

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No. 180**

Issued by the Authority of the Minister for Innovation, Industry, Science  
and Research

*National Measurement Act 1960*

*National Trade Measurement Amendment Regulations 2010 (No. 1)*

The principal objects of the *National Measurement Act 1960* (the Act) are to:

- establish a national system of units and standards of measurement of physical quantities;
- provide for the uniform use of those uniform units and standards of measurement throughout Australia;
- co-ordinate the operation of the national system of measurement;
- provide for a system of verification of utility meters used for trade; and
- provide the legal framework for a national system of trade measurement.

In December 2008, the *National Measurement Amendment Act 2008* amended the Act to create the legislative framework for a national system of trade measurement based on the existing state and territory Uniform Trade Measurement Legislation (UTML).

Section 20 of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The *National Trade Measurement Regulations 2009* (the Principal Regulations) were made to support the establishment of the Commonwealth trade measurement system.

The purpose of the Regulations is to amend the Principal Regulations to make minor alterations to the offence provisions, to ensure that they operate as intended; in particular, that strict liability offences do not apply to licensees in circumstances that are beyond their control.

The Regulations also include some provisions based on the UTML which were unintentionally omitted from the Principal Regulations initially, and remedy some minor technical issues with the Principal Regulations.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

In accordance with section 17 of the *Legislative Instruments Act 2003*, consultation was undertaken with affected parties on licensing and weighbridges. Public consultation has also been carried out on all aspects of the Regulations, and, more recently, extensive consultation has been carried out with state and territory trade measurement officers.

We have also consulted with the Office of Best Practice Regulation and they have advised that a Regulation Impact Statement was not required.

The amendments to the Principal Regulations in Schedule 1 commence on the day after they are registered. The amendments contained in Schedule 2 commence on the commencement of the *National Measurement Amendment Act 2010*.

## ATTACHMENT

### Details of the *National Trade Measurement Amendment Regulations 2010 (No. 1)*

#### Regulation 1 – Name of Regulations

This regulation specifies the name of the Regulations as the *National Trade Measurement Amendment Regulations 2010 (No. 1)*.

#### Regulation 2 - Commencement

Regulation 2 provides that regulations 1 to 3 and Schedule 1 commence on the day after the Regulations are registered on the Federal Register of Legislative Instruments, and regulation 4 and Schedule 2 commence on the commencement of Schedule 1 to the *National Measurement Amendment Act 2010*.

#### Regulation 3 – Amendment of National Trade Measurement Regulations 2009

This regulation provides that Schedule 1 amends the *National Trade Measurement Regulations 2009* (the Principal Regulations).

#### Regulation 4 – Amendment of National Trade Measurement Regulations 2009

This provides that Schedule 2 amends the Principal Regulations.

#### Schedule 1 – Amendments

These amendments commence in accordance with regulation 2 (on the day after they are registered).

#### **Item 1 - Regulation 1.4, definition of *glass measure***

This item replaces the existing definition of 'glass measure' with a new definition that covers more kinds of glasses.

The previous definition excluded a range of glasses which are intended to be subjected to batch testing. In particular, the majority of brim and plimsoll beer glasses were not captured by the definition, because the volume marking on these glasses is predominately marked at the time of manufacture. As it is intended that these beer glasses be treated as glass measures for the purposes of batch testing, the regulation removes the exclusion (current paragraph (d)) and replaces the definition with one more clearly drafted.

### **Item 2 - Regulation 1.4, definition of *maximum permissible error***

This item amends the definition of 'maximum permissible error' to remove an unintended reference to requirements in the National Instrument Test Procedures (NITPs).

Subparagraph (b)(ii) of the definition previously referred to requirements which could be specified in the NITPs. However, NITPs were not intended, as a policy matter, to contain substantive requirements that could affect rights and obligations, since they are not legislative instruments but simply procedural, administrative documents. Accordingly, this reference has been removed.

### **Item 3 - Regulation 1.4, definition of *meat***

This item corrects an erroneous reference by replacing the reference to regulation 1.4 with the correct reference (regulation 1.5).

### **Item 4 - Regulation 1.4, definition of *public weighing*, second occurring**

This item corrects a minor error by removing the second, duplicate, definition of 'public weighing'.

### **Item 5 - Regulation 1.6**

This item includes a new provision relating to the sale of meat.

Special provision for the sale of meat is featured in the Uniform Trade Measurement Legislation (UTML) of the states and territories before the introduction of the Commonwealth scheme. However, this provision was unintentionally omitted from the Principal Regulations on initial drafting, with the exception of the definition of 'meat'.

New regulation 1.6 is based on section 25 of the UTML. It establishes a series of requirements that apply where a person offers or exposes for sale a quantity of meat for a marked price.

The provision requires that the person ensure that the mass of the meat, and its price per kilogram is displayed, either on the meat or in another statement that clearly refers to the meat (for example, on a clear sign on the meat display).

The disclosure of the mass of the meat and the marked price of the meat must be displayed in a similar fashion; in particular, they must be in the same colour, and must attract attention equally. This is intended to prevent a person from avoiding the intention of requiring mass to be displayed by making that mass more difficult to read than the price of the item.

The price per kilogram of the meat must be marked in a particular fashion. The provision specifies the minimum size of the lettering/numbering of the price (at least 10mm high) and requires that the price per kilogram is the same colour as the mass of the meat and the price of the meat. The provision also requires that the person ensure that the price per kilogram of the meat is displayed close to the marked price of the meat.

Consistently with other similar provisions in the Principal Regulations, this provision is a strict liability offence for the purposes of section 6.1 of the Criminal Code. That is, a person can be guilty of a strict liability offence if it can be proved that the person committed a certain prohibited act. In relation to new regulation 1.6, a person will breach this provision if that person offers meat for sale with a label that does not display the mass of the meat, for example. The person's state of mind is not relevant to their guilt. For example, it does not matter whether the person did not intend to breach regulation 1.6: the person will be guilty if it can be proved they committed the prohibited act.

This proposed strict liability offence is consistent with the principles set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*. In particular:

- the offence is not punishable by imprisonment;
- the penalty for committing the strict liability offences is a fine of 20 penalty units for an individual (which is less than the maximum recommended penalty of 40 units); and
- strict liability has been imposed to enhance the effectiveness of the provision by deterring people from committing the offence, and to encourage people to be vigilant so as to ensure they do not breach the legislation.

#### **Item 6 - Regulations 2.36A and 2.36B**

This item inserts a provision which prescribes verification marks for the purposes of section 18GJ of the Act. That section requires the Secretary of the Department of Innovation, Industry, Science and Resources to keep a register of prescribed particulars relating to verification marks.

New regulation 2.36A defines the particulars relating to verification marks as comprising:

- a licensee identifier (AAA to ZZZ) which must be used by every servicing licensee that uses the verification mark;
- an alphanumeric verifier identifier (no minimum length prescribed) which must be used by each verifier employed by a servicing licensee; and
- the date with the month specified as A to L (January-December) and the year specified as 0 to 9 (for example, 2010 would be represented as 0, 2011 as 1, 2019

as 9, etc). This date must be the date on which a verifier verifies and marks the instrument.

The first two codes will be issued by the Secretary. The Secretary will keep a register of the licensee and verifier identifiers, as required by section 18GJ. Verifiers provide regular reports to the Secretary which will contain the date codes required by this regulation, which will then be recorded on the register against each verifier's unique code.

The item also prescribes the circumstances in which a measuring instrument is taken to be marked with a verification mark for the purposes of paragraph 18GG(4)(c) of the Act. That paragraph was included to allow for a batch of imported utility meters, manufactured and individually verified overseas, to be verified as a batch without individually re-marking each utility meter.

New regulation 2.36B sets out the following circumstances as those that would allow a utility meter to be taken as marked following verification according to subparagraph 18GG(1)(a)(ii) of the Act:

- the utility meter is one of an imported batch of utility meters;
- the utility meter verifier issues a batch verification certificate in the format given in the relevant NITP;
- the utility meter verifier provides a copy of the certificate to the Secretary; and
- the utility meter verifier provides a copy of the certificate to the person who imported the utility meter.

#### **Item 7 - Paragraph 2.38(3)(c)**

This item corrects an erroneous reference to regulation 2.38 in paragraph 2.38(3)(c) by replacing it with the correct reference (regulation 2.39).

#### **Items 8 and 9 - Paragraphs 2.42(f) and (g)**

These items insert a new prescribed particular that must be maintained on a register by the Secretary in respect of each servicing licence under section 18NF of the Act.

New paragraph 2.42(g) requires that a three letter unique identifier (AAA-ZZZ) be associated with each licence. This will prevent any possible confusion associated with organisations with similar names.

### **Item 10 - Regulations 2.47 and 2.48**

This item prescribes the fee for the verification of a measuring instrument by a trade measurement inspector.

Section 18MK of the Act permits a trade measurement inspector to examine a measuring instrument and test its calibration either for the purposes of another Act, or on request of the person possessing the instrument. It also permits the inspector to charge the prescribed fee for verifying or re-verifying the instrument.

The prescribed fee is based on an National Measurement Institute (NMI) hourly rate, and also allows for the recovery of any additional costs incurred in verifying the instrument, such as travel and equipment costs where the inspector is required to travel to a remote location to test the instrument. A structured fee of this nature was prescribed because it is difficult to prescribe a single monetary amount to cover all possible circumstances. In many circumstances, additional costs will not be necessary; however, this permits flexibility in unforeseen and unusual circumstances.

This item also prescribes the period of time that a servicing licensee can fail to have competent staff before disciplinary action is commenced against a servicing licensee for the purposes of section 18QA of the Act.

Paragraph 18QA(1)(c) provides that it is grounds for disciplinary action in relation to a servicing licensee that, continuously, for a period prescribed by the regulations, neither the licensee nor any employee of the licensee is competent to perform the functions and duties of a verifier. This regulation prescribes 90 days as that period to ensure the proper functioning of that paragraph.

### **Items 11 and 12 - Regulation 3.12**

These items restructure the prescribed fee in relation to an application for a public weighbridge for the purposes of paragraph 18PA(3)(b) of the Act, to separate out the application fee component and the annual fee component.

Section 18PA of the Act allows for a person to apply for a public weighbridge licence, which is granted for a period of one year but is renewable on application. The fee prescribed in regulation 3.12 was \$850 for the first year and \$350 for subsequent years. The \$850 comprised a one off fee of \$500 as well as the \$350 fee for the first year.

These items amend that regulation to separate out the \$500 component from the first year fee of \$350, so that the annual fee can be refunded where an application is refused. The total costs to applicants will remain the same.

## **Items 13-22 - strict liability offences**

Items 13 - 22 amend a number of strict liability offences in the regulations to address concerns raised by the Senate Standing Committee on Regulations and Ordinances (SSCRO), including concerns that licensees may not be adequately protected from the application of the strict liability offences in circumstances beyond their control, and to ensure that strict liability offences do not contain fault elements.

### *Item 13 - Subregulation 3.25(1)*

This item replaces subregulation 3.25(1) with a new provision that ensures a public weighbridge licensee will not contravene the strict liability offence where he or she has taken all reasonable steps in the circumstances.

Regulation 3.25 previously provided that the licensee must ensure that, for each measurement determined using a public weighbridge, the operator of the weighbridge takes the appropriate degree of care to determine the measurement. This requirement was replicated in paragraph 3.27(1)(a).

The new subregulation will operate to protect the licensee against failures by the operator which are outside the licensee's control and ensure that regulations 3.25 and 3.27 apply to different conduct. The new offence will apply to a failure by the licensee to take all reasonable steps to ensure that the operator has sufficient training to enable the operator to take the appropriate degree of care in operating the weighbridge, and to competently determine a measurement using the weighbridge. The NMI offers training in relation to this competency, including producing a manual for reference.

### *Item 14 - Subregulation 3.27(1)*

This item amends subregulation 3.27(1) to ensure that a licensee who takes all reasonable steps in the circumstances is protected from the strict liability offence.

Regulation 3.27 provides that the licensee must ensure a number of matters for each measurement determined using a public weighbridge, including that the operator takes reasonable care in determining the measurement, and that they complete a measurement ticket according to requirements and provide a copy to the person receiving the measurement. In order to protect licensees who have acted reasonably in circumstances where the operator does not comply with these requirements, the amendments require the licensee to take all reasonable steps to ensure that the matters occur.



### *Items 15 and 16 - Regulation 3.38*

These items amend the strict liability offence associated with public weighbridge licensees permitting or assisting a person to engage in fraudulent conduct to remove references to a fault element.

Regulation 3.38 is a strict liability offence; that is, it is not necessary to prove a fault element in relation to the offence. Accordingly, it is inappropriate that the regulation currently requires proof that licensees were acting 'knowingly'. These items remove references to acting 'knowingly' in the heading and text of the regulation so that it will operate as intended.

It is considered appropriate, and consistent with the principles set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, that this offence be a strict liability offence. As discussed in relation to item 5:

- the offence is not punishable by imprisonment;
- the penalty for committing the strict liability offences is a fine of 20 penalty units for an individual (which is less than the maximum recommended penalty of 40 units); and
- strict liability has been imposed to enhance the effectiveness of the provision by deterring people from committing the offence, and to encourage people to be vigilant so as to ensure they do not breach the legislation.

### *Items 17 and 18 - Regulation 3.40*

These items amend the strict liability offence associated with public weighbridge licensees making false representations in relation to public weighbridge measurements to remove references to a fault element.

Regulation 3.40 is a strict liability offence; that is, it is not necessary to prove a fault element in relation to the offence. Accordingly, it is inappropriate that the regulation currently requires proof that licensees made statements that were known to be false. These items remove references to acting knowingly in the heading and text of the regulation so that it will operate as intended.

These items also remove the offence associated with a licensee conspiring with another person to make a representation in relation to the measurement of anything using a public weighbridge that the licensee knows to be false.

The new provision will operate to impose strict liability on a licensee who makes a false representation in relation to the measurement of anything using a public weighbridge. It will not be necessary that the licensee intended to make a false statement or knew that the statement was false.

It is considered appropriate, and consistent with the principles set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, that this offence be a strict liability offence. As discussed in relation to item 5:

- the offence is not punishable by imprisonment;
- the penalty for committing the strict liability offences is a fine of 20 penalty units for an individual (which is less than the maximum recommended penalty of 40 units); and
- strict liability has been imposed to enhance the effectiveness of the provision by deterring people from committing the offence, and to encourage people to be vigilant so as to ensure they do not breach the legislation.

*Items 19 and 20 - Regulation 3.56*

These items amend the strict liability offence associated with operators of public weighbridges assisting another person to engage in fraudulent conduct, to remove references to a fault element.

Regulation 3.56 is a strict liability offence; that is, it is not necessary to prove a fault element in relation to the offence. Accordingly, it is inappropriate that the regulation currently requires proof that operators acted knowingly. These items remove references to acting knowingly in the heading and text of the regulation so that it will operate as intended.

It is considered appropriate, and consistent with the principles set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, that this offence be a strict liability offence. As discussed in relation to item 5:

- the offence is not punishable by imprisonment;
- the penalty for committing the strict liability offences is a fine of 20 penalty units for an individual (which is less than the maximum recommended penalty of 40 units); and
- strict liability has been imposed to enhance the effectiveness of the provision by deterring people from committing the offence, and to encourage people to be vigilant so as to ensure they do not breach the legislation.

*Items 21 and 22 - Regulation 3.58*

These items make minor amendments to the offence associated with public weighbridge operators making false representations in relation to public weighbridge measurements.

These items remove references to acting knowingly in the heading of the regulation, and remove erroneous references to 'licensees' in the text of the regulation and replace them with references to operators.

### **Item 23 - Regulation 3.61A**

This item prescribes the period of time that a public weighbridge licensee can fail to have competent staff before disciplinary action is commenced against the licensee for the purposes of section 18QA of the Act.

Paragraph 18QA(1)(d) provides that it is grounds for disciplinary action in relation to a public weighbridge licensee that, continuously, for a period prescribed by the regulations, neither the licensee nor any employee or contractor (or contractor's employee) of the licensee is competent to operate the weighbridge. This regulation prescribes 90 days as that period to ensure the proper functioning of that paragraph.

### **Item 24 - Paragraphs 4.6(a) and (b)**

This item replaces the word 'immediate' with the word 'inner' in regulation 4.6.

Regulation 4.6 excludes certain packages from the requirements of the relevant Part. Specifically, where the package on the product is inside another package (the outer package), the requirements do not apply to the inner package, and where the outer package is used only for transportation, the requirements do not apply to the outer package. The text of the regulation referred to 'immediate' packaging, but it has been decided that this word is potentially confusing. The word 'inner' more clearly explains the intent of the provision, and is consistent with the heading to the regulation.

### **Items 25 - 27 - Regulation 4.8**

These items insert an exemption in regulation 4.8 to the requirements of regulation 4.7 for imported prepackaged products.

Regulation 4.7 requires the marking of packages with the name and address of the person who packed the packages (or on whose behalf they were packed). Subregulation 4.7(3) states that the address must be a place in Australia. However, it was not intended that this should apply to imported packages, since this will not be possible where packages were packed overseas. These items therefore insert a new exception in regulation 4.8 (which exempts certain packaged seed products from the requirements of regulation 4.7) so that imported prepackaged articles do not need to be marked with an Australian address. Section 18JB of the Act will still require the name and the address of the packager of imported products to be marked on those packages, but that section does not require an Australian address to be included.

### **Item 28 - Regulation 4.16A**

This item inserts a new regulation 4.16A which prescribes the location of an Average Quantity System (AQS) mark for the purposes of section 18JK of the Act.

Subdivision 3-A of Division 3 of the Act deals with AQS marks on articles packed ready for sale. Section 18JK provides that the regulations may prescribe where the AQS mark is to be marked on the article. This location was not prescribed initially in the Principal Regulations. New regulation 4.16A provides that the AQS mark must be marked on the principal display panel of the package.

### **Item 29 - Division 4.5, heading**

This item amends the heading to Division 4.5 to reflect the insertion of new regulation 4.29A (item 30).

### **Item 30 - Regulation 4.29A**

This item inserts a new regulation 4.29A that prescribes particulars which are to be kept in a register of permits by the Secretary under section 18JY of the Act.

Section 18JY provides for the Secretary to keep a register of particulars in relation to permits issued under section 18JX. The particulars were not prescribed in the initial Principal Regulations. This item inserts a new regulation 4.29A which requires the register to include the following details in respect of each permit:

- the name and address of packer or importer to whom the permit was issued;
- a description of product to which the permit relates; and
- the period the permit will be in force.

### **Item 31 - Regulation 4.33, *definition of tolerable deficiency***

This item makes a consequential amendment relating to item 33 by replacing a reference to subregulation 4.36(4) with a reference to regulation 4.36.

The tolerable deficiency table which was previously in subregulation 4.36(4) has been moved to regulation 4.36. Accordingly, it is necessary to correct the reference.

### **Item 32 - Subregulations 4.35(3) and (4)**

This item amends regulation 4.35 to moderate the requirement that batch size from which a sample is selected be equal to the hourly output of the production line by requiring it to be 'approximately equal'.

This amendment is in response to concerns that the word 'equal' could be interpreted too strictly so that arguments could arise where batches contained slightly too few or too many articles. By requiring the batch size to be approximately equivalent to an hour's output of the production line, this prevents an overly rigid restriction in sampling processes.

### **Item 33 - Regulation 4.36**

This item replaces a regulation containing AQS test procedures with a new regulation which merely states tolerable deficiencies for the purposes of determining whether a package is an inadequate package under regulation 4.33.

After the commencement of the *National Measurement Amendment Act 2010*, AQS test procedures will be determined by the Chief Metrologist. Accordingly, the procedures have been removed from the Principal Regulations.

It is still necessary to retain the tolerable deficiencies table formerly in regulation 4.36(4), as this is relevant to the definition of 'inadequate package' in regulation 4.33.

### **Item 34 - Subregulation 4.40(2)**

This item removes an erroneous reference to NITPs in subregulation 4.40(2) and the note following the regulation.

Regulation 4.40 prescribes a national group test procedure for prepackages for the purposes of paragraph 20(1)(v) of the Act. It requires that an inspector must determine the quantity of the content of each sampled prepackage 'in accordance with the relevant National Instrument Test Procedure'. Since this regulation concerns the testing of packages rather than measuring instruments, this reference is not appropriate.

### **Item 35 - Regulation 4.45**

This item omits regulation 4.45 from the Principal Regulations.

Regulation 4.45 was in the form of test procedure and was prescribed in the regulations because it is not an NITP. However, other similar procedures will also be required in the near future and it is now intended to determine these test procedures as packaging test procedures (AQS or non-AQS). Accordingly, this item removes regulation 4.45.

### **Item 36 - Subparagraph 5.2(1)(b)(v)**

This item inserts a subparagraph 5.2(1)(b)(v) relating to the sale of firewood.

Special provision for the sale of firewood was featured in the UTML and was intended to be included in the Commonwealth scheme. However, this provision was unintentionally omitted from the Principal Regulations on initial drafting.

This item amends regulation 5.2, which sets conditions on the sale of certain articles at a price determined by reference to a measurement. New subparagraph 5.2(1)(b)(v) is based on section 25A of the UTML. It establishes a series of requirements that apply where a person offers or exposes for sale a quantity of firewood at a price by reference to the volume of the firewood.

The regulation will provide that the person offering the firewood ensures that where firewood is sold by volume (rather than mass), the firewood should be stacked so as to minimise the volume that it occupies, and the volume of a stack of firewood calculated using the dimensions of the stack must be at least the volume mentioned in advertising, offering or otherwise exposing the firewood for sale.

### **Item 37 - Part 6**

This item inserts a new Part 6, including new regulations 6.1 and 6.2, relating to prescribed qualifications and identity cards for trade measurement inspectors.

Section 18MA of the Act provides for the Secretary to appoint trade measurement inspectors. The appointees must hold the prescribed qualifications. This item inserts a new regulation 6.1 which prescribes the qualifications a person may have which would satisfy subsection 18MA(2). Those qualifications are:

- Certificate IV in Government (Investigation);
- Certificate IV in Government (Trade Measurement);
- Diploma of Government (Trade Measurement);
- a qualification that would have made a person eligible under an earlier corresponding state or territory law (as defined in section 3 of the Act) to be appointed as a senior trade measurement inspector or a trade measurement inspector in a jurisdiction.

This item also prescribes a form of a trade measurement inspector's identity card for the purposes of section 18MB of the Act. That section requires the Secretary to issue an identity card to an inspector which is in the form prescribed by the regulations. The prescribed form was set out in regulation 90A of the *National Measurement Regulations 1999*. Substantially the same regulation has been reproduced in the

Regulations as regulation 6.2. Outdated and incorrect references to provisions of the Act (as a consequence of renumbering which occurred as a consequence of the *National Measurement Amendment Act 2008*) which appeared in regulation 90A have been replaced with the correct provisions, namely:

- the reference to subsection 18ZN(1) has been replaced with a reference to subsection 18MB(1);
- the reference to section 18ZM has been replaced with a reference to section 18MA; and
- the reference to Division 5 of Part VA of the Act has been replaced with a reference to Division 2 of Part IX of the Act.

#### **Item 38 - Schedule 1, Part 3, Division 5, Table 8**

This item replaces the table setting out maximum permissible errors for price computing devices in Schedule 1, Part 3, Division 5, Table 8 with the previous version of that table that appeared prior to the 2009 amendments.

An issue has arisen about the application of Table 8 to existing fuel dispensers with pre-set capability. It has been decided to revert to the original requirements until a better solution can be developed which does not raise any difficulties.

Accordingly, this item replaces Table 8 with the same table that appeared in Schedule 12 to the *National Measurement Regulations 1999* prior to the amendments to the *National Measurement Regulations 1999* made by the *National Measurement Amendment Regulations 2009 (No. 1)*.

#### **Item 39 - Schedule 1, Part 3, Division 6, Table 10**

This item replaces the column heading on the second column in Table 10 for clarity.

Table 10 contains a number of items which set out a load range where load is expressed as 'm' (for example:  $0 < m \leq 50\,000\text{ e}$ ). The table does not directly define 'm'. This item replaces the reference to 'Load' in the column heading with 'Load (m) expressed in verification scale intervals (e)'.

#### **Items 40-42 – Schedule 1, Part 3, Division 7**

These items specify maximum permissible errors for hopper weighers (a type of automatic weighing instrument for weighing bulk product) by inserting a new provision dealing with hopper weighers, and making minor changes to existing Table 14 so that it covers hopper weighers.

New clause 4A of Schedule 1, Part 3, Division 7 will provide that the maximum permissible error for a totalising hopper weigher applies for loads not less than the minimum totalised load. The maximum permissible error for weighing will be the value calculated in accordance with Table 14. This item also makes consequential changes to Table 14 to recognise that it now applies to totalising hopper weighers.

#### **Item 43 - Schedule 2, Part 1**

This item amends a reference to class 7 in the Schedule from 'no licence available' to '[Reserved for future use]'. This reflects the fact that there is currently no class 7 category but one may be introduced at some stage in the future.

#### **Item 44 - Schedule 2, Part 1**

This item makes changes to subitems 8.1 and 9.1 of Schedule 2, Part 1, to correct some differences in terminology between the headings and the text.

Subregulation 2.43(25) provides for a servicing licensee who tests or verifies a measuring instrument that is included in a licence class prescribed in Schedule 2 to provide a test report to the Secretary in certain circumstances. Part 1 of Schedule 2 sets out the classes and subclasses of servicing licenses. In some items, the terminology used does not match the heading. This item corrects instances where the items referred to 'classes' in the heading but 'categories' in the subitems.

#### **Item 45 - Schedule 2, Part 1, item 11**

There is currently no class 11 in the Schedule. To avoid unnecessary enquiries, this item inserts a class 11 placeholder which states '[Reserved for future use]'.

#### **Item 46 - Schedule 2, Part 1**

This item makes changes to subitems 12.1, 13.1, 14.1, 16.1 and 17.1 of Schedule 2, Part 1, to correct some differences in terminology between the headings and the text.

Subregulation 2.43(25) provides for a servicing licensee who tests or verifies a measuring instrument that is included in a licence class prescribed in Schedule 2 to provide a test report to the Secretary in certain circumstances. Part 1 of Schedule 2 sets out the classes and subclasses of servicing licenses. In some items, the terminology used does not match the heading. This item corrects instances where the items referred to 'classes' in the heading but 'categories' in the subitems.



## Schedule 2 – Amendments

These amendments commence in accordance with regulation 2 (on the commencement of Schedule 1 to the *National Measurement Amendment Act 2010*).

### **Item 1 - Regulation 4.35**

This item removes regulation 4.35, which previously set out AQS sampling procedures for the purposes of the Act.

Pursuant to the *National Measurement Amendment Act 2010*, AQS sampling procedures will no longer be provided for in regulations, but will be determined by the Chief Metrologist. Accordingly, this item removes the former prescribed AQS sampling procedures.

### **Item 2 - Regulations 4.39 to 4.41**

This item removes the prescribed sampling procedures (regulation 4.39), national group test procedures (regulation 4.40) and national single article test procedures (regulation 4.41) pursuant to the changes that took effect on the commencement of the *National Measurement Amendment Act 2010*. Pursuant to that Act, these procedures will no longer be provided for in regulations, but will be determined by the Chief Metrologist. Accordingly, this item removes the former prescribed procedures.

### **Item 3 - Regulation 6.1**

This item recognises a change in the requirements of subsection 18MA(2) of the Act. Prior to the commencement of the *National Measurement Amendment Act 2010*, subsection 18MA(2) contemplated only prescribing *qualifications* of trade measurement inspectors. Pursuant to the *National Measurement Amendment Act 2010*, this item amends regulation 6.1 to refer not just to qualifications but also to knowledge or experience.

It also inserts an additional category relating to persons who were employed in another jurisdiction before 1 July 2010. The Secretary may register such a person if the Secretary is satisfied that the person has appropriate knowledge, experience or a combination of both.