

# Trade Measurement Administration Act 1989 No 234

[1989-234]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2001](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Trade Measurement Administration Act 1989 No 234



New South Wales

An Act relating to the administration of the [Trade Measurement Act 1989](#) and associated matters.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the [Trade Measurement Administration Act 1989](#).

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**Administrative Decisions Tribunal** means the Administrative Decisions Tribunal established by the [Administrative Decisions Tribunal Act 1997](#).

**Commissioner** means the Director-General of the Department of Fair Trading holding office as such under Part 2 of the [Public Sector Management Act 1988](#).

**corresponding law** means a law of another State or a Territory of the Commonwealth that corresponds with this Act.

**inspector** means:

- (a) the Superintendent, or
- (b) a person holding office under section 5 as an inspector, or
- (c) a person authorised under section 6 to exercise the functions of an inspector, or
- (d) an investigator appointed under section 18 of the [Fair Trading Act 1987](#).

**Principal Act** means the [Trade Measurement Act 1989](#).

**regulations** means regulations under this Act.

**Superintendent** means the person for the time being holding or acting in the office of Superintendent of Trade Measurement under section 5.

- (2) Expressions used in this Act have the same meanings respectively as they have in the Principal Act.
- (3) In this Act:
  - (a) a reference to a function includes a reference to a power, authority and duty, and
  - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

#### **4 Declarations for the purposes of the Principal Act**

For the purposes of the Principal Act:

- (a) the Superintendent is the administering authority, and
- (b) the Commissioner is the licensing authority.

## **Part 2 Staff**

### **5 Superintendent and other staff**

- (1) A Superintendent of Trade Measurement, inspectors and such other staff as may be necessary to provide for the administration of the Principal Act and this Act are to be employed under Part 2 of the [Public Sector Management Act 1988](#).
- (2) The Commissioner may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

### **6 Authority to exercise functions of an inspector**

- (1) Authority to exercise the functions of an inspector may be given by the Superintendent to:
  - (a) a person whose services are made available under section 5, or
  - (b) a person who, under a corresponding law, has functions similar to those of an inspector.
- (2) With the consent of the Commissioner of Police, authority to exercise the functions of an inspector may be given by the Superintendent to a member of the Police Force.
- (3) A person authorised under subsection (1) or (2) has the functions of an inspector for the time and purposes specified by the Superintendent when giving the authority.

## **7 Control of inspectors**

A person (other than the Superintendent) who exercises the functions of an inspector is, in the exercise of the functions, subject to the direction and control of the Superintendent.

## **8 Inspectors' certificates of authority**

The Commissioner is to issue to each inspector a certificate of authority in the form determined by the Commissioner.

## **9 Functions of Superintendent under Commonwealth regulations**

The Superintendent, with the approval of the Minister:

- (a) may hold an appointment made under the National Measurement Regulations of the Commonwealth, and
- (b) may exercise any functions conferred on the holder of the appointment.

## **Part 3 Fees and charges**

### **10 Charge payable in respect of verification or re-verification by inspector**

- (1) When an inspector verifies or re-verifies a measuring instrument pursuant to the Principal Act, there is payable to the administering authority by the owner of the instrument the appropriate charge, as prescribed by the regulations.
- (2) If a charge payable under this section is not paid, the administering authority is authorised by this section to obliterate the inspector's mark made in the course of the verification or re-verification concerned.
- (3) In this section:

**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.

### **11 Charges payable by licensee in respect of certification**

- (1) The regulations may make provision for or with respect to requiring a licensee to pay a charge to the administering authority when the licensee certifies a measuring instrument under the Principal Act.
- (2) It is a condition of a licensee's licence that the licensee pay any charge payable by the licensee under the regulations made for the purposes of this section.
- (3) The charges authorised to be imposed under this section are for the purpose of meeting the costs of administering this Act and the Principal Act and are in addition to any other fee or charge that a licensee is required to pay by or under this Act or the

Principal Act.

## **12 Regulations prescribing charges**

- (1) For the purpose of the prescription of charges under sections 10 and 11 (and without limiting those sections), the regulations may make provision for or with respect to any of the following:
  - (a) prescribing different charges for different types or classes of measuring instruments,
  - (b) prescribing different charges depending on the nature and circumstances of verification, re-verification or certification,
  - (c) prescribing the periods for which and the times by which the charges must be paid,
  - (d) requiring the submission by the persons liable to pay charges of returns as to the number and nature of measuring instruments verified, re-verified or certified during a specified period,
  - (e) requiring any such return to be verified by statutory declaration,
  - (f) providing for the reduction of, waiver of or exemption from payment of the prescribed charges in specified circumstances.
- (2) Regulations made for the purposes of section 11 need not require the payment of a charge for each and every certification of a measuring instrument and may, for example, provide that no charge, or a reduced charge, is payable in respect of any subsequent certification of the same measuring instrument during a specified period.
- (3) For the purposes of sections 10 and 11 (and the regulations under those sections), the marking of a measuring instrument with an inspector's mark or a licensee's mark pursuant to the provisions of the regulations under the Principal Act concerning batch testing is to be regarded as constituting the verification or certification, as appropriate, of the instrument concerned.

## **13 Other fees and charges may be prescribed**

- (1) Regulations may be made for and with respect to the imposition, collection and recovery of fees and charges for the purposes of the Principal Act and this Act including:
  - (a) application fees, and
  - (b) licence fees, and
  - (c) charges for the examination of public weighbridges for suitability, and

- (d) fees payable for the issue of amended licences or certificates and for the issue of duplicate licences and certificates, and
  - (e) charges payable where an inspector keeps an appointment to examine or test a measuring instrument but is unable to carry out the examination or testing because the measuring instrument is unavailable or inaccessible or access to it is unreasonably refused, and
  - (f) charges to re-imburse costs incurred in connection with the examination and testing of a measuring instrument under the Principal Act, and
  - (g) charges payable by a person where the use of specified labour or equipment provided by the Superintendent is necessary for the exercise of the functions of an inspector, and
  - (h) charges payable for the use by a person of specified equipment provided by the Superintendent.
- (2) The regulations may provide for a charge under subsection (1) (c)–(h) to be calculated on a time basis.
- (3) The regulations may provide for the fee payable under section 52 (Periodic licence fee) of the Principal Act for a licence to be a specified amount or an amount calculated in a specified manner.

#### **14 Recovery of unpaid fees and charges**

A fee or charge payable under this Part (or the regulations under this Part) is recoverable as a debt due to the Crown.

### **Part 4 Proceedings for offences**

#### **15 Time for instituting proceedings for offence**

Proceedings for an offence under the Principal Act or this Act may be instituted at any time before:

- (a) the expiration of the period of 3 years that next succeeds the commission of the offence, and
- (b) in the case of an offence under section 28 (1) (Requirements as to packaging of pre-packed articles) or 32 (1) (a) (Offence of packing short measure) of the Principal Act, the expiration of the period referred to in paragraph (a) or the expiration of the period of 1 year that next succeeds the discovery by an inspector of the commission of the offence, whichever is the later.

## **16 Disposal of proceedings for offence**

- (1) Proceedings for an offence under the Principal Act or this Act may be taken and prosecuted only by the Superintendent or, in the name of the Superintendent, by a person acting with the authority of the Superintendent.
- (2) Proceedings for an offence under the Principal Act or this Act must be disposed of summarily before:
  - (a) a Local Court constituted by a Magistrate, or
  - (b) the Supreme Court in its summary jurisdiction.
- (3) The maximum pecuniary penalty that may be imposed by a Local Court in proceedings that could have been taken in the Supreme Court is \$10,000.
- (4) In proceedings for an offence, an authority to prosecute purporting to have been signed by the Superintendent is evidence of that authority without proof of the signature of the Superintendent.

## **17 Double jeopardy**

- (1) If an act or omission is both an offence under the Principal Act and an offence under a law of the Commonwealth, or of another State, or of a Territory, a person who:
  - (a) is convicted of the offence under that law, or
  - (b) is found by a court to have committed the offence under that law but is not convicted,is not liable to be proceeded against for the offence under the Principal Act.
- (2) In proceedings under the Principal Act, a certificate that complies with subsection (3) in relation to a conviction or finding of a court is conclusive evidence of the conviction or finding unless it is proved:
  - (a) that the conviction was quashed or set aside, or
  - (b) that the finding was set aside or reversed.
- (3) A certificate complies with this subsection if it is signed by the registrar or other proper officer of the court that directed the conviction or made the finding and is to the effect:
  - (a) that a named person was, on a stated date, convicted by that court of a specified offence, or
  - (b) that a named person charged with a specified offence was, on a stated date, found by that court to have committed the offence but was not convicted.

## **18 Offences against the regulations**

If a regulation under the Principal Act or this Act imposes a penalty for an offence against the regulation, this Part applies to the offence in the same way as it applies to an offence against the Principal Act or this Act, except that:

- (a) proceedings for the offence against the regulation must be disposed of summarily before a Local Court constituted by a Magistrate, and
- (b) the maximum penalty that may be imposed for the offence is the penalty provided by the regulation.

## **Part 5 Reviews by the Administrative Decisions Tribunal**

### **19 Review tribunal (disciplinary proceedings against licensees)**

For the purposes of section 59 (Rights of review) of the Principal Act, the review tribunal is the Administrative Decisions Tribunal.

### **20 Powers on review**

- (1) The review tribunal is to determine any such application for review under section 59 of the Principal Act and in doing so may:
  - (a) in the case of an application for the review of a decision to refuse an application for a licence—make any decision that the licensing authority could have made on the application, and
  - (b) in the case of an application for a review of a decision to make an order under section 55 (Order preventing employment of certain persons) of the Principal Act—amend the order, and
  - (c) in the case of an application for a review of a decision to impose or vary a condition of a licence—impose a different condition or vary the condition differently, and
  - (d) in the case of an application for a review of a decision to take disciplinary action against a licensee—remit the matter to the licensing authority and direct it to take specified disciplinary action under section 58 (1) of the Principal Act.
- (2) Nothing in subsection (1) limits any other powers that the review tribunal has under Division 3 of Part 3 of Chapter 5 of the [Administrative Decisions Tribunal Act 1997](#).

### **21 (Repealed)**

## Part 6 General

### 22 Search warrants

- (1) An inspector may apply to an authorised justice for the issue of a search warrant if the inspector believes on reasonable grounds that a provision of this Act or the Principal Act or of the regulations under this Act or the Principal Act is being or has been contravened in or on a part of any premises.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:
  - (a) to enter the premises, and
  - (b) to search the premises for evidence of a contravention of this Act or the Principal Act or of the regulations under this Act or the Principal Act.
- (3) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.
- (4) In this section:

**authorised justice** has the same meaning as in the [Search Warrants Act 1985](#).

### 23 Penalty notices for certain offences

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act, or the Principal Act, prescribed by the regulations under this Act.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and

- (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section:
- authorised officer** means:
- (a) an inspector, or
  - (b) an officer of the administering authority authorised by the administering authority for the purposes of this section.

## 24 Service of documents

- (1) A document required or permitted by the Principal Act or this Act to be served on a person (whether the expression “serve”, “give” or “send” or any other expression is used) may, unless the contrary intention appears, be served:
- (a) on a natural person—by delivering it to the person personally or by leaving it at, or by sending it by pre-paid post to, the address of the place of residence or business of the person last known to the person serving the document, or
  - (b) on a body corporate—by leaving it at, or sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate.
- (2) Nothing in this section:
- (a) affects the operation of any other law of the State or elsewhere that authorises the service of a document in any other way, or
  - (b) affects the power of a court to authorise service of a document in any other way.

## 25 Delegation

- (1) The Commissioner may delegate to any person a function of the Commissioner exercisable under the Principal Act or this Act.
- (2) The Superintendent may delegate to any person a function of the Superintendent exercisable under the Principal Act or this Act.
- (3) A power of delegation under this section may not itself be delegated under this

section.

## **26 Savings and transitional provisions**

Schedule 2 has effect.

## **27 Repeals**

(1) The following Acts are repealed:

*Weights and Measures Act 1915 No 10*

*Weights and Measures (Amendment) Act 1980 No 63*

(2) The *Weights and Measures Regulations 1917* are repealed.

## **28 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 be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may make provision for or with respect to:
  - (a) any matter required or permitted by the Principal Act to be prescribed by regulations made under this Act, or
  - (b) the administration of the Principal Act.
- (3) A regulation may impose a penalty not exceeding 20 penalty units for an offence against the regulation.

## **29, 30 (Repealed)**

## **Schedule 1 (Repealed)**

## **Schedule 2 Savings and transitional provisions**

(Section 26)

### **1 Definitions**

In this Schedule:

***appointed day*** means the day on which this Schedule commences.

***repealed Act*** means the *Weights and Measures Act 1915* as in force immediately before the appointed day.

## **2 Marks under repealed Act**

A mark of verification or re-verification made on a measuring instrument pursuant to the repealed Act is to be considered to be an inspector's mark for the purposes of the Principal Act.

## **3 Permit for sale of pre-packed articles**

A permit in force under section 29F of the repealed Act immediately before its repeal is to be considered to have been issued under section 38 of the Principal Act.

## **4 References to the repealed Act**

A reference in any other Act, or in any instrument, to the repealed Act is to be read as a reference to this Act or the Principal Act, as appropriate.

## **5 General**

(1) If anything done or commenced under the repealed Act before the appointed day and still having effect, or not completed, immediately before that day could have been done or commenced under this Act or the Principal Act if it had been in force at the time the thing was done or commenced:

(a) the thing done continues to have effect, or

(b) the thing commenced may be completed,

as if it had been done or commenced under the Principal Act.

(2) Subclause (1) does not apply to anything in relation to which other provision is made by or under this Schedule.

## **6 Regulations**

(1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of the Principal Act or this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the appointed day or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its

publication therein.

- (4) A provision referred to in subclause (1) is, if the regulations so provide, to have effect despite any other clause of this Schedule.