

[Home](#) » [Hansard & Papers](#) » [Legislative Assembly](#) » [25 September 2007](#) » [Full Day Hansard Transcript](#) » [Item 50 of 52](#) »

## Trade Measurement Legislation Amendment Bill 2007

About this Item

Speakers - [Burney Ms Linda](#)

Business - [Bill, Bill Introduced, Agreement in Principle, Motion](#)

### TRADE MEASUREMENT LEGISLATION AMENDMENT BILL 2007

Page: 2253

**Bill introduced on motion by Ms Linda Burney.**

#### **Agreement in Principle**

**Ms LINDA BURNEY** (Canterbury—Minister for Fair Trading, Minister for Youth, and Minister for Volunteering) [7.50 p.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to introduce the Trade Measurement Legislation Amendment Bill 2007. The purpose of the bill is to amend the Trade Measurement Act 1989 and the Trade Measurement Administration Act 1989 in line with amendments approved by the Ministerial Council on Consumer Affairs for the uniform trade measurement legislation. The New South Wales amendment bill is based on the model amendment Act prepared by the lead jurisdiction for the uniform legislation—Queensland. It was the Queensland model bill that was approved by the ministerial council and was subsequently passed by the Queensland Parliament as the Consumer Credit and Trade Measurement Amendment Act 2006, which was assented to on 2 May 2006.

Before explaining the relationship between the New South Wales trade measurement legislation and the uniform legislation I would like to outline the scope of the two New South Wales Acts to which I have just referred. The Trade Measurement Act applies to all measurements made for trade purposes and aims to promote fair trading and consumer protection in relation to transactions conducted by weight or measure. For example, the measurements may come from shop scales in a suburban supermarket or corner store, flow meters at petrol stations, liquor dispensers at the local club or pub and public weighbridges used to check the weight of an article—for example, a truckload of soil—supplied by a trader to a consumer. The Act's coverage includes the approval, use and inspection of measuring instruments used for trade, requirements for the packaging and labelling of pre-packaged articles—for example, bottled or boxed articles on supermarket shelves—and a licensing system for businesses that service and certify measuring instruments or operate public weighbridges.

The Trade Measurement Administration Act provides for the administrative arrangements required under the trade measurement legislation and includes dealing with the employment and authority of government trade measurement inspectors, the setting of fees and charges for licensees who undertake certification of measuring instruments for their owners and the proceedings for offences against the legislation.

Returning to the connection between the uniform legislation and the New South Wales trade measurement legislation, both are subject to the uniform trade measurement agreement, which was signed in 1990 by the New South Wales Government, most of the other State and Territory governments and the Commonwealth to enact the uniform legislation. The agreement established the legislative and administrative framework under which the ministerial council considers and approves amendments to the model uniform legislation that applies in the participating jurisdictions. The proposed amendments in this bill have arisen from a review of the uniform legislation carried out by the Trade Measurement Advisory Committee. The committee was formed by the ministerial council in 1995 and one of its functions is the ongoing review of the uniform legislation. The committee is made up of the trade measurement managers and representatives from each of the participating jurisdictions and includes representation from New South Wales.

Collectively, the bill amendments are known by the Trade Measurement Advisory Committee as the "batch two" amendments in order to distinguish them from an earlier "batch one" set of amendments to the uniform legislation that were approved by the ministerial council and assented to in New South Wales on 4 April 2001. The current amendments proposed in the bill were prepared by the Trade Measurement Advisory Committee and the Parliamentary Counsel's Committee. They are mostly of a technical or minor nature and designed to improve the administration of the uniform legislation by clarifying its intent or covering identified deficiencies. Several of the proposed amendments will also improve consumer protection—for example, the sale of firewood by volume provisions.

To assist members of the House I will now provide an overview of the proposed amendments in the bill, which

can be thought of as constituting three main groups. Most of the bill amendments relate to the Trade Measurement Act and two amendments affect the Trade Measurement Administration Act, which I will identify separately. The first group of bill amendments concerns licensing arrangements for public weighbridge and servicing licensees. Currently under the Act the owner of a public weighbridge or a measuring instrument service and certification business is required to be licensed. The bill seeks to clarify the following arrangements for these licensees, who have chosen to structure their business as a partnership so that all licensees are treated the same irrespective of whether they are structured as a sole trader, incorporated body or partnership.

Firstly, the bill clarifies that all partner names must appear on the partnership licence and that each partner must comply with the trade measurement legislative requirements. Secondly, it clarifies that the grounds for refusing a licence apply to each member of the partnership who has applied for a licence. Thirdly, it makes provision to enable a partnership to change the names on the licence due to a change in partnership membership. Fourthly, it clarifies when changes to partnership membership come into effect. Finally, it clarifies that disciplinary action applies to the partnership if the grounds for disciplinary action exist in relation to any one partner. The bill also clarifies that a servicing licensee may apply to the licensing authority—being the Office of Fair Trading in New South Wales—for an amendment to one of the licence conditions. For example, licensees may have a condition on their licence that restricts the classes of measuring instruments that they may certify because they have not completed the relevant training. Following completion of the training, this bill amendment makes it clear that licensees can apply to have that condition removed from the licence.

A number of the bill amendments will improve the administration of public weighbridge licensing under the Act so that a user of the weighbridge can readily determine that it is correctly licensed. The amendments will also reduce the paperwork for public weighbridge owners. These bill amendments include the following: Firstly, the bill licenses the individual public weighbridge rather than the owner of the weighbridge to help make sure that each weighbridge meets the requirements under the legislation. Secondly, it introduces a "weighbridge suitability statement" and explains the circumstances under which the statement will continue to be in force, which rolls into one document the statement and the licence for the weighbridge. Thirdly, it sets out the procedure for handling a public weighbridge that is no longer suitable for use as a public weighbridge because, for example, it now contravenes the legislative weighbridge operational requirements.

The handling procedure includes the option for written notification to the owner about the problem and the opportunity to reply to the administering authority. It also provides for the surrender of a public weighbridge licence where the weighbridge has been moved, for regulation-making powers and transitional arrangements for the introduction of the proposed suitability statement and for fee arrangements under the Administration Act, such as a fee for amending the suitability statement.

The second group of amendments primarily concerns the improvement of consumer protection under the uniform legislation in relation to the sale of firewood by volume and clarification to whom the incorrect measurement and price calculation provisions apply. The bill introduces amendments that will apply to the sale of firewood by volume; for example, where a consumer orders so many cubic metres of firewood from a supplier. It can be difficult to resolve disputes between consumers and traders over the volume of firewood supplied because the Act does not define "firewood" or provide a test for determining the volume supplied. The amendments aim to remedy these deficiencies.

For example, a firewood trader who states he is supplying two cubic metres of firewood to a consumer will need to ensure that the quantity supplied is at least the volume worked out using the dimensions of a stack of firewood that has as few gaps as possible. This does not mean that the trader needs to stack and measure each delivery of firewood to determine its volume. However, the trader will need to develop some system or rule of thumb that ensures the correct volume is delivered to consumers. This might involve, for example, the trader doing a once-only determination of the volume of wood he can put in the back of his delivery truck.

These provisions do not apply to firewood sold by weight or by the load, and traders may continue to supply firewood by these means if they are acceptable to the consumer. However, if the trader indicates on the consumer's receipt that he has supplied two cubic metres of firewood, these amendments provide a method to check the volume statement in the event that it is disputed by the consumer. This proposal will also provide a level playing field for long-term firewood suppliers and fly-by-night operators because both will be subject to the same requirements.

Another reform in the bill is the replacement of the current provisions of the Act concerning incorrect measurement and price calculation of an article. These will be replaced with a form of words that clarifies when a person using a measuring instrument is guilty of an offence for misleading another person about the measurement and price calculation of an article. The new provisions make it clear that it does not matter whether the person using the measuring instrument is going to sell the article or whether the article will be sold by another person at any time following its measurement. A person commits an offence if because of the person's measurement of the article any party to the sale is misled as to the measurement of the article or the calculation of the article's price that results in the party's detriment, or the price paid or required to be paid is

not the price correctly determined by reference to the correct measurement of the article and as a result any party to the sale suffers or would suffer detriment. The amendment makes it clear that the penalty arises only if a party or parties suffer or would suffer some detriment—for example, a consumer being overcharged for an article.

The following example illustrates an application of these provisions. A consumer may agree to purchase a truckload of topsoil from a supplier and pay for it by the tonne based on the measurement of the topsoil's weight. The supplier could use a public weighbridge to measure the weight of the topsoil and calculate the price accordingly. In the event that the public weighbridge operator did not correctly weigh the load of soil, the operator would have committed an offence under the provision.

The third group of amendments concerns definitions under the Act and other minor or technical amendments to improve its administration. The bill amends several definitions. Firstly, "pack" is amended to clarify who is responsible for ensuring that a package complies with the pre-packaged article requirements of the legislation. Secondly, "use" is amended to make it clear who is responsible for meeting the requirements in relation to the use of a measuring instrument. Usually it will be the owner of the instrument and not an employee. Thirdly, "class 4 measuring instrument" is amended to clarify that the instrument's measurement scale and class 4 identification symbol accord with the legislative requirements. Class 4 instruments are useful for weighing relatively low value goods per unit of weight such as sand or soil. Fourthly, the definition of "sell" is amended to include "anything else that is a sale". That is in addition to the current definitions, which include "agree to sell" and "offer or expose for the purpose of selling".

Other minor or technical amendments covered by the bill include clarifying the circumstances where a person will not be prosecuted, for example, if they are complying with a notice issued under the Act to rectify a non-compliant measuring instrument, clarifying that a class 4 measuring instrument, which includes compliant freight scales, may be used to weigh a variety of freight containers or articles to determine the applicable freight or transport charges, and allowing government licensing authority decisions to be appealed, for example, a decision made by an authority about an application to amend a condition on a licence issued under the Act.

Stakeholders have been consulted through the release of consultation papers and through direct discussions with industry representatives. I am advised that stakeholders either support the proposed amendments or have no concern with them. It is proposed that the amendments will commence in New South Wales on a date to be proclaimed. This will allow for associated amendments to the regulations to be made. It will also enable stakeholders, including instrument owners, certifiers, public weighbridge operators and government inspectors, to be provided with updated information about the implementation of the amendments.

The amendments contained in this bill will enable the Government to continue its role in the provision of high-quality trade measurement services to the people of New South Wales. The passage of the bill through Parliament will also enable the Government partially to fulfil an element of the Council of Australian Governments' agreement on the national trade measurement system. That element concerns the maintenance of the necessary resources for the administration of trade measurement during the transition period to the Commonwealth national system.

I will now set out the main elements of the Council of Australian Governments' agreement made on 13 April 2007 concerning the national system because it points the way to the future provision of trade measurement services throughout Australia, including New South Wales. The council's April 2007 agreement in relation to national trade measurement comprised agreement to the Commonwealth's offer to take full responsibility for the national trade measurement system, including funding; noting the Commonwealth's commitment to ensure the maintenance of existing trade measurement service standards; a three-year transition period for the transfer of responsibility for the administration of the national trade measurement system, with the Commonwealth administration commencing on 1 July 2010; consultation with New Zealand in developing the national legislation and administration to explore opportunities for greater harmonisation in trade measurement; the States' and Territories' agreement to maintain the necessary resources devoted to the administration of trade measurement during the transition period, including staffing and funding, to ensure continuity of service and maintenance of existing service standards; and Commonwealth, State and Territory officials working together to develop detailed transitional arrangements, including facilitating the transfer of resources where required for the operation of the new national system.

While noting the future transfer of trade measurement administration to the Commonwealth, the amendments will enable the Government to continue to provide for the fair and efficient measurement of traded goods for both consumers and businesses in New South Wales. I commend the bill to the House.

**Debate adjourned on motion by Mr Thomas George and set down as an order of the day for a future day.**

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