

## **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 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 Queensland (*Consumer Credit and Trade Measurement Amendment Act 2006*).

The object of this Bill is to amend the *Trade Measurement Act 1989* of New South Wales (**the Principal Act**) and the *Trade Measurement Administration Act 1989* of New South Wales to adopt the amendments concerned.

### 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 to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Trade Measurement Act 1989* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Trade Measurement Administration Act 1989* set out in Schedule 2.

**Clause 5** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

### **Schedule 1 Amendment of Trade Measurement Act 1989**

**Schedule 1 [1] and [2]** amend the definition of **class 4 measuring instrument** to improve the clarity of the definition.

**Schedule 1 [3]** inserts definitions of **firewood, pack** (for the purpose of deciding who packs or has packed an article as a pre-packed article), **use** (in relation to the use of a measuring instrument for trade) and **weighbridge suitability statement** (in relation to a public weighbridge licence) into the Principal Act.

**Schedule 1 [4]** amends the definition of **sell** so that it includes anything else (not already included in the definition) that is a sale.

**Schedule 1 [5]** amends section 7 (Measuring instruments used for trade must be marked) to make it clear that a person who complies with a written notice issued as a result of the person's use of a measuring instrument in contravention of section 7 may not be prosecuted for an offence against the section.

**Schedule 1 [6]** makes a minor amendment to section 7A to ensure the uniformity of trade measurement legislation.

**Schedule 1 [7]** amends section 7B by utilising the defined term **approved pattern** (which is used throughout the Principal Act) and removing superfluous information.

**Schedule 1 [8]** amends section 8 (Unjust measurement) to make it clear that a person who complies with a written notice issued as a result of the person's use of a measuring instrument in contravention of section 8 may not be prosecuted for an offence against the section.

**Schedule 1 [9]** makes a minor amendment to section 9 to remove superfluous words.

**Schedule 1 [10]** also amends section 9 (which holds the supplier of an incorrect measuring instrument guilty of an offence) by inserting a new subsection which provides that (subject to the defence in section 9 (3) (b)) it does not matter whether the person who used the measuring instrument purchased it or took it on lease, hire or loan for trade.

**Schedule 1 [11]** substitutes section 23 to provide more certainty as to when a person using a measuring instrument is guilty of an offence for misleading another party about the measurement and price calculation of an article or not correctly determining the price by reference to the correct measurement of the article. In particular, the proposed new section 23 makes it clear that it does not matter whether the person using the measuring instrument is going to sell the article or the article will be sold by another person.

**Schedule 1 [12]** inserts proposed section 25A into the Principal Act. This section addresses the sale of firewood by volume. Until now, the provisions have been silent on a method of calculating the quantity of firewood when it is sold by volume. The proposed new section applies section 23 to firewood sales and requires that a volume of firewood stated for sale must be at least the volume that is worked out when the firewood is stacked with as few gaps as practicable. However, there is no requirement that the firewood must actually be stacked in this manner before sale.

**Schedule 1 [13]** amends section 44 so that the licensing authority may grant a public weighbridge licence for a single weighbridge (rather than granting a general weighbridge licence). **Schedule 1 [18]** makes a consequential amendment.

**Schedule 1 [14]** amends section 44 to require a licence granted to a partnership to state the names of all the partners and any registered business name and to provide that each partner stated in the licence is taken to be a holder of the licence.

**Schedule 1 [15]** makes a minor law revision amendment to section 44.

**Schedule 1 [16]** amends section 45 to make it clear that the grounds for refusing an application for a licence apply to each member of a partnership and also to require the licensing authority to refuse an application for a public weighbridge licence if the weighbridge is not suitable for use as a public weighbridge.

**Schedule 1 [17]** amends section 50 to provide that a public weighbridge licence is subject to a condition that the weighbridge must not be operated unless the licence has a weighbridge suitability statement (being a statement that the weighbridge is suitable for use as a public weighbridge). This replaces the current condition that the weighbridge must not be operated unless it is the subject of a "current certificate". A condition that the weighbridge suitability statement is in force only until the end of the period for which the fee payable in relation to the statement has been paid (or the period as extended under proposed section 52A) and a condition that the weighbridge mentioned in the licence be located at the place stated in the licence are also introduced.

**Schedule 1 [19]** inserts proposed sections 52A and 52B into the Principal Act. Proposed section 52A provides that a licensee may continue to operate a public weighbridge under the licence in certain circumstances even though the weighbridge suitability statement has expired. Proposed section 52B sets out the action that may be taken if the administering authority decides a public weighbridge is no longer suitable for use as a public weighbridge.

**Schedule 1 [21]** inserts proposed sections 54A, 54B, 54C and 54D into the Principal Act. Proposed section 54A applies if a licensee moves a weighbridge from the location at which it was inspected before the issue of a weighbridge suitability statement to another location at the place stated in the licence. It requires the surrender of the licence after such a relocation (to ensure that the weighbridge is reinspected). Proposed section 54B allows a partnership to apply to the licensing authority to amend the licence if there is a change to the membership of the partnership. Proposed section 54C allows for the continuation of a licence in certain circumstances where the membership of a partnership holding the weighbridge licence has been changed. Proposed section 54D allows a licensee under a servicing licence to apply for an amendment to a condition of the licence which specifies the class or classes of measuring instruments which may be certified by the licensee.

**Schedule 1 [20]** makes a consequential amendment.

**Schedule 1 [22]** amends section 56 to clarify that if a ground for disciplinary action under that section exists in relation to one or more of the members of a licensed partnership, it applies to the licensed partnership.

**Schedule 1 [23]** amends section 59 to provide a right of review in relation to an amendment of a licence as well as the existing right of review of a refusal of an application for a licence.

**Schedule 1 [24]** amends section 59 to provide a right of review in relation to a decision to cancel a licence because the weighbridge mentioned in the licence is no longer suitable as a public weighbridge.

**Schedule 1 [25]** amends section 80 to enable regulations to be made in relation to weighbridge suitability statements.

**Schedule 1 [26]** amends section 80 to enable regulations to be made in relation to the approval of forms for use under the Principal Act.

**Schedule 1 [27]** inserts a new Part IX (proposed sections 82 and 83) into the Principal Act. The new Part contains transitional provisions consequent on the enactment of the proposed Act. Proposed section 82 provides that a certificate issued by the administering authority for the purposes of section 50 (1) (a) of the Principal Act (to the effect that the weighbridge is suitable for use as a public weighbridge), immediately before the commencement of the proposed Act, is taken to be a weighbridge suitability statement, expiring when the certificate would otherwise have expired. Proposed section 83 deals with licensees who, immediately before the commencement of the proposed Act, operate more than one public weighbridge. Proposed section 83 provides that each public weighbridge is taken to be licensed under a separate public weighbridge licence on that commencement. However, a separate periodic licence fee is not payable until the day the periodic licence fee is payable under section 52.

#### **Schedule 2 Amendment of Trade Measurement Administration Act 1989**

**Schedule 2 [1]** amends section 13 to enable regulations to be made for the imposition, collection and recovery of fees for providing weighbridge suitability statements and duplicates of such statements.

**Schedule 2 [2]** amends section 13 to clarify that a prescribed fee for a public weighbridge licence and a weighbridge suitability statement may be a combined fee for the same period.