



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.



New South Wales

# Trade Measurement Amendment Bill 2001

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New South Wales

# Trade Measurement Amendment Bill 2001

No. , 2001

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## A Bill for

An Act to amend the *Trade Measurement Act 1989* to adopt changes to maintain uniform trade measurement legislation agreed between the States and Territories; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1    Name of Act</b>	2
This Act is the <i>Trade Measurement Amendment Act 2001</i> .	3
<b>2    Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5 6
<b>3    Amendment of Trade Measurement Act 1989 No 233</b>	7
The <i>Trade Measurement Act 1989</i> is amended as set out in Schedule 1.	8

## Schedule 1 Amendments

	1
(Section 3)	2
<b>[1] Section 3 Definitions</b>	3
Insert in section 3 (1) in alphabetical order:	4
<i>class 4 measuring instrument</i> means a measuring instrument of an approved pattern that:	5
(a) has not less than 100 but not more than 1,000 verification scale intervals, each of which is not less than 5 grams, and	7
(b) is marked with a symbol that is an oval of any shape, or 2 parallel horizontal lines that are joined at each end by a semi-circle, with 4 vertical lines in it.	10
<b>[2] Section 3 (1)</b>	13
Omit the definition of <i>measurement</i> . Insert instead:	14
<i>measurement</i> means a determination of number or physical quantity, other than for descriptive purposes only.	15
<b>[3] Section 3 (2) and (3)</b>	17
Omit the subsections.	18
<b>[4] Sections 3A and 3B</b>	19
Insert after section 3:	20
<b>3A Determining certain quantities</b>	21
For the purposes of this Act:	22
(a) time interval not related to the calendar is a physical quantity, and	23
(b) time interval related to the calendar is not a physical quantity, and	25
(c) any packaging or other thing that is not part of an article is to be disregarded when determining a physical quantity.	27



**3B References to functions**

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.

**[5] Section 7 Measuring instruments used for trade must be marked**

Renumber existing section 7 (3) and (4) as section 7 (5) and (6).

**[6] Section 7 (3) and (4)**

Insert after section 7 (2):

- (3) If an inspector finds a measuring instrument that is being used in contravention of subsection (1) or (2), the inspector may give to the owner or user of the measuring instrument a written notice:
  - (a) stating that the measuring instrument:
    - (i) does not have an inspector's mark or a licensee's mark on it, or
    - (ii) for a weighbridge—does not comply with stated requirements of the regulations relating to weighbridges, and
  - (b) requiring the person to remedy the contravention within a stated period of not more than 28 days.
- (4) If the person complies with the notice, the person is taken not to have committed an offence against this section in relation to the circumstances to which the notice relates.

**[7] Sections 7A and 7B**

Insert after section 7:

**7A Use of class 4 measuring instruments**

A person must not use a class 4 measuring instrument for trade, other than:

- (a) as airport baggage scales, or

(b)	for the determination of freight or haulage charges, or	1
(c)	for weighing garbage, or	2
(d)	for weighing earth, sand, gravel or other similar material, or	3 4
(e)	as a crane-weigher, or	5
(f)	for weighing timber in log form, or	6
(g)	for another purpose prescribed by the regulations.	7
	Maximum penalty:	8
(a)	if the class 4 measuring instrument is a weighbridge—\$10,000, or	9 10
(b)	in any other case—\$5,000.	11
<b>7B</b>	<b>Use of measuring instruments for pre-packed articles</b>	12
	A person must not use a measuring instrument for measuring pre-packed articles on premises in which articles are pre-packed unless at least one measuring instrument on the premises is approved for trade use under the National Measurement Act, complies with this Act, and is suitable for measuring the articles to be pre-packed.	13 14 15 16 17 18
	Maximum penalty: \$5,000.	19
<b>[8]</b>	<b>Section 8 Unjust measurement</b>	20
	Omit “or unjust” from section 8 (1).	21
<b>[9]</b>	<b>Section 8 (4)</b>	22
	Renumber existing section 8 (4) as section 8 (6).	23
<b>[10]</b>	<b>Section 8 (4) and (5)</b>	24
	Insert after section 8 (3):	25
(4)	If an inspector finds a measuring instrument being used for trade that is incorrect or is being used in a way that is unjust, the inspector may give to the owner or user of the measuring instrument a written notice:	26 27 28 29
(a)	stating that:	30
(i)	the measuring instrument is incorrect, or	31

	(ii) the way the person is using it is unjust, and	1
	(b) requiring the person to take stated steps to stop contravening the relevant subsection within a stated period, of not more than 28 days.	2 3 4
	(5) If the person complies with the notice, the person is taken not to have committed an offence against this section in relation to the circumstances to which the notice relates.	5 6 7
<b>[11]</b>	<b>Section 9 Supplying incorrect etc. measuring instrument</b>	8
	Omit “or unjust” from section 9 (1).	9
<b>[12]</b>	<b>Section 10 Provision and maintenance of standards</b>	10
	Omit “classes of reference standards of measurement as may be necessary for the purposes of this Act” from section 10 (1).	11 12
	Insert instead “classes and denominations of reference standards of measurement as the administering authority decides are necessary for the purposes of this Act”.	13 14 15
<b>[13]</b>	<b>Section 10 (2)</b>	16
	Omit “classes”.	17
	Insert instead “classes and denominations, decided by the administering authority,”.	18 19
<b>[14]</b>	<b>Section 23 Incorrect measurement or price calculation</b>	20
	Insert “or decides the measurement” after “operates the measuring instrument”.	21 22
<b>[15]</b>	<b>Section 23 (a)</b>	23
	Omit “the other party to the sale”.	24
	Insert instead “any other person who is a party to a sale of the article”.	25
<b>[16]</b>	<b>Section 31 Incorrect pricing of pre-packed article</b>	26
	Insert “(without any packaging or other thing that is not part of the article)” after “article” where lastly occurring in section 31 (1).	27 28

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<b>[17] Section 42 Requirement for servicing licence</b>	1
Renumber existing section 42 (2) as section 42 (3).	2
<b>[18] Section 42 (1) and (2)</b>	3
Omit section 42 (1). Insert instead:	4
(1) A person must not test a batch of measuring instruments or certify or purport to certify a measuring instrument unless the person is the holder of a servicing licence or an employee of the holder of a servicing licence.	5 6 7 8
Maximum penalty: \$20,000.	9
(2) A person who is the holder of a servicing licence, or an employee of the holder of a servicing licence, must comply with the conditions of the licence.	10 11 12
Maximum penalty: \$20,000.	13
<b>[19] Section 44 Application for licence</b>	14
Renumber existing section 44 (2) and (3) as section 44 (3) and (4).	15
<b>[20] Section 44 (2)</b>	16
Insert after section 44 (1):	17
(2) However, if two or more persons who carry on business together as partners join in making an application, the licensing authority may only grant a single licence to the joint applicants.	18 19 20
<b>[21] Section 60 Powers of entry etc.</b>	21
Omit section 60 (1) (b). Insert instead:	22
(b) require a person in charge of such a vehicle to stop it, or move it a reasonable distance to a place specified by an inspector, to enable the inspector:	23 24 25
(i) to enter and search it, or	26
(ii) to weigh or measure it and its load, and	27

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<b>[22] Section 61 Powers in relation to measuring instruments</b>	1
Insert at the end of the section:	2
(2) Also, the inspector may record the details of any measuring instrument that is examined or tested under this section in the way the inspector considers appropriate, including by filming or photographing.	3 4 5 6
<b>[23] Section 62 Powers in relation to articles</b>	7
Insert “and measure” after “examine” in section 62 (1) (a).	8
<b>[24] Section 62 (4)</b>	9
Insert after section 62 (3):	10
(4) Also, the inspector may record the details of any article that is examined or measured under this section in the way the inspector considers appropriate, including by filming or photographing.	11 12 13 14
<b>[25] Section 76 Evidence—pre-packed articles</b>	15
Omit “prima facie” wherever occurring.	16
<b>[26] Section 76 (4)</b>	17
Renumber existing section 76 (4) as section 76 (5).	18
<b>[27] Section 76 (4)</b>	19
Insert after section 76 (3):	20
(4) A batch number on a pre-packed article is evidence of the matters indicated by the number, including for example, the date and place the article was packed and who packed it.	21 22 23
<b>[28] Section 76 (6)</b>	24
Insert after the subsection renumbered as section 76 (5):	25
(6) In this section:	26
<i>batch number</i> means a number marked on a pre-packed article in accordance with a system of numbers, letters or symbols or	27 28

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any combination of numbers, letters and symbols, used by the	1
person packing the article to mark the article to indicate when	2
and where it was packed and who packed it.	3
<b>[29] Section 80 Regulations</b>	4
Insert “certified,” after “of a” in section 80 (2) (g).	5