

## Second Reading

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [5.03 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

### Leave granted.

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 NSW 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 has subsequently been 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 NSW Trade Measurement Legislation and the Uniform Legislation, I would like to outline the scope of the two NSW Acts I have just referred to.

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 the 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, of 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 prepackaged 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 NSW Trade Measurement Legislation, both are subject to the Uniform Trade Measurement Agreement, which was signed in 1990, by the NSW 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 which 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. That 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 of 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, to distinguish them from an earlier "batch one" set of amendments to the Uniform Legislation which were approved by the Ministerial Council and assented to in NSW on 4 April 2001.

The current amendment proposals in this Bill are prepared by the Trade Measurement Advisory Committee and the Parliamentary Counsel's Committee. They are mostly of a technical or minor nature 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 this House, I would now like to provide an overview of the proposed amendments in the Bill, which can be thought of as comprising three main groups. Most of the Bill amendments relate to the Trade Measurement Act. Two amendments affect the Trade Measurement Administration Act which I will identify separately.

The first group of Bill amendments concern 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:

clarification that all the partner names must appear on the partnership licence and that each partner must comply with the trade measurement legislative requirements,

clarification that the grounds for refusing a licence apply to each member of the partnership which has applied for a licence,

provision to enable a partnership to change the names on the licence due to a change in partnership membership,

clarification of when changes to partnership membership come into effect, and

clarification that disciplinary action applies to the partnership, if the grounds for disciplinary action exist in relation to anyone partner.

The Bill 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 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:

licensing the individual public weighbridge rather than the owner of the weighbridge to help make sure that each weighbridge meets the requirements under the legislation,

the introduction of a "weighbridge suitability Statement" and 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,

setting out the procedure for handling a public weighbridge which is no longer suitable for use as a public weighbridge, for example, because it now contravenes the legislative weighbridge operational requirements, the handling procedure includes the option for written notification of the owner about the problem and the opportunity to reply to the administering authority.

provision for the surrender of a public weighbridge licence where the weighbridge has been moved,

provision for regulation making powers and transitional arrangements for the introduction of the proposed suitability Statement, and

in the Administration Act, to provide for the fee arrangements such as a fee for amending the suitability Statement.

The second group of Bill amendments mainly concern the improvement of consumer protection under the Uniform Legislation in relation to the "sale of firewood by volume" and clarification of who the incorrect measurement and price calculation provisions apply to.

The Bill introduces amendments which will apply to the sale of firewood by volume, for example, where a consumer orders so many cubic metres of firewood from a supplier. Currently, it can be difficult to resolve disputes between consumers and traders over the volume of firewood supplied, as the Act does not define firewood or provide a test for determining the volume supplied. The proposed 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 which 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 that 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 Bill 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 provisions 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 the "fly-by-night" operators, as 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 which 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 proposed 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 the measurement of the article.

For the sale of the article, 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 Bill amendment makes it clear that the penalty only arises where a party or parties suffer or would suffer some detriment, for example, a consumer being charged more for an article than they were going to receive.

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 Bill amendments concern definitions under the Act and other minor or technical amendments to improve its administration.

The Bill amends several definitions under the Act including the following ones:

"pack" is amended to clarify who is responsible for making sure that a package complies with the prepackaged article requirements of the legislation;

"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;

"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; and

"sell" is amended to enlarge the definition to include "anything else that is a sale" which 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.

In relation to consultation about the amendments, 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 Bill amendments will commence in NSW 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 to partially 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 would now like to set out the main elements of the Council's agreement made on 13 April 2007 concerning the national system, as it points the way to the future provision of trade measurement services throughout Australia, including New South Wales. Council's April 2007 agreement, in relation to national trade measurement, comprised the following elements:

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 Bill 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.