clause 6 lists exemptions from the operation of the proposed Act, including electricity, gas and water meters, telephone call metering and taxi meters. The

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regulations can provide further exemptions. The proposed Act will not apply to bread.

PART II - USE OF MEASURING INSTRUMENTS FOR TRADE

Clause 7 prohibits the use of a measuring instrument for trade unless it bears an inspector's mark or a licensee's mark. In addition, if the measuring instrument is a weighbridge, it must not be used for trade unless it complies with the requirements of the regulations.

Clause 8 creates the following offences:

- . using for trade a measuring instrument that is incorrect or unjust;
- . using a measuring instrument for trade in a manner that is unjust;
- . causing a measuring instrument in use for trade to give an incorrect reading.

Clause 9 creates the offence of supplying a measuring instrument that is incorrect, unjust or not of an approved pattern (approved under the National Measurement Act 1960 of the Commonwealth).

PART III - VERIFICATION, RE-VERIFICATION AND CERTIFICATION OF MEASURING INSTRUMENTS

Clause 10 makes it the responsibility of the administering authority to arrange for the standards of measurement necessary for the purposes of the proposed Act. Each licensee is made responsible for providing the standards of measurement necessary for the exercise of the licensee's functions under the proposed Act.

Clause 11 explains "verification" and "re-verification" of measuring instruments. Each is carried out by an inspector who has to be satisfied that the instrument complies with certain requirements and who marks the instrument with the inspector's mark. Verification is carried out when the instrument does not already bear a mark. The requirements at verification are stricter than at re-verification which is carried out if the instrument already bears a mark (as a result of a prior verification, re-verification or certification). When re-verification takes place, any existing mark is removed.

Clause 12 explains "certification" of measuring instruments. It is carried out by the holder of a servicing licence issued under the proposed Act. The licensee must be satisfied that the instrument complies with the same requirements as for verification by an inspector. The licensee marks the instrument with the licensee's mark and removes any existing mark.

Clause 13 sets out the various requirements that have to be satisfied for verification or certification and for re-verification. These relate to permissible limits of error, pattern approval under the National Measurement Act and requirements for metric graduations.

Clause 14 imposes requirements as to the types of standards of measurement that must be used in assessing compliance with the requirements of clause 13.

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Clause 15 makes the administering authority responsible for providing the means for verifying measuring instruments used for trade and making arrangements for their periodic re-verification.

Clause 16 allows an inspector to prohibit the use for trade of a measuring instrument if directions intended to permit its re-verification are not complied with.

Clause 17 requires an inspector who rejects a measuring instrument to obliterate any inspector's mark or licensee's mark on it.

Clause 18 requires a person who repairs or modifies a measuring instrument to obliterate any inspector's mark or licensee's mark on it.

Clause 19 makes provision for marks to be put on measuring instruments by means of a label affixed to the instrument.

Clause 20 creates the offence of making an inspector's mark or licensee's mark without proper authority.

Clause 21 creates related offences of unlawful possession of marks and marking implements and of making counterfeit marks.

PART IV - TRANSACTIONS BY MEASUREMENT

Clause 22 requires that when an article is sold at a price determined by reference to measurement the measurement must be done in the consumer's presence or the consumer must be given a written statement of the measurement. The consumer can demand measurement in his or her presence if delivery takes place at the time and place of measurement. Pre-packed articles are not affected.

Clause 23 creates the offence of misleading the consumer as to measurement or price calculation based on measurement and of incorrect payment that is to the detriment of the consumer.

Clause 24 makes the seller of an article guilty of an offence if the quantity sold is less than the quantity ordered unless the seller tells the buyer before completion of the sale.

Clause 25 makes special provisions for the sale of meat. The written statement required for the purposes of clause 22 must specify the mass of each cut. When exposing meat for sale at a marked price for a given quantity, its mass and price per kilogram must also be marked.

Clause 26 requires articles that are prescribed by the regulations for the purposes of the clause to be sold at a price determined by reference to a measurement of quantity in the unit of measurement required by the regulations.

Clause 27 creates a presumption that measurement determined by direct measurement of certain vehicles is more accurate than the same measurement determined by the method known as "end-and-end measurement".

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PART V - PRE-PACKED ARTICLES

**Division 1 - Requirements for Packaging and Sale of
Pre-packed Articles**

Clause 28 requires the packaging of pre-packed articles to comply with the requirements of the regulations as to the quantities in which articles may be packed and the marking on the package of the name and address of the packer, the measurement of the article and its price.

Clause 29 creates exceptions to the requirements of clause 28. The exceptions relate to packages for retail sale that are sold where they are packed, packages for export and sale of imported packages.

Clause 30 restricts the use on packages of "net mass when packed", "net mass at standard condition" and other expressions that are prohibited or restricted by the regulations.

Clause 31 makes it an offence to sell a pre-packed article at a specified price per unit of measurement where the price charged exceeds the correct price.

Clause 32 creates the offence of packing or selling a short measure (where the quantity in the package is less than the quantity indicated).

Clause 33 requires that where sufficient packages are available for testing, an average deficiency of the extent required by the regulations is necessary before a short measure offence is committed under clause 32.

Clause 34 creates defences to the offence in clause 32 of packing or selling a short measure. The defences relate to deficiencies which arise after packaging and for which reasonable allowance could not be made and deficiencies in packages obtained from a supplier and sold unaltered.

Clause 35 creates a general defence for sellers to the offences under clauses 28, 30 and 31 where the seller did not pack or alter the packaging of the package and the offence resulted from something the defendant could not reasonably have foreseen.

Clause 36 gives a general defence to persons who pack articles solely as employees.

Clause 37 enables the regulations to prescribe procedures for determining the measurement of pre-packed articles.

Division 2 - Permit to Sell Certain Pre-packed Articles

Clause 38 authorises the administering authority to issue permits enabling persons to sell pre-packed articles where the sale would otherwise be an offence under clause 28 or 30.

Clause 39 imposes restrictions on the circumstances in which such a permit can be issued.

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Clause 40 authorises the cancellation of a permit at any time.

Clause 41 recognises permits issued under a law of another jurisdiction that corresponds to the proposed Act.

PART VI - LICENSING

Division 1 - Requirements for Licences

Clause 42 requires a person who certifies a measuring instrument to hold a servicing licence or to be an employee of a licensee.

Clause 43 requires a person who makes a weighbridge available for public use to be the holder of a public weighbridge licence or to be an employee of a licensee.

Division 2 - Granting of Licences

Clause 44 provides for the making of applications to the licensing authority for servicing licences and public weighbridge licences.

Clause 45 provides the grounds on which an application for a licence may, and in some cases must, be refused.

Clause 46 requires the licensing authority to approve a particular mark for use by each licensee.

Clause 47 requires the licensing authority to keep a register of licences.

Clause 48 gives the licensing authority power to impose and vary conditions on licences.

Clause 49 sets out the conditions that apply to all servicing licences.

Clause 50 sets out the conditions that apply to all public weighbridge licences.

Clause 51 states that conditions of a licence need not be endorsed on the licence.

Clause 52 requires payment by a licensee of a periodic licence fee.

Clause 53 authorises cancellation of a licence if the periodic licence fee is not paid.

Clause 54 authorises surrender of a licence and provides that a licence is not transferable.

Clause 55 empowers the licensing authority to order that specified persons not be employed to certify measuring instruments, or not be employed to operate a public weighbridge, on the grounds of the person's lack of competency or fitness.

Division 3 - Disciplinary Action Against Licensees

Clause 56 lists the grounds for disciplinary action against a licensee.

Clause 57 provides for the licensing authority to give notice to a licensee of suspected grounds for disciplinary action against the licensee and calling on the licensee to show cause why disciplinary action should not be taken.

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Clause 58 provides for the disciplinary action that the licensing authority can take against a licensee.

Division 4 - Appeals

Clause 59 provides for an appeal against various decisions of the licensing authority.

PART VII - INSPECTORS

Clause 60 provides for the general powers of entry and inspection by inspectors under the proposed Act.

Clause 61 provides for the powers of inspectors in relation to the examination and testing of measuring instruments.

Clause 62 provides for the powers of inspectors in relation to pre-packed articles and articles that are for sale by measurement.

Clause 63 gives an inspector special powers to demand information from a person whose name appears on a pre-packed article.

Clause 64 entitles a person from whom anything is seized under the proposed Act to return of the thing if proceedings for an offence are not instituted within 6 months or if no conviction is obtained.

Clause 65 creates offences of hindering, assaulting, impersonating, or failing to comply with a lawful requirement made by, an inspector.

Clause 66 relates to self-incrimination.

Clause 67 requires an inspector to produce his or her certificate of authority on request.

PART VIII - MISCELLANEOUS

Clause 68 provides that a penalty appearing at the end of a provision of the proposed Act indicates the creation of an offence for which the maximum penalty is the penalty specified.

Clause 69 increases by 5 times the maximum penalty for any offence committed by a body corporate.

Clause 70 empowers the court which convicts a person of an offence under the proposed Act to award compensation to a person who has suffered pecuniary loss.

Clause 71 makes the employer guilty of the same offence committed by an employee unless the employer had no knowledge of the contravention and could not have prevented the contravention.

Clause 72 makes the director of a body corporate guilty of the same offence committed by the body corporate if the director knowingly authorised or permitted the offence.

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Clause 73 creates the offence of making a false or misleading statement.

Clause 74 requires certain official signatures to be presumed to be authentic.

Clause 75 provides for the giving of certificates and for those certificates to be evidence of certain things.

Clause 76 creates certain presumptions as to the authenticity of names, addresses and dates marked on pre-packed articles.

Clause 77 creates the presumption that certain articles are packed for sale (and hence are pre-packed articles).

Clause 78 creates the presumption that a measuring instrument present on premises used for trade is itself used for trade.

Clause 79 requires records to be kept or produced in the English language.

Clause 80 lists the matters for which regulations can be made.

Clause 81 makes special provision for the application of the proposed Act in New South Wales.
