

South Australia



ANNO QUINQUAGESIMO
ELIZABETHAE II REGINAE
A.D. 2001

TRADE MEASUREMENT (MISCELLANEOUS) AMENDMENT ACT 2001

No. 48 of 2001

[Assented to 11 October 2001]

An Act to amend the Trade Measurement Act 1993.

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The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Trade Measurement (Miscellaneous) Amendment Act 2001*.
- (2) The *Trade Measurement Act 1993* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 3—Definitions

3. Section 3 of the principal Act is amended—

- (a) by inserting after the definition of "certify" in subsection (1) the following definition:

"class 4 measuring instrument" means a measuring instrument of an approved pattern that—

- (a) has not less than 100 but not more than 1 000 verification scale intervals, each of which is not less than five grams; and
- (b) is marked with a symbol that is an oval of any shape, or two parallel horizontal lines that are joined at each end by a semi-circle, with four vertical lines in it;;

- (b) by striking out from subsection (1) the definition of "measurement" and substituting the following definition:

"measurement" means a determination of number or physical quantity, other than for descriptive purposes only;;

- (c) by striking out subsections (2) and (3).

Insertion of ss. 3A and 3B

4. The following sections are inserted after section 3 of the principal Act:

Determining certain quantities

3A. For the purposes of this Act—

- (a) time interval not related to the calendar is a physical quantity; and
- (b) time interval related to the calendar is not a physical quantity; and
- (c) any packaging or other thing that is not part of an article is to be disregarded when determining a physical quantity.

References to functions

3B. 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.

Amendment of s. 7—Measuring instruments for trade must be marked

5. Section 7 of the principal Act is amended by striking out subsections (3) and (4) and substituting the following subsections:

(3) If an inspector reasonably suspects that a measuring instrument has been or 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) setting out details of the alleged contravention; and
- (b) requiring the person to remedy the contravention within a stated period not exceeding 28 days.

(4) If the notice is complied with, the contravention to which the notice relates is not an offence against this section.

(5) This section does not apply to the use of a measuring instrument to determine a quantity of articles by number.

(6) The regulations may provide for the circumstances in which the use for trade of a measuring instrument that has been repaired or modified, or commissioned, is permitted even though it does not bear an inspector's mark or a licensee's mark, pending its verification or certification.

Insertion of ss. 7A and 7B

6. The following sections are inserted after section 7 of the principal Act:

Use of class 4 measuring instruments

7A. A person must not use a class 4 measuring instrument for trade, other than—

- (a) as airport baggage scales; or
- (b) for freight scales with a capacity of up to 2 000 kg; or
- (c) for weighing garbage; or
- (d) for weighing earth, sand, gravel or other similar material; or
- (e) as a crane-weigher; or
- (f) for weighing timber in log form; or
- (g) for another purpose prescribed under a regulation.

Maximum penalty:

- (a) if the class 4 measuring instrument is a weighbridge—\$10 000; or
- (b) in any other case—\$5 000.

Use of measuring instruments for pre-packed articles

7B. 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.

Maximum penalty: \$5 000.

Amendment of s. 8—Incorrect measuring instruments and unjust use of measuring instruments

7. Section 8 of the principal Act is amended—

(a) by striking out from subsection (1) "or unjust";

(b) by striking out subsections (3) and (4) and substituting the following subsections:

(3) If an inspector reasonably suspects that a measuring instrument has been or 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) setting out details of the alleged contravention; and

(b) requiring the person to take stated steps to remedy the contravention or prevent further contravention within a stated period not exceeding 28 days.

(4) If the notice is complied with, the contravention to which the notice relates is not an offence against this section.

(5) A person whose act or omission causes or is likely to cause a measuring instrument in use for trade to give a measurement or other information that is incorrect is guilty of an offence if the person acted or omitted to act with the intention of causing that result or with reckless indifference to whether that result would be caused.

Maximum penalty: \$20 000.

(6) If a person commits an offence against this section, any contract to which the person is a party and which is made by reference to a measurement to which the offence relates is voidable at the option of another party to the contract.

Amendment of s. 9—Supplying incorrect measuring instrument

8. Section 9 of the principal Act is amended by striking out from subsection (1) "or unjust".

Amendment of s. 10—Provision and maintenance of standards

9. Section 10 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) It is the responsibility of the administering authority to arrange for the provision, custody and maintenance of such State primary standards of measurement and such classes and denominations of reference standards of measurement as the administering authority decides are necessary for the purposes of this Act.;

- (b) by striking out from subsection (2) "of reference standards of measurement as may be necessary" and substituting "and denominations of reference standards of measurement as the administering authority decides are necessary".

Amendment of s. 23—Incorrect measurement or price calculation

10. Section 23 of the principal Act is amended—

- (a) by inserting "or decides the measurement" after "operates the measuring instrument";
- (b) by striking out from paragraph (a) "the other party to the sale" and substituting "any other person who is a party to a sale of the article".

Amendment of s. 31—Incorrect pricing of pre-packed article

11. Section 31 of the principal Act is amended by inserting in subsection (1) "(without any packaging or other thing that is not part of the article)" after "reference to the measurement of the article".

Substitution of s. 42

12. Section 42 of the principal act is repealed and the following section is substituted:

Requirement for servicing licence

42. (1) A person must not test a batch of measuring instruments for the purpose of certification, 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.

Maximum penalty: \$20 000.

(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.

Maximum penalty: \$20 000.

(3) It is a defence in proceedings against an employee of a licensee in respect of a failure to comply with a condition of a servicing licence if the employee establishes that the licensee failed to make the employee aware of the condition.

Amendment of s. 44—Application for licence

13. Section 44 of the principal Act is amended by striking out subsections (2) and (3) and substituting the following subsections:

(2) 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.

(3) The application must be accompanied by the application fee prescribed under the Administration Act.

(4) The licensing authority may require an applicant to provide specified particulars (in writing) and documents relating to the application, and may refuse the application if they are not provided.

Amendment of s. 60—Powers of entry, etc.

14. Section 60 of the principal Act is amended by striking out paragraph (b) of subsection (1) and substituting the following paragraph:

- (b) require a person in charge of such a vehicle to stop it, or move it a reasonable distance to a place specified by the inspector, to enable the inspector—
 - (i) to enter and search it; or
 - (ii) to weigh or measure it and its load; and.

Amendment of s. 61—Powers in relation to measuring instruments

15. Section 61 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

- (2) An 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.

Amendment of s. 62—Powers in relation to articles

16. Section 62 of the principal Act is amended—

- (a) by inserting in subsection (1)(a) "and measure" after "examine";
- (b) by inserting after subsection (3) the following subsection:

- (4) An 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.

Amendment of s. 76—Evidence—pre-packed articles

17. Section 76 of the principal Act is amended—

- (a) by striking out "*prima facie*" wherever occurring;
- (b) by striking out subsection (4) and substituting the following subsections:

- (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.

- (5) The fact that an article contained in a package is found exposed for sale or in the possession of a person for sale is evidence that the article is a pre-packed article.

- (6) In this section—

"batch number" means a number marked on a pre-packed article in accordance with a system of numbers, letters or symbols or any combination of numbers, letters and symbols, used by the person packing the article to mark the article to indicate when and where it was packed and who packed it.

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Amendment of s. 80—Regulations

18. Section 80 of the principal Act is amended by inserting in subsection (2)(g) "certified," after "of a".

Amendment of penalty provisions

19. The principal Act is amended by striking out "Penalty:" wherever occurring and substituting in each case "Maximum penalty:".