

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 126

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

National Measurement Act 1960

National Trade Measurement Amendment Regulations 2011 (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.

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) support the establishment of the Commonwealth trade measurement system.

The purpose of the Regulations is to amend the Principal Regulations to clarify the provisions relating to weighbridges, to amend the fee charged for verification of measuring instruments by trade measurement inspectors on request, and to correct some minor drafting errors.

The Regulations also insert into the Principal Regulations a number of provisions from the *National Measurement Regulations 1999*. Those amendments are the subject of a separate Minute.

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 a number of relevant stakeholders in respect of the Regulations. In particular, the changes to the requirements for weighbridges and the fees charged for the verification of measuring instruments on request were developed following the National Measurement Institute's routine interaction with its stakeholders.

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 commenced on 1 July 2011.

Details of the *National Trade Measurement Amendment Regulations 2011 (No. 1)*

Regulation 1 – Name of Regulations

This regulation specifies the name of the Regulations as the *National Trade Measurement Amendment Regulations 2011 (No. 1)*.

Regulation 2 - Commencement

This regulation provides that the Regulations commence on 1 July 2011.

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).

Schedule 1 – Amendments

Item 1 - Regulation 1.4, note at the foot

This item replaces the footnote at the end of this regulation with a revised footnote that lists the terms used in the Principal Regulations which are defined in subsection 3 (1) of the Act. This list has changed as a result of previous amendments made to the Principal Regulations and this amendment updates the footnote by including all the terms used in the Principal Regulations which are currently defined in the Act to further improve the ease of use of the legislation.

Item 2 - Regulation 2.11

This item amends regulation 2.11 of the Principal Regulations by providing that it is not an offence to use interchangeable load receptors with a measuring instrument approved for use for trade if the measuring instrument has automatic or semi-automatic zero adjustment facilities. This enables interchangeable load receptors to be used with such measuring instruments allowing traders greater flexibility in their operations whilst still complying with the relevant provisions of the Principal Regulations.

Item 3 - Regulation 2.29

This item amends regulation 2.29 to enable the mark that must be applied to material measures verified by either a trade measurement inspector or a servicing licensee or one of their employees to be applied to a sealed container enclosing the material measure where it is impractical to apply the mark to the material measure because of its construction or size. This is consistent with other provisions made in the *National Measurement Regulations 1999* issued under the Act for the marking of reference standards of measurement following their verification under those regulations where it is impractical to apply the mark to the reference standard because of its construction

or size. A minor and machinery drafting error is also corrected by removing an incorrect reference to a ‘measuring instrument’ in this regulation and replacing it with a reference to a ‘material measure’.

Item 4 - Regulation 2.47

Regulation 2.47 prescribes the fee to be charged when a trade measurement inspector acting under section 18MK of the Act examines a measuring instrument and tests its calibration for the purposes of another Act or at request of the person in possession of the measuring instrument. This item reduces the prescribed fee for this service from \$212 per hour to \$136 per hour. The fee was initially set on the basis of the cost associated with the examination and certification of measuring instruments for the purpose of pattern approval. Further experience and data has confirmed that \$136 per hour better reflects the true cost of this activity.

Item 5 – Paragraphs 3.4 (2) (a) and (b)

This item details of the conditions to be met in order for the approach to a weighbridge to comply with the requirement to be *in the same plane* under the Principal Regulations. These conditions depend on the use to which a weighbridge is to be put. This amendment inserts details of the conditions to be met by weighbridges used for the determinations of end-and-end measurements which were omitted from the Principal Regulations when they were made.

Item 6 - Regulation 3.7 (1) (c)

This item replaces the current prescriptive requirements for the clear space in weighbridges without pits with a set of fitness for purpose requirements. These are based on functionality and access criteria rather than prescribed dimensions. This provides a greater range of options for achieving compliance with the requirements of the Principal Regulations. It also reduces the costs associated with the need for individual weighbridges that do not comply with the prescribed clear space requirements to be assessed and granted written permission by the Secretary before they can be used.

Items 7-10 - use of weighbridges for end-and-end weighing

Item 7 - Subregulation 3.11 (1)

This item clarifies when weighbridges may be used for end-and-end weighing. It corrects a drafting error in the current regulation that could be interpreted to give the incorrect impression that end-and-end weighing is permitted if the conditions for the construction of weighbridges used for that purpose are met. It also repeals a redundant duplication of the requirements for the approaches to weighbridges used for end-and-end weighing and instead refers to the prescription of the requirements given in subregulation 3.4 (1) of the Principal Regulations.

Item 8 - Paragraph 3.11 (2) (b)

This item omits the word ‘air’ from this paragraph so that the provision applies to all types of vehicle suspension. This corrects a minor drafting error in the Principal

Regulations which specified ‘air suspension’ thereby possibly and unintentionally not including other types of suspension which could be manipulated to affect a measurement.

Item 9 – After subregulation 3.11 (2)

This item inserts a new subregulation 3.11 (3) that enables the Secretary to issue a written permit enabling weighbridges that do not comply with the construction conditions for weighbridges used for end-and-end weighing to be used for that purpose. It corrects a drafting error in the current regulation that failed to provide the Secretary with appropriate discretion in the application of this regulation making it over prescriptive.

Item 10 – Subparagraphs 3.62 (e) (ii) and (f) (ii)

This item omits the word ‘air’ from these subparagraphs so that their provisions apply to all types of vehicle suspension. This corrects a minor drafting error in the Principal Regulations which specified ‘air suspension’ thereby possibly and unintentionally not including other types of suspension which could be manipulated to affect a measurement.

Item 11 – After regulation 5.5

This item inserts a new subregulation 5.6 to exempt classes of utility meters from the operation of Part IV of the Act which covers the use of measuring instruments for trade. The equivalent provision was repealed from the *National Measurement Regulations 1999* by the *National Measurement Amendment Regulations 2011 (No.)*. It is being inserted into the Principal Regulations as it relates more closely to their subject matter as a further aid to its ease of use.

Item 12 – Schedule 1, Part 3, Division 5, clause 5, definition of A

This item amends the definition of ‘A’ the maximum permissible error for the accuracy class of a liquid measuring system to make it more consistent with the relevant recommendation of the International Organization of Legal Metrology (OIML). The maximum permissible errors prescribed in the Principal Regulations are derived from OIML Recommendation 117-1: *Dynamic Measuring Systems for Liquids other than Water* and prescribed in the Principal Regulation to give effect to Australia’s treaty obligations under the OIML Convention to adopt OIML recommendations unless they are inapplicable to Australian conditions or not in the national interest.

Item 13 – Schedule 2, Item 16

This item corrects a minor drafting error in the Principal Regulations which refers to a class of servicing licence relating to evidential breath analysis. There is no such class of servicing licence and this reference is omitted.