



# Legislative Assembly

## Trade Measurement Amendment Bill

### Hansard

### Extract

06/03/2001

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#### Second Reading

**Mr WATKINS** (Ryde—Minister for Fair Trading, Minister for Corrective Services, and Minister for Sport and Recreation) [7.08 p.m.]: I move:

That this bill be now read a second time.

The purpose of the bill is to make a number of amendments designed to improve consumer protection under the Trade Measurement Act 1989. The Trade Measurement Act applies to all measurements made for trade or business purposes, including shop scales, flow meters for petrol and LPG pumps, liquor dispensers, weighbridges and industrial scales. The trade measurement legislation aims to promote fair trading and consumer protection. The New South Wales Trade Measurement Act is subject to the Uniform Trade Measurement Legislation Agreement, signed in 1990, which operates in all States and Territories except Western Australia. The agreement established a uniform legislative and administrative framework under which the Ministerial Council on Consumer Affairs [MCCA] considers and approves amendments to the model legislation. This model forms the base for trade measurement legislation in individual States and Territories.

The amendments proposed in this bill have arisen from a review of the trade measurement legislation by the Trade Measurement Advisory Committee [TMAC]. The TMAC was set up by the MCCA and has representation from all States and Territories. The TMAC has developed over 40 recommendations for improving the trade measurement legislation. The technical recommendations contained in the bill have become known as the batch No. 1 amendments. I will now outline some of the changes proposed in the bill. The amendments to the Trade Measurement Act are intended to provide clarification and certainty to consumers and businesses about the method of calculating weight or price. An area where this has an everyday impact on consumers is general grocery shopping, especially from supermarkets. New section 3A makes it clear to traders that pre-packed articles must be sold by reference to the net measurement of the article, disregarding all packaging used to present the article for sale.

Similarly, section 31 of the Act will be amended to make it clear that in respect of unit pricing of articles—that is, when the article is sold, for example, per kilogram—the weight of the packaging is to be disregarded when calculating the price. These requirements are to ensure that consumers pay for the actual item they want to purchase. This means that there is no incentive for a trader to add layers of elaborate packaging in order to reduce the amount of the real weight of the product being sold. Traders also benefit from these reforms. They will bring greater certainty which benefits traders by giving clearer direction as to what is required of them. It will be clearer also for consumers in the full extent of the protection they receive in relation to the measure and price of items they purchase. A number of other amendments flow from this clarification relating to the sale of articles or product by net measurement. For example, the powers of inspectors to weigh a vehicle to determine the net measurement of its load and to measure an article without its packaging will be clarified by these amendments.

Class 4 weighing instruments are also targeted by these changes. The purposes for which these less accurate and less expensive class 4 weighing instruments can be used will be specified to help ensure their appropriate application. It will be an offence to use a class 4 instrument for a use which is not listed in the legislation. Class 4 weighing instruments will also be able to be used for the determination of charges for freight and haulage. This will be of particular benefit to applications in the mining industry, where low cost materials are being transported. It is also proposed to introduce a new permit system that will enable an inspector to issue a notice to the owner of a measuring instrument to allow up to 28 days to have a minor problem corrected or rectified. Such a notice would be issued provided the problem does not affect the

accuracy of the instrument's measurement to the detriment of consumers. This will enable the owner to continue to legally sell product during this period without the risk of prosecution.

Consumers in remote areas, where there may be few or no alternative suppliers of critical products such as petrol, will also benefit from the continuing access to these products. In addition, when a pre-packaging business uses a measuring instrument it will be required to have at least one trade approved measuring instrument on its premises. Other provisions in the legislation provide sufficient incentive for packers to use this approved instrument to accurately measure or check the weight of the products they are packing. To clarify any doubt, it will be made clear that it is the administering authority—in the case of New South Wales, the Department of Fair Trading—which has the legal power to specify the reference standards of measurement. These standards are used by licensees or inspectors to check that measuring instruments comply with the requirements of the legislation.

There are other effective changes under the bill. It will be an offence to incorrectly estimate or decide the measurement of an article. In many situations the use of an estimate is a legitimate and reasonable method to charge for a product or service. However, there have been instances when consumers have been overcharged because the estimate was little more than an uninformed guess on the part of the trader in, say, supplying firewood or accepting rubbish for disposal at a tip. The amendment should encourage businesses to develop their own rule of thumb to ensure that their estimates do not result in consumers being overcharged or undersupplied, for example, periodically checking the weight of firewood deliveries. Licensing arrangements for partnerships will also be clarified under this amending legislation to establish that partners can jointly hold a single licence. A check on the probity of each partner will be carried out by the administering authority in this State, that is, the Department of Fair Trading.

Other amendments that will assist with the administration of the legislation include making it clear that licensees or the employees of licensees can be prosecuted if they breach licence conditions; formally recognising the use of batch numbers on pre-packaged articles as evidence for the purposes of prosecutions; and clarifying a requirement for batch testers to hold a servicing licence. Currently all batch testers in New South Wales hold a servicing licence. However, the legislation is presently unclear about this requirement. Another requirement to be clarified is for certified instruments to be sealed after they have been checked to prevent them being tampered with in a way that could affect their measurement accuracy. The department has been working with the supermarket industry, as well as being very active in enforcing the trade measurement and other consumer protection laws, and it is apparent that greater certainty in the laws which govern this important area of commerce will improve compliance and provide benefits across the board.

Honourable members may recall that in July 2000 I warned New South Wales supermarkets to improve weighing procedures for food items. This warning was issued following an increase in detection by the Department of Fair Trading of the number of food products that were underweight and resulted in an overcharge to consumers. These overcharges were caused by the inclusion of packaging material in the weight of the product. As I mentioned earlier, the New South Wales Trade Measurement Act 1989 requires that goods must be sold on a net weight basis, that is, any packaging or wrapping material should not be included in the weight and price calculation. The legislation provides for penalties of up to \$20,000 for an individual and \$100,000 for a corporation. In the 12 months to 31 December 2000, seven New South Wales supermarkets were fined nearly \$26,000 for 59 weighing offences. In light of such instances the Department of Fair Trading has again stepped up enforcement programs against supermarkets.

New South Wales consumers have a right to get exactly what they pay for, especially when they buy food. Following my statement in July 2000, the Australian Retailers Association [ARA], Coles Myer Ltd and Woolworths Ltd requested meetings to discuss the issues raised and other fair trading matters. A recommendation flowing from these meetings was that a working group be established with the supermarket chains, the Department of Fair Trading and, as appropriate, other organisations in which information on various fair trading matters could be discussed and disseminated. Subsequently, I wrote to the ARA supporting the establishment of the working group. The first meeting of the working group took place in December 2000, with the next meeting to be held this month. The department's trade measurement inspectors have continued a wide range of compliance activities in respect of supermarkets ranging from assisting them with setting up and testing their point-of-sale systems to initiating prosecutions when supermarket operators have failed to meet their obligations under the Trade Measurement Act.

This broad spectrum approach, when the department assists traders to comply but also disciplines traders who fail to do so, will continue. When necessary and appropriate, the department will look at

escalating its enforcement response to ensure that it secures compliance by supermarkets and other traders with New South Wales consumer protection laws. The New South Wales Government is determined to ensure that consumers get what they pay for. This bill will assist in ongoing compliance by traders with New South Wales trade measurement laws. Such compliance is ultimately to the mutual benefit of both traders and consumers. I commend the bill to the House.