



New South Wales

# Trade Measurement (Repeal) Bill 2009

## Explanatory note

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

## Overview of Bill

The objects of this Bill are as follows:

- (a) to repeal the *Trade Measurement Act 1989* and the *Trade Measurement Administration Act 1989* as a consequence of the agreement by the Council of Australian Governments in April 2007 in relation to national trade measurement reform and the transfer of trade measurement responsibilities from the States and Territories to the Commonwealth,
- (b) to make provision for transitional and consequential matters related to the transfer of trade measurement responsibilities,
- (c) to amend the *Fair Trading Act 1987* in relation to information sharing arrangements between the Director-General of the Department of Services, Technology and Administration (*the Director-General*) and certain other agencies of the State or of the Commonwealth, another State or Territory or an overseas jurisdiction (which may be used in relation to the transfer of trade measurement information to the Commonwealth).

## Outline of provisions

### Part 1 Preliminary

**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 (except sections 1, 2, 13 and 15 and Schedule 1.1 which commence on the date of assent to the proposed Act). It is proposed to appoint a date of commencement of 1 July 2010 by proclamation since this is the anticipated date that the Commonwealth will assume full responsibility for the national trade measurement system.

**Clause 3** defines certain words and expressions used in the proposed Act.

### Part 2 Repeals

**Clause 4** provides for the repeal of the *Trade Measurement Act 1989* and the *Trade Measurement Administration Act 1989*.

### Part 3 Transitional provisions

**Clause 5** enables the issue and service of a penalty notice under the repealed *Trade Measurement Administration Act 1989* in respect of a penalty notice offence committed before the date of that Act's repeal.

**Clause 6** provides for the taking of disciplinary action under the repealed *Trade Measurement Act 1989* if notice of such action was given in accordance with that Act before its repeal.

**Clause 7** allows a person to apply to the Administrative Decisions Tribunal for the review of a decision of a licensing authority under the *Trade Measurement Act 1989* following its repeal if the person was entitled to make such an application immediately before the date of repeal. Clause 7 also provides for the continuation of existing reviews after the date of repeal.

**Clause 8** allows an inspector to deal with a seized measuring instrument, record or other thing in accordance with the *Trade Measurement Act 1989* after its repeal if the inspector seized the thing prior to the date of repeal. Clause 8 also provides that the National Measurement Institute may inspect a seized thing for the purposes of the administration or enforcement of the Commonwealth trade measurement law.

**Clause 9** provides that 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 repeal of that Act continues to be recoverable as a debt due to the Crown. Clause 9 also allows for the recovery of a charge under section 11 of the *Trade Measurement Administration Act 1989* that would have become payable after the commencement date but that relates to a period ending on or before the commencement date.

**Clause 10** enables a search warrant to be issued after the commencement date in relation to the suspected contravention of a provision of the *Trade Measurement Administration Act 1989* or the *Trade Measurement Act 1989* (or of the regulations under either of those Acts) in or on a part of any premises before the commencement date.

**Clause 11** makes it clear, for the purposes of the continuing matters referred to in clauses 5–10, that the *Trade Measurement Act 1989* and the *Trade Measurement Administration Act 1989* continue to apply as if they had not been repealed and the Acts and instruments specified in Schedule 1 (except Schedule 1.1) continue to apply as if they had not been amended.

**Clause 12** provides that a reference in any other Act or instrument 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

**Clause 13** enables the Director-General (or an authorised member of staff of the Department of Services, Technology and Administration) to provide certain registers and other information to the National Measurement Institute for the purpose of the administration or enforcement of the Commonwealth trade measurement law.

**Clause 14** provides that section 30 of the *Interpretation Act 1987* is not affected by the proposed Act unless otherwise indicated in the proposed Act. Section 30 enables proceedings to be commenced under the repealed *Trade Measurement Act 1989* or the *Trade Measurement Administration Act 1989* in respect of offences which are alleged to have been committed before the date of repeal.

**Clause 15** enables regulations to be made for or with respect to any matter required or permitted to be prescribed by the proposed Act or that is necessary or convenient to be prescribed for carrying out or giving effect to the proposed Act.

**Clause 16** provides for the repeal of the proposed Act on 1 July 2013.

## Schedule 1 Amendment of Acts and instruments

**Schedule 1.1** amends the *Fair Trading Act 1987* to ensure that the information sharing arrangements provided for under section 9A of that Act are sufficiently flexible (by providing that such arrangements may be approved of by the Director-General in addition to being entered into by the Director-General). Schedule 1.1 also amends section 9A so that such arrangements may relate to information of a type prescribed by the regulations (in addition to the types of information already specified in that section).

**Schedule 1.2–1.9** make amendments to various Acts and instruments as a consequence of the repeal of the *Trade Measurement Act 1989* and the *Trade Measurement Administration Act 1989*.





New South Wales

# Trade Measurement (Repeal) Bill 2009

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New South Wales

## Trade Measurement (Repeal) Bill 2009

No. , 2009

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### **A Bill for**

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.

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**The Legislature of New South Wales enacts:** 1

**Part 1 Preliminary** 2

**1 Name of Act** 3

This Act is the *Trade Measurement (Repeal) Act 2009*. 4

**2 Commencement** 5

(1) Subject to subsection (2), this Act commences on a day to be appointed by proclamation. 6  
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(2) Sections 1, 2, 13 and 15 and Schedule 1.1 commence on the date of assent to this Act. 8  
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**3 Definitions** 10

(1) In this Act: 11

*administering authority* has the same meaning as it had in the *Trade Measurement Act 1989* (as in force immediately before the commencement date). 12  
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*commencement date* means the date of commencement of this Act (except sections 1, 2, 13 and 15 and Schedule 1.1). 15  
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*Commonwealth trade measurement law* means the *National Measurement Act 1960* of the Commonwealth or any regulations made under that Act. 17  
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*continuing matter* means: 20

(a) a penalty notice offence in respect of which a penalty notice is issued in accordance with section 5, or 21  
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(b) disciplinary action taken in accordance with section 6, or 23

(c) a review carried out, or an application for a review made, in accordance with section 7, or 24  
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(d) a seized measuring instrument, record, article or other thing to which section 8 applies, or 26  
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(e) a fee or charge to which section 9 applies, or 28

(f) a search warrant in respect of which an application is made, or that is issued, in accordance with section 10, or 29  
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(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). 31  
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***inspector*** has the same meaning as it had in the *Trade Measurement Administration Act 1989* (as in force immediately before the commencement date).

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

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

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

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

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Clause 4      Trade Measurement (Repeal) Bill 2009

Part 2      Repeals

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## **Part 2   Repeals**

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### **4   Repeal of Acts**

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

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<b>Part 3</b>	<b>Transitional provisions</b>	1
<b>5</b>	<b>Penalty notices</b>	2
(1)	A penalty notice may be issued and served on a person in relation to a penalty notice offence after the commencement date if:	3
(a)	the person is alleged to have committed the penalty notice offence before the commencement date, and	4
(b)	a penalty notice had not been served immediately before the commencement date.	5
(2)	In this section:	6
	<i>penalty notice offence</i> means an offence prescribed as a penalty notice offence by the regulations under the <i>Trade Measurement Administration Act 1989</i> immediately before the commencement date.	7
		8
<b>6</b>	<b>Disciplinary action</b>	9
(1)	The licensing authority may take disciplinary action against a licensee after the commencement date if:	10
(a)	the licensing authority served a written notice on the licensee in accordance with section 57 of the <i>Trade Measurement Act 1989</i> before the commencement date, and	11
(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.	12
(2)	In this section:	13
	<i>disciplinary action</i> means disciplinary action under section 58 of the <i>Trade Measurement Act 1989</i> (as in force immediately before the commencement date).	14
		15
<b>7</b>	<b>Reviews</b>	16
(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:	17
(a)	the person could have applied for the review of the decision under section 59 of the <i>Trade Measurement Act 1989</i> immediately before the commencement date, and	18
(b)	the person had not made such an application.	19
(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 <i>Trade Measurement</i>	20
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Clause 8 Trade Measurement (Repeal) Bill 2009

Part 3 Transitional provisions

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*Administration Act 1989* (as in force immediately before the commencement date). 1  
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- (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: 3  
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- (a) the application for the review under section 59 of the *Trade Measurement Act 1989* was made before the commencement date, and 8  
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- (b) the review had not been finally determined immediately before the commencement date. 11  
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**8 Seized measuring instruments, records, articles and other things** 13

- (1) This section applies if, before the commencement date, an inspector seized: 14  
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- (a) a measuring instrument, or records concerning a measuring instrument or its use, under section 61 of the *Trade Measurement Act 1989*, or 16  
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- (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*. 19  
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- (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. 22  
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- (3) The National Measurement Institute may inspect a seized thing for the purposes of the administration or enforcement of the Commonwealth trade measurement law. 25  
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**9 Unpaid fees** 28

- (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. 29  
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- (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. 33  
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<b>10</b>	<b>Search warrants</b>	1
(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:	2
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(a)	the inspector believes on reasonable grounds that a provision of the <i>Trade Measurement Act 1989</i> or the <i>Trade Measurement Administration Act 1989</i> 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	5
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(b)	a search warrant had not been issued as at the commencement date in relation to those premises based on the inspector's belief.	10
		11
(2)	Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to a search warrant under this section.	12
		13
(3)	In this section:	14
	<b>authorised officer</b> has the same meaning as it has in the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> .	15
		16
<b>11</b>	<b>Application of repealed Acts</b>	17
(1)	For the purposes of a continuing matter:	18
(a)	the <i>Trade Measurement Act 1989</i> and the <i>Trade Measurement Administration Act 1989</i> continue to apply as if they had not been repealed by this Act, and	19
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		21
(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.	22
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		24
	<b>Note.</b> In relation to proceedings for an offence against the <i>Trade Measurement Act 1989</i> or the <i>Trade Measurement Administration Act 1989</i> that are instituted or continued after those Acts are repealed, see section 14.	25
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		27
(2)	Without limiting subsection (1) and for the avoidance of doubt:	28
(a)	a person may be authorised to take proceedings for an offence under section 16 of the repealed <i>Trade Measurement Administration Act 1989</i> , and	29
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		31
(b)	an authority to prosecute given under section 16 of the <i>Trade Measurement Administration Act 1989</i> and in force immediately before the commencement date continues in force until it terminates, and	32
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(c)	section 25 of the <i>Trade Measurement Administration Act 1989</i> continues in force in relation to any function continued in force by this Act, and	36
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Part 3          Transitional provisions

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(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.      1  
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**12 References to repealed Acts**      4

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).      5  
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## 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

Clause 16 Trade Measurement (Repeal) Bill 2009

Part 4 Miscellaneous

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be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	1
(2) In particular, the regulations may make provision for or with respect to savings and transitional matters consequent on the repeal of the <i>Trade Measurement Act 1989</i> and the <i>Trade Measurement Administration Act 1989</i> .	2
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<b>16 Repeal of Act</b>	7
This Act is repealed on 1 July 2013.	8

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<b>Schedule 1</b>	<b>Amendment of Acts and instruments</b>	1
<b>1.1</b>	<b>Fair Trading Act 1987 No 68</b>	2
[1]	<b>Section 9A Exchange of information</b>	3
	Insert “, or approve of,” after “enter into” in section 9A (1).	4
[2]	<b>Section 9A (2) (d)</b>	5
	Insert after section 9A (2) (c):	6
	(d) any other information of a type prescribed by the regulations.	7 8
<b>1.2</b>	<b>Fines Act 1996 No 99</b>	9
	<b>Schedule 1 Statutory provisions under which penalty notices issued</b>	10
	Omit “ <i>Trade Measurement Administration Act 1989</i> , section 23”.	11
<b>1.3</b>	<b>Fisheries Management (General) Regulation 2002</b>	12
	<b>Clause 53A Beach safety meshing net</b>	13
	Omit “ <i>Trade Measurement Act 1989</i> ” from clause 53A (3) (e).	14
	Insert instead “ <i>National Measurement Act 1960</i> of the Commonwealth”.	15
<b>1.4</b>	<b>Law Enforcement (Powers and Responsibilities) Act 2002 No 103</b>	16 17
	<b>Schedule 2 Search warrants under other Acts</b>	18
	Omit “ <i>Trade Measurement Administration Act 1989</i> , section 22”.	19
<b>1.5</b>	<b>Licensing and Registration (Uniform Procedures) Act 2002 No 28</b>	20 21
[1]	<b>Schedule 1 Licences to which Part 2 of Act applies</b>	22
	Omit the heading “ <b>Trade Measurement Act 1989</b> ” and the matter under that heading.	23 24
[2]	<b>Schedule 4 Amendment of other Acts and statutory rules</b>	25
	Omit Schedule 4.13.	26

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<b>1.6 Protection of the Environment Operations (Waste) Regulation 2005</b>	1
	2
<b>Clause 15 Weighbridges</b>	3
Omit “ <i>Trade Measurement Act 1989</i> ” from clause 15 (2) (e).	4
Insert instead “ <i>National Measurement Act 1960</i> of the Commonwealth”.	5
<b>1.7 Road Transport (General) Act 2005 No 11</b>	6
<b>[1] Section 234 Evidence regarding measuring and weighing</b>	7
Omit “an inspector within the meaning of the <i>Trade Measurement Administration Act 1989</i> ”.	8
	9
Insert instead “a trade measurement inspector within the meaning of the <i>National Measurement Act 1960</i> of the Commonwealth”.	10
	11
<b>[2] Section 234</b>	12
Omit “the <i>Trade Measurement Act 1989</i> ”.	13
Insert instead “that Act”.	14
<b>1.8 Road Transport (Mass, Loading and Access) Regulation 2005</b>	15
	16
<b>Clause 67 Weighing devices</b>	17
Omit “ <i>Trade Measurement Act 1989</i> ”.	18
Insert instead “ <i>National Measurement Act 1960</i> of the Commonwealth”.	19
<b>1.9 Roads Act 1993 No 33</b>	20
<b>[1] Section 248 Evidentiary certificates</b>	21
Omit “an inspector within the meaning of the <i>Trade Measurement Administration Act 1989</i> ” from section 248 (3).	22
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Insert instead “a trade measurement inspector within the meaning of the <i>National Measurement Act 1960</i> of the Commonwealth”.	24
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**[2] Section 248 (3)**

Omit “the *Trade Measurement Act 1989*”.

Insert instead “that Act”.

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