

# Trade Measurement Legislation Repeal Bill 2009

## Explanatory Notes

### Short Title

The short title of the Bill is the *Trade Measurement Legislation Repeal Bill 2009*.

### Policy Objectives of the Bill

The objectives of the Bill are to repeal the *Trade Measurement Act 1990* and the *Trade Measurement Administration Act 1990* (the Trade Measurement Acts) and to introduce transitional measures for a seamless transfer of the State responsibility for administration and enforcement of trade measurement to a national regime (so as to minimise any adverse impacts on the community or the market in the process).

### Reasons for the Bill

#### *Current regulatory arrangements for trade measurement*

Currently, in accordance with the Uniform Trade Measurement Legislation and Administration Agreement of 1990, the States and Territories are jointly responsible for the administration of trade measurement. Each jurisdiction has implemented substantially uniform trade measurement legislation (UTML). The system provides a national legal framework to ensure that weights and measures used in trade are accurate.

For its part of the agreement, Queensland administers the following legislation:

- *Trade Measurement Act 1990*
  - *Trade Measurement (Measuring Instruments) Regulation 1991*
  - *Trade Measurement (Miscellaneous) Regulation 1991*
  - *Trade Measurement (Prepacked Articles) Regulation 1991*

- *Trade Measurement (Weighbridges) Regulation 1991*
- *Trade Measurement Administration Act 1990*
  - *Trade Measurement Administration Regulation 1991.*

### ***Review process***

The 1995 Kean Inquiry into Australia's Standards and Conformance Infrastructure noted a decline in the trade measurement system and the continuing lack of uniform implementation of trade measurement legislation and administrative requirements. The inquiry also noted that not all States and Territories implemented the UTML and some amendments to the UTML have resulted in less than uniform implementation.

In 2004, the Ministerial Council on Consumer Affairs (MCCA) agreed to commission a national review of trade measurement. This review identified the current trade measurement system as creating:

- additional costs for national industries imposed by having to comply with different requirements in each jurisdiction;
- inefficiencies when operating across state borders;
- lack of equity in cost recovery; and
- an inability to adopt new technologies and processes within timeframes required by industry.

In February 2006, the Council of Australian Governments (COAG) identified trade measurement as a regulatory 'hot spot' requiring reform and asked MCCA to develop a recommendation and timeline for the introduction of a national trade measurement system. A major national review confirmed significant problems with the current administrative arrangements. MCCA recommended to the COAG that Commonwealth administration would be the best means of resolving them.

Central administration is expected to produce benefits for businesses, consumers and government. A single policy platform would allow Government to provide a framework for consistent and timely adoption of new technologies and processes by industry. Requiring compliance with a single set of requirements nationwide would be likely to result in cost reductions and efficiency gains. Where there are charges for government trade measurement services they will be uniform, removing current inequities for businesses in different States and Territories.

On 13 April 2007, COAG agreed to establish a national system of trade measurement funded and administered by the Commonwealth, meaning the Commonwealth will assume full responsibility for both administration and enforcement. The agreement provides for Commonwealth enforcement of trade measurement to begin on 1 July 2010.

On 8 December 2008, the Federal Parliament passed the *National Measurement Amendment Act 2008*, which amends the Commonwealth *National Measurement Act 1960* (NMA). This provides the basis for the Commonwealth legislative regime and includes a commencement date of 1 July 2009 and a ‘transition day’ of 1 July 2010. The transition day will be the time when the Commonwealth begins enforcing the trade measurement law across Australia.

The National Measurement Institute (NMI), in the Commonwealth Department of Innovation, Industry, Science and Research, will have responsibility for the ongoing operation of the national trade measurement regime.

The national agreement involves the Commonwealth using existing State and Territory staff and infrastructure to continue performing trade measurement duties. State and Territory staff will be employed by the Commonwealth to operate under Commonwealth legislation. The agreement includes maintaining continuity of the level of service and service standards. Commonwealth, State and Territory officials are working together on the transitional arrangements.

The COAG agreement includes a requirement that each State and Territory repeal its trade measurement law to take effect 1 July 2010. The Bill progresses Queensland’s commitment to the agreement. It also introduces a small number of savings provisions necessary for the transition to a national regime.

### **Achievement of the objectives**

The Bill provides for the repeal of the Trade Measurement Acts on a date fixed by proclamation. It is anticipated that a proclamation will be made to repeal the Trade Measurement Acts on 1 July 2010, which is consistent with the national agreement for the Commonwealth to assume full responsibility for trade measurement and the time when Commonwealth enforcement begins across Australia.

Transitional provisions provided by the Bill are reasonable, appropriate and necessary for finalising any outstanding administrative or enforcement

matters at the time of changeover. For example, proceedings against offences, disciplinary proceedings against a licensee and reviews of decisions by the licensing authority may not be concluded on the date of transition. The Bill also enables information associated with the administration of trade measurement to be supplied to the Commonwealth upon assent. This allows the Commonwealth time to establish information systems, infrastructure and work schedules before commencing enforcement. These provisions will facilitate a seamless transition to a national regime with minimal, if any, adverse impacts on the community and the market.

### **Alternative ways of achieving the policy objectives**

The MCCA considered various options to develop a national trade measurement system.

In order to develop and assess options for an effective national system, the MCCA Standing Committee of Consumer Affairs Officials (SCOCA) established a Working Party comprising representatives from all State and Territory trade measurement authorities.

In November 2003, the Working Party presented a report, which identified the following four major options. The report contained an initial assessment of how each option may impact on industry and consumers, as well as the policy implications for all jurisdictions.

- (i) National Trade Measurement Legislation with Consistent State and Territory Administration Acts - Under this option the present uniform State and Territory Trade Measurement Acts would be replaced with national legislation, however the States and Territories would continue to have their own supporting administrative Acts and would enforce and administer the trade measurement laws within their respective jurisdiction.
- (ii) Full National Legislation with State and Territory Administration - Under this option all of the present uniform State and Territory Trade Measurement Acts and their supporting administrative Acts would be replaced with national legislation, however States and Territories would continue to have responsibility for enforcement and administration of those national trade measurement laws within their respective jurisdiction.
- (iii) National Legislation with Contracted Administration - Under this option all of the present uniform State and Territory Trade

Measurement Acts would be replaced with national legislation, and although the Commonwealth would then have responsibility for enforcement and administration of those national trade measurement laws, the States and Territories would be contracted to perform those functions within their respective jurisdiction.

- (iv) National Legislation and Administration - Under this option all of the present uniform State and Territory Trade Measurement Acts would be replaced with national legislation and responsibility for enforcement and administration of trade measurement laws would move fully to the Commonwealth.

Of the four options, the first three would rationalise and unify trade measurement laws and at the same time preserve, to varying extents, the enforcement and administrative role of each State and Territory. The Queensland Government endorsed the fourth option which was the option adopted by MCCA.

MCCA recommended that a trade measurement system administered by the Commonwealth was the best option to remove existing structural problems, to rationalise the different regulatory regimes of the States and Territories, and to address the challenges presented by new measurement technologies. MCCA recommended to COAG that Commonwealth administration would best overcome the problems in the system and produce benefits sought by businesses, consumers and government.

The main benefit of national legislation and administration is that trading practices will comply with only one set of requirements across Australia and this will result in cost reductions and efficiency gains. Also, cost-recovery for government services will be uniform and therefore, option (iv) would remove current inequities for businesses in different States and Territories. Government will be able to provide a framework for consistent and timely adoption of new technologies and processes by industry, and will have a single policy platform.

COAG subsequently accepted MCCA's recommendation and agreed on the transfer of full responsibility for trade measurement to the Commonwealth.

State and Territory Trade Measurement law will become redundant once enforcement of the new Commonwealth law starts on 1 July 2010. Therefore, each State and Territory will need to separately progress an amendment bill, similar to this Bill, to repeal its trade measurement legislation on that date.

A referral of powers is not necessary as the Commonwealth already has the constitutional power under section 51 of the Constitution to make law in respect of 'weights and measures'.

### **Administrative costs**

The transfer of the administration of trade measurement will realise a substantial net financial saving for the Queensland Government.

COAG agreed on the Commonwealth providing \$29 million over four years to establish the national system of trade measurement. This is intended to cover the initial three year transition period and the first year of Commonwealth operation of the system. The Commonwealth also agreed to fully fund ongoing measurement operations estimated at \$24 million per annum. No additional budgetary expenditure is anticipated by the Queensland Government.

The States and Territories will transfer existing trade measurement testing and scientific equipment to the Commonwealth. The total depreciated book value of Queensland measurement testing and scientific equipment is estimated to be approximately \$0.087 million as at 30 June 2009. The valuation reflects the fact that much of the equipment has been in use for some years.

The Commonwealth is offering to employ the same State and Territory staff to perform the same role under Commonwealth legislation in similar locations around Australia.

COAG has indicated that any transfer of staff and resources would involve no net cost to the Commonwealth or to the States and Territories.

Twenty-eight staff are employed in the Queensland Trade Measurement Branch. Inspectors are based in Brisbane and seven regional locations in Queensland. The Commonwealth has confirmed it will offer all existing State and Territory trade measurement personnel employment performing similar duties at similar regional locations. Most of the Queensland personnel have indicated they may accept the offer. The actual number will not be known until closer to the transition on 1 July 2010. For those who accept, salary scales will be very similar and the offer will be on the basis that there will be no disadvantage to them when commencing duties with the Commonwealth on 1 July 2010.

The Department of Employment, Economic Development and Innovation, in consultation with the Public Service Commission, will endeavour to

satisfactorily redeploy any staff who do not accept the offer. The Queensland Public Sector Union is being consulted on an ongoing basis regarding the interests of staff and proposed employment arrangements.

## **Fundamental Legislative Principles**

To facilitate the seamless transition of trade measurement administration and enforcement to the Commonwealth it will be necessary to provide the NMI with information relating to trade measurement licensees and regulated traders. This will include personal information.

Clause 14 of the Bill provides for the provision of information to the NMI, after the repeal of the Trade Measurement Acts, about administrative and enforcement matters yet to be finalised at the time of the repeal. Such matters include disciplinary proceedings, infringement notice offences, proceedings for offences against either of the repealed Acts, reviews of decisions made under the *Trade Measurement Act 1990*, unpaid trade measurement fees and instruments or other things seized by trade measurement inspectors in the performance of their duties under the *Trade Measurement Act 1990*.

Clause 16 of the Bill provides for the transfer of information prior to the repeal of the Trade Measurement Acts, including information from the register containing the particulars of current licences, as well as information obtained by the chief inspector as the administering authority or licensing authority.

Enabling the supply of information held by Queensland trade measurement authorities, including about licensees and regulated traders, to the Commonwealth may impact on requirements under the *Legislative Standards Act 1992* that legislation shall have sufficient regard to the rights and liberties of individuals, including privacy. However, any potential breach of such a fundamental legislative principle is considered reasonable and necessary. The only information provided will be that information obtained in the lawful administration of the repealed Trade Measurement Acts. As administration of trade measurement will be transferred to the Commonwealth, this information will be necessary to ensure the ongoing efficient administration and enforcement of trade measurement. The provision of the register relating to licences will have beneficial impacts for current Queensland licensees as it will enable the recognition of their licenses by the Commonwealth, without the need for them to apply again under the Commonwealth scheme.

## **Consultation**

An extensive national community and government consultation process informed a major review of the administration of trade measurement law. A public discussion paper entitled *Review of the National Trade Measurement System* was released in June 2006. Consultation included different sectors of industry, consumers, all Australian Governments and the New Zealand Government.

Queensland officials have been extensively involved in the review process, including providing input to the public discussion paper and the preparation of a Regulatory Impact Statement, which was released nationally for public consultation in March 2007.

The review process strongly showed all stakeholder groups experience fundamental problems with the current administrative arrangements for trade measurement and support Queensland proceeding with its components of the proposed COAG reforms.

Since the COAG agreement on the reforms, ongoing consultation is occurring between the States and Territories and the Commonwealth on nationally agreed processes for implementing the transition to the new regime. A national transition forum has been established for this purpose comprising officials from all jurisdictions. Queensland is also represented on nine working groups providing consultation on specific areas of trade measurement administration. Progress is being monitored by the COAG Business Regulation and Competition Working Group. Queensland officials are members of the working group.

## **Uniform and complementary nature of the bill**

As noted above, in accordance with the Uniform Trade Measurement Legislation and Administration Agreement of 1990, each jurisdiction has implemented substantially uniform trade measurement legislation. Similarly, under the COAG agreement, each State and Territory will be introducing similar transition and repeal bills to transfer State and Territory responsibility for administration and enforcement of trade measurement to a national regime.



## Notes on Provisions

### Part 1 Preliminary

Clause 1 sets out the short title of the Act.

Clause 2 provides, that other than section 16, the Act will commence on proclamation. The notes for clause 16 explain why this clause will commence on assent.

Clause 3 provides the definitions of various terms used for interpreting the Act.

Clause 4 provides that words used under this Act and under the repealed *Trade Measurement Act 1990* and *Trade Measurement Administration Act 1990* (the Trade Measurement Acts) have the same meanings.

Clause 5 provides that the transitional provisions in this Act do not limit, nor are they limited by section 20 of the *Acts Interpretation Act 1954* which provides for the saving of the operation of repealed Acts.

### Part 2 Repeals

Clause 6 repeals the Trade Measurement Acts.

### Part 3 Transitional Provisions

Clause 7 provides for the finalisation of certain administrative and enforcement matters, specified under the definition of a ‘continuing matter’ in clause 3, during the 12 month period following the repeal of the Trade Measurement Acts. It also provides for trade measurement officials to be employed during that time for these purposes.

Clause 8 relates to finalisation of proceedings. It clarifies that proceedings for an offence against the Trade Measurement Acts may be started, or concluded if the offence was alleged to have been committed prior to the repeal of those Acts.

Clause 9 relates to the finalisation of infringement notices. It clarifies that a fine for an offence may be served for a trade measurement offence actionable under the *State Penalties Enforcement Act 1999*, if the offence was committed and the fine was yet to be served prior to the repeal of the Trade Measurement Acts.

Clause 10 relates to finalisation of disciplinary actions against a licensee. It provides that action may be taken if a notice has been served before the repeal of the Trade Measurement Acts and, at the time of repeal, disciplinary action was yet to be taken.

Clause 11 relates to finalisation of reviews. It enables the Queensland Civil and Administrative Tribunal to commence, or finalise a review of a decision of the trade measurement licensing authority in the situation where a person could have started a review, but had not applied to do so prior to the repeal of the Trade Measurement Acts, or where a person had commenced a review, but the Tribunal was yet to make its decision, prior to the repeal of the Trade Measurement Acts.

This section will commence after the commencement of the relevant provisions of the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* which confers jurisdiction on the Queensland Civil and Administrative Tribunal to hear and determine reviews of decisions of the licensing authority listed in section 59 *Trade Measurement Act 1990*.

Clause 12 enables trade measurement inspectors to make a decision to retain, return or dispose of seized things, such as measuring instruments, related records and articles after the repeal of the Trade Measurement Acts. This is subject to allowing the NMI to inspect the thing if required under the new national law.

Clause 13 provides for the recovery of unpaid trade measurement fees after the repeal of the Trade Measurement Acts.

Clause 14 provides for the disclosure of information to the NMI by the chief inspector about various administrative and enforcement matters yet to be finalised upon the repeal of the Trade Measurement Acts. This is to

enable the seamless transition of trade measurement administration and enforcement to the Commonwealth.

Clause 15 provides that, where applicable, a reference in another Act or a document to the repealed Trade Measurement Acts is a reference to the Commonwealth law.

## **Part 4                      Miscellaneous**

Clause 16 provides for the transfer of information associated with administration of trade measurement to the NMI. This section will commence upon assent. The transfer of information to the Commonwealth will allow for re-establishment of information systems, work schedules and employment arrangements. With Commonwealth enforcement commencing on 1 July 2010, commencement of this section upon assent will avoid gaps in the transition and minimise the impacts on stakeholders and the market.

Clause 17 sets the expiry of this Act as 1 July 2011.

## **Part 5                      Amendment of Acts and subordinate legislation**

Clause 18 states that the schedule makes consequential amendments to the Acts and subordinate legislation listed in the schedule.

### **Schedule**

The Schedule makes minor consequential amendments to the following Acts and subordinate legislation:

- *Agricultural Standards Act 1994*
- *Agricultural Standards Regulation 1997*
- *Fair Trading Act 1989*
- *Fisheries Act 1994*

- *Fisheries (Coral Reef Fin Fish) Management Plan 2003*
- *Petroleum and Gas (Production and Safety) Act 2004*
- *State Penalties Enforcement Act 1999*
- *State Penalties Enforcement Regulation 2000*
- *Statutory Instruments Act 1992*
- *Statutory Instruments Regulation 2002*
- *Transport Operations (Road Use Management) Act 1995*
- *Transport Operations (Road use management, Mass, Dimensions and Loading) Regulation 2005*

Where subordinate legislation is amended, the principal Act is also amended to clarify that the amendment by this Act of the subordinate legislation does not affect the power of the Governor in Council to further amend or repeal the relevant subordinate legislation.

In the case of the *Fisheries (Coral Reef Fin Fish) Management Plan 2003*, a new provision is inserted in the *Fisheries Act 1994* to clarify that amendment by this Act to the *Fisheries (Coral Reef Fin Fish) Management Plan 2003* does not affect the power of the chief executive to further amend or repeal the management plan or the power of the Governor in Council to approve the management plan.