



# **National Measurement Act 1960**

**No. 64, 1960 as amended**

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**Includes amendments up to:** Act No. 13, 2013

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### The compiled Act

This is a compilation of the *National Measurement Act 1960* as amended and in force on 12 April 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 29 May 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending Acts and instruments and the amendment history of each amended provision.

### Uncommenced provisions and amendments

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

### Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

### Modifications

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

### Provisions ceasing to have effect

If a provision of the compiled Act has expired or otherwise ceased to have effect in accordance with a provision of the Act, details of the provision are set out in the endnotes.

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# **An Act relating to Weights and Measures**

## **Part I—Preliminary**

### **1 Short title**

This Act may be cited as the *National Measurement Act 1960*.

### **3 Interpretation**

- (1) In this Act, unless the contrary intention appears:

***approved pattern***, in relation to a measuring instrument, means a pattern approved for the measuring instrument under section 19A that:

- (a) is currently in force; or
- (b) has expired or been cancelled (but not withdrawn) and was in force when the measuring instrument was manufactured.

***AQS mark*** has the meaning given by section 18JJ.

***AQS sampling procedures*** are sampling procedures determined by the Chief Metrologist under section 19Q for the purposes of Subdivision 3-C of Division 3 of Part VI.

***AQS test procedures*** are test procedures determined by the Chief Metrologist under section 19Q for the purposes of Subdivision 3-C of Division 3 of Part VI.

***AQS threshold*** is the threshold prescribed for the purposes of Subdivision 3-C of Division 3 of Part VI.

***article*** includes a substance.

***Australia*** includes the external Territories.

***Australian certified reference material*** means a reference material that has been certified in accordance with the regulations.

***Australian legal unit of measurement*** means:

- (a) a unit of measurement prescribed for the purposes of subsection 7A(1); or

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- (b) a unit of measurement derived by the application of guidelines issued by the Chief Metrologist under section 7B, or 2 or more successive applications of those guidelines.

***Australian primary standard of measurement*** means a standard of measurement that is maintained, or caused to be maintained, by the Chief Metrologist as an Australian primary standard of measurement for the purposes of subsection 8(1).

***Australian secondary standard of measurement*** means a standard of measurement that is maintained, or caused to be maintained, by the Chief Metrologist as an Australian secondary standard of measurement for the purposes of subsection 8(2) and that has been verified, in accordance with the regulations, by means of, by reference to, by comparison with or by derivation from an Australian primary standard of measurement.

***automated packing machine*** means a machine that follows a pre-determined program for automatically measuring articles in pre-determined quantities as part of the packing process.

***business premises*** means premises or a part of premises:

- (a) used for the importation, packing, storage or sale of articles or utilities sold, or to be sold, by measurement; or
- (b) on which a measuring instrument is used for trade; or
- (c) used for activities incidental to the uses mentioned in paragraph (a) or (b);

but does not include premises or a part of premises occupied as a residence or for residential accommodation.

***business vehicle*** means a vehicle:

- (a) used for the transportation of articles or utilities sold, or to be sold, by measurement (whether packed in advance ready for sale or otherwise); or
- (b) on which a measuring instrument is used for trade; or
- (c) used for the measurement of articles or utilities sold, or to be sold, by measurement; or
- (d) used for activities incidental to the uses mentioned in paragraph (a), (b) or (c).

***certified measuring instrument*** means a measuring instrument that has been certified in accordance with the regulations.

**Chief Metrologist** means the Chief Metrologist mentioned in section 18A.

**Commonwealth authority** means a body corporate established for a public purpose by or under a law of the Commonwealth.

**component**: a thing is a component of another thing (the **instrument**) by means of which a measurement may be made where:

- (a) the instrument is designed or constructed so as to include the thing, or have the thing associated with it, but the thing need not form part of the instrument; and
- (b) the thing is designed or intended to do any or all of the following:
  - (i) convert the result of a measurement by the instrument;
  - (ii) calculate number, tax or price by reference to the result of a measurement by the instrument;
  - (iii) correct the result of a measurement by the instrument;
  - (iv) provide or repeat information relating to the result of a measurement by the instrument or a result of the conversion or calculation described in subparagraph (i) or (ii);
  - (v) control the measurement process carried out by the instrument;
  - (vi) convert a physical quantity into another physical quantity.

**controller**, in relation to premises, a part of premises or a vehicle, means the person apparently in control of the premises, the part of the premises or the vehicle.

**earlier corresponding law** means any of the following:

- (a) the *Trade Measurement Act 1989* of New South Wales;
- (b) the *Trade Measurement Administration Act 1989* of New South Wales;
- (c) the *Trade Measurement Act 1995* of Victoria;
- (d) the *Trade Measurement (Administration) Act 1995* of Victoria;
- (e) the *Trade Measurement Act 1990* of Queensland;
- (f) the *Trade Measurement Administration Act 1990* of Queensland;

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- (g) the *Trade Measurement Act 2006* of Western Australia;
- (h) the *Trade Measurement Administration Act 2006* of Western Australia;
- (i) the *Trade Measurement Act 1993* of South Australia;
- (j) the *Trade Measurement Administration Act 1993* of South Australia;
- (k) the *Trade Measurement Act 1999* of Tasmania;
- (l) the *Trade Measurement (Tasmania) Administration Act 1999* of Tasmania;
- (m) the *Trade Measurement Act 1991* of the Australian Capital Territory;
- (n) the *Trade Measurement (Administration) Act 1991* of the Australian Capital Territory;
- (o) the *Trade Measurement Act* of the Northern Territory;
- (p) the *Trade Measurement Administration Act* of the Northern Territory;

and includes the regulations made under those Acts.

***evidential material*** means any of the following:

- (a) any thing with respect to which an offence against this Act has been committed or is suspected, on reasonable grounds, to have been committed;
- (b) any thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of any such offence;
- (c) any thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing any such offence.

***inspector's mark*** means the mark allotted to a trade measurement inspector by the Secretary under subsection 18MA(5).

***interest in land*** includes an interest by way of stratum title (by whatever name known), an interest by way of strata title (by whatever name known) and a time-sharing interest in land (by whatever name known).

***made available as a public weighbridge*** has the meaning given by section 3A.

***marked***: something is ***marked*** on a package if:

- (a) it is marked on the package itself; or
- (b) it is marked on a label attached to or enclosed with, but visible within, the package.

**marking a measuring instrument with a verification mark** has the meaning given in subsection (5).

**material measure** means a thing designed or intended to conserve or reproduce, in a permanent manner during the use of the thing, one or more known values of a physical quantity.

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

**measuring instrument** means:

- (a) a thing by means of which a measurement may be made; or
- (b) a component of such a thing.

**measuring instrument gives an inaccurate measurement** has the meaning given in subsection (6).

**measuring instrument with an approved pattern** means a measuring instrument a pattern of which has been approved under this Act.

**metric system of measurement** means measurement in terms of:

- (a) the units comprised in the International System of Units for the time being approved by the General Conference on Weights and Measures;
- (b) units decimally related to those units and for the time being so approved.

**national group test procedures** are test procedures with respect to groups of packages determined by the Chief Metrologist under section 19Q for the purposes of Subdivision 4-B of Division 4 of Part VI.

**national instrument test procedures** are procedures for testing measuring instruments determined by the Chief Metrologist under subsection 18GG(2).

**national sampling procedures** are sampling procedures determined by the Chief Metrologist under section 19Q for the purposes of Subdivision 4-B of Division 4 of Part VI.

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***national single article test procedures*** are test procedures with respect to single packages determined by the Chief Metrologist under section 19Q for the purposes of Subdivision 4-B of Division 4 of Part VI.

***national test threshold*** is the threshold prescribed for the purposes of Subdivision 4-B of Division 4 of Part VI.

***net measurement***, in relation to an article, means the measurement of the article disregarding any packaging or other thing that is not part of the article.

***obliterate***, in respect of a verification mark, means destroy, or remove and destroy, a verification mark.

***package*** includes:

- (a) a container, wrapper, confining band or other thing in which an article is packed, or 2 or more articles are packed, for sale as a single item; and
- (b) anything around which an article is wound or wrapped, or 2 or more articles are wound or wrapped, for sale as a single item.

***packed in advance ready for sale*** has the meaning given by section 18HA.

***pattern***, in relation to a measuring instrument, includes a sample of the measuring instrument.

***premises*** means:

- (a) an area of land or any other place, whether or not it is enclosed or built on; or
- (b) a building or other structure.

***public weighbridge*** means a weighbridge that is made available as a public weighbridge.

***public weighbridge licence*** means a licence granted under section 18PB.

***public weighbridge licensee*** means a person to whom a licence is granted under section 18PB.

***recognized-value standard of measurement*** means a standard of measurement that the Chief Metrologist has, under section 8A, determined shall be a recognized-value standard of measurement.

***reference material*** means a material whose properties are used for the calibration of measuring instruments, the assessment of a measuring method or for assigning values to materials.

***reference standard of measurement*** means a standard of measurement (other than an Australian primary standard of measurement, an Australian secondary standard of measurement, a recognized-value standard of measurement or a State primary standard of measurement) that has been verified in accordance with the regulations and for which the period for which a certificate of verification is given under the regulations has not expired.

***residential premises*** means premises, or a part of premises, that is occupied as a residence or for residential accommodation.

***Secretary*** means the Secretary of the Department.

***seize*** includes secure against interference.

***sell*** includes barter or exchange.

***servicing licence*** means a licence granted under section 18NB.

***servicing licensee*** means a person to whom a licence is granted under section 18NB.

***servicing licensee's mark*** means the mark approved by the Secretary for use by or on behalf of a servicing licensee in verifying measuring instruments.

***shortfall***, in relation to an article packed in advance ready for sale that is not marked with an AQS mark, has the meaning given by section 18JR.

***standard of measurement*** means:

- (a) a material measure, measuring instrument or measuring system designed or intended to define, realise, conserve or reproduce:
  - (i) a unit of measurement of a physical quantity; or

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- (ii) one or more known values of a physical quantity; in order to transmit that unit or those values to measuring instruments by way of comparison; or
- (b) a formula designed or intended to define the magnitude of a physical quantity.

**State or Territory officer** means a person who, whether on a full-time basis or a part-time basis and whether in a permanent capacity or otherwise:

- (a) is in the service or employment of a State or Territory or an authority of a State or Territory; or
- (b) holds or performs the duties of any office or position established by or under a law of a State or Territory.

**State primary standard of measurement** means a standard of measurement that has been approved by the Chief Metrologist and that is maintained, or caused to be maintained, by a State or Territory and that has been verified under section 9 by means of, by reference to, by comparison with or by derivation from an Australian primary standard of measurement or an Australian secondary standard of measurement.

**this Act** includes the regulations and any other instrument made under a provision of this Act.

**trade measurement inspector** means:

- (a) in relation to the exercise of a power or the performance of a function or duty in circumstances prescribed under paragraph 18MA(3)(b)—a person appointed to a class of trade measurement inspectors authorised to exercise that power or perform that function or duty in those circumstances; and
- (b) in relation to the exercise of a power or the performance of a function or duty otherwise—a person appointed to a class of trade measurement inspectors authorised to exercise that power or perform that function or duty.

**unit of measurement** includes any word or expression that is used in conjunction with numerical values in order to describe the magnitudes of physical quantities.

**use for trade:** a person uses a measuring instrument for trade if:

- (a) the person is actually or apparently in control of the measuring instrument; and
- (b) the person uses it, or makes it available for another person to use, for either or both of the following purposes:
  - (i) determining the consideration in respect of a transaction;
  - (ii) determining the amount of a tax.

**utility** means gas, electricity or water.

**utility meter** means a measuring instrument that is:

- (a) a gas meter; or
- (b) an electricity meter; or
- (c) a water meter;

but does not include a meter that is included in a class of meters exempted from the operation of Part IV by the regulations.

Note: Most of the definitions dealing with utility meters are in section 18H.

**utility meter verifier** means a person appointed as a utility meter verifier under section 18RA or 18RH.

**utility meter verifier's mark** means a mark allocated to a person appointed as a verifier in relation to utility meters under section 18RA or 18RH for use by the verifier or its employees (if any), when verifying utility meters.

**vehicle** includes vessel, aircraft and any other means of conveying persons or goods.

**verification**, in relation to a measuring instrument, has the meaning given by section 18GG.

**verification mark** means:

- (a) in relation to utility meters—a utility meter verifier's mark; and
- (b) in relation to any other measuring instrument:
  - (i) an inspector's mark; or
  - (ii) a servicing licensee's mark.

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**verifier:**

- (a) in relation to utility meters—means a person who is permitted to verify the utility meter under section 18GI; and
- (b) in relation to any other measuring instrument—means a person who is permitted to verify the measuring instrument under section 18GH.

**weighbridge** means a measuring instrument that is of a capacity of 3 tonnes or more and has one or more platforms by the use of which the measuring instrument is capable of determining the mass of a vehicle or of livestock.

- (2) For the purposes of this Act, time interval not related to the calendar is a physical quantity and time interval so related is not a physical quantity.
- (3) A reference in this Act to the verification of a standard of measurement shall be read as including a reference to the reverification of the standard of measurement.
- (3A) A reference in this Act to the verification of a utility meter used for trade does not include a reference to the reverification of a utility meter used for trade.
- (4) A reference in this Act to an appropriate State authority shall be read as a reference to a Department of State or other authority in a State or Territory having responsibility for matters relating to weights and measures.
- (5) A reference in this Act to a person **marking a measuring instrument with a verification mark** includes the marking of the measuring instrument itself, the affixing of a label to the measuring instrument or the marking of a label affixed to the measuring instrument.
- (6) For the purposes of this Act, a **measuring instrument gives an inaccurate measurement** if the measuring instrument does not operate within the appropriate limits of error that are permitted under the regulations.
- (7) A reference in this Act to a particular provision or group of provisions includes a reference to regulations made under that provision or under any one or more of the provisions of that group of provisions.

**3A Meaning of *made available as a public weighbridge***

- (1) A weighbridge is *made available as a public weighbridge* if:
  - (a) it is open for use by or on behalf of the public; or
  - (b) it is available for use for a charge.
- (2) A weighbridge is not *made available as a public weighbridge* if the weighbridge is used by a person who owns or who has contracted to operate the weighbridge:
  - (a) for the purpose of determining the consideration in an agreement between the person and another person; or
  - (b) for purposes that do not involve another person.
- (3) The regulations may prescribe other circumstances in which a weighbridge is taken not to be *made available as a public weighbridge* for the purposes of this Act.

**4 Objects and application of Act**

- (1) The objects of this Act are:
  - (a) to establish a national system of units and standards of measurement of physical quantities; and
  - (b) to provide for the uniform use of those uniform units and standards of measurement throughout Australia; and
  - (c) to co-ordinate the operation of the national system of measurement; and
  - (d) to bring about the use of the metric system of measurement in Australia as the sole system of measurement of physical quantities; and
  - (e) to provide for a national system of trade measurement; and this Act shall be construed accordingly.
- (1A) Subsection (2) does not apply in respect of the application of this Act and regulations to utility meters used for trade.

Note: Section 4A deals with the application of the Act in respect of utility meters used for trade
- (2) This Act and the regulations do not apply to the exclusion of any law of a State or Territory except in so far as that law is inconsistent with an express provision of this Act or of the regulations.

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**4A Application of Act—utility meters used for trade**

*General rule—Commonwealth law applies*

- (1) Subject to subsections (2) and (3), this Act and the regulations are intended to apply to the exclusion of any State or Territory law to the extent that the State or Territory law relates to utility meters used for trade.

*Exception—certain State and Territory laws coexist with Commonwealth law*

- (2) This Act and the regulations are not intended to exclude or limit the concurrent operation of any State or Territory law relating to improper practices in connection with utility meters used for trade.

*Exception—this Act does not apply to reverification*

- (3) This Act and the regulations do not apply to the reverification of utility meters used for trade.

**4B Application of trade measurement provisions**

- (1) Parts IV to XIII of this Act do not apply to a measurement, or an instrument used for the purposes of a measurement, to determine any of the following:
  - (a) charges relating to telephone calls or the use of internet services;
  - (b) the fare payable for use of a taxi;
  - (c) the charge for the hire of a motor vehicle;
  - (d) tyre pressures;
  - (e) the expiration of time, or the calculation of time, for parking a vehicle.
- (2) Parts IV to XIII of this Act do not apply to a measuring instrument that is an automated packing machine.
- (3) Parts IV to XIII of this Act do not apply to a measurement for the purposes of:
  - (a) reporting and disseminating information relating to greenhouse gas emissions, greenhouse gas projects, energy production and energy consumption under the *National Greenhouse and Energy Reporting Act 2007*; or

- (b) reporting and disseminating information relating to greenhouse gas emissions or greenhouse gas projects under any other law of the Commonwealth or of a State or Territory; or
- (c) emissions trading under a law of the Commonwealth or of a State or Territory.

## **5 Act to bind the Crown**

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island and any authority constituted by or under a law of the Commonwealth or of a State or Territory.

## **6 Extension of Act to Territories**

This Act extends to all the Territories.

### **6A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences created by this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Part II—Units and standards of measurement**

### **7 Australian legal units of measurement**

Subject to subsection 7A(2), the Australian legal units of measurement of a physical quantity are the sole legal units of measurement of that physical quantity.

#### **7A Regulations may prescribe Australian legal units of measurement etc.**

- (1) The regulations may prescribe the Australian legal units of measurement of any physical quantity.
- (2) The regulations may prescribe units of measurement of any physical quantity to be additional legal units of measurement for use for a particular purpose or for the purpose of a particular contract, dealing or other transaction or class of contracts, dealings or other transactions.
- (3) The regulations may prescribe prefixes specifying numerical value.

#### **7B Guidelines**

The Chief Metrologist may, by legislative instrument, issue guidelines governing:

- (a) the way in which an Australian legal unit of measurement may be combined with itself, or one or more other Australian legal units of measurement, to produce an Australian legal unit of measurement; and
- (b) the way in which an Australian legal unit of measurement may be combined with a prefix prescribed for the purposes of subsection 7A(3) to produce an Australian legal unit of measurement.

### **8 Australian standards of measurement**

- (1) The Chief Metrologist shall maintain, or cause to be maintained, such standards of measurement as are necessary to provide means by which measurements of physical quantities for which there are

Australian legal units of measurement may be made in terms of those units.

- (2) The Chief Metrologist shall maintain, or cause to be maintained, such standards of measurement (not being Australian primary standards of measurement) as the Chief Metrologist considers desirable to maintain as Australian secondary standards of measurement in order to provide additional means by which measurements of physical quantities for which there are Australian legal units of measurement may be made in terms of those units.

### **8AA Co-ordinated Universal Time**

The Chief Metrologist is to maintain, or cause to be maintained, Co-ordinated Universal Time (UTC) as determined by the International Bureau of Weights and Measures.

### **8A Recognized-value standards of measurement**

- (1) The Chief Metrologist may, by legislative instrument, determine that:
  - (a) magnitudes of physical quantities specified in the determination; or
  - (b) magnitudes of physical quantities as ascertained in accordance with a formula set out in the determination;shall be recognized-value standards of measurement.
- (2) The Chief Metrologist may revoke or vary any such determination.
- (4) A recognized-value standard of measurement is not subject to verification.

### **9 Verification of State primary standards of measurement**

- (1) A State primary standard of measurement may, at the request of the appropriate State authority, be verified by or on behalf of the Chief Metrologist by means of, by reference to, by comparison with or by derivation from:
  - (a) an appropriate Australian primary standard of measurement;
  - (b) an appropriate Australian secondary standard of measurement; or

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- (c) 2 or more standards of measurement each of which is an appropriate Australian primary standard of measurement or an appropriate Australian secondary standard of measurement.
- (2) Verification of such a standard of measurement shall be carried out in a manner that is, having regard to the nature of the standard of measurement to be verified, appropriate for the purpose.
- (3) Where a State primary standard of measurement is verified by the Chief Metrologist or by a person on behalf of the Chief Metrologist, the Chief Metrologist or the person, as the case may be, shall specify the period within which the standard is to be verified again, and the standard shall be verified again within that period.

**10 Measurements to be ascertained in accordance with appropriate standards of measurement, Australian certified reference materials or certified measuring instruments**

When, for any legal purpose, it is necessary to ascertain whether a measurement of a physical quantity for which there are Australian legal units of measurement has been made or is being made in terms of those units, that fact shall be ascertained by means of, by reference to, by comparison with or by derivation from:

- (a) an appropriate Australian primary standard of measurement;
- (b) an appropriate Australian secondary standard of measurement;
- (c) an appropriate State primary standard of measurement;
- (d) an appropriate recognized-value standard of measurement;
- (e) an appropriate reference standard of measurement;
- (f) 2 or more standards of measurement, each of which is a standard of measurement referred to in paragraph (a), (b), (c), (d) or (e);
- (g) an Australian certified reference material;
- (h) a certified measuring instrument;
- (i) one or more standards of measurement, each of which is a standard of measurement referred to in paragraph (a), (b), (c), (d) or (e) and an Australian certified reference material;

- (j) one or more standards of measurement, each of which is a standard of measurement referred to in paragraph (a), (b), (c), (d) or (e) and a certified measuring instrument; or
  - (k) one or more standards of measurement, each of which is a standard of measurement referred to in paragraph (a), (b), (c), (d) or (e), an Australian certified reference material and a certified measuring instrument;
- and not in any other manner.

## **11 Conversion factors**

Where, for any legal purpose:

- (a) it is necessary to convert a measurement of a physical quantity expressed in terms of one of the Australian legal units of measurement of that physical quantity to a measurement expressed in terms of another Australian legal unit of measurement; or
- (b) it is necessary to convert a measurement of a physical quantity expressed in terms of a unit of measurement (not being an Australian legal unit of measurement) of that physical quantity to a measurement expressed in terms of one of the Australian legal units of measurement;

the prescribed conversion factors shall, where applicable, be used.

## **12 Trade contracts etc. to be expressed in Australian legal units of measurement**

- (1) On and after the date from which the Australian legal units of measurement of a physical quantity are the sole legal units of measurement of that physical quantity, every contract, dealing or other transaction made or entered into for any work, goods or other thing that is to be done, sold, carried or agreed for by measurement of that physical quantity shall be made or entered into by reference to Australian legal units of measurement of that physical quantity, and if not so made or entered into is void.
- (1A) Subsection (1) does not apply, and shall be deemed never to have applied, in relation to a contract, dealing or other transaction made or entered into with respect to an interest in land.
- (2) Where, in a contract, dealing or other transaction to which subsection (1) applies:

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- (a) reference is made to a unit of measurement of a physical quantity; and
  - (b) there is an Australian legal unit of measurement of that physical quantity of the same name;
- the reference shall, unless the contrary intention appears, be deemed to be a reference to that Australian legal unit of measurement.
- (3) Nothing in subsection (1) shall be taken to affect the validity of a contract, dealing or other transaction referred to in that subsection that was made or entered into by reference to units of measurement of a physical quantity that, at the time when it was made or entered into, were Australian legal units of measurement of that physical quantity.
  - (4) Where a contract, dealing or other transaction in relation to which an additional unit of measurement is applicable under regulations made for the purposes of subsection 7A(2) is made or entered into by reference to that additional unit of measurement, the contract, dealing or other transaction is not void by reason only that it is made or entered into by reference to that additional unit of measurement.

**12A Contracts etc. with respect to interests in land to be expressed in Australian legal units of measurement**

- (1) After the commencement of this section, every contract, dealing or other transaction made or entered into with respect to an interest in land that refers to any measurement of a physical quantity (including a reference to a measurement of a physical quantity for descriptive purposes only) shall refer to Australian legal units of measurement of that physical quantity.
- (2) Where, in a contract, dealing or other transaction to which subsection (1) applies:
  - (a) reference is made to a unit of measurement of a physical quantity; and
  - (b) there is an Australian legal unit of measurement of that physical quantity of the same name;the reference shall, unless the contrary intention appears, be deemed to be a reference to that Australian legal unit of measurement.

- (3) Where a contract, dealing or other transaction in relation to which an additional unit of measurement is applicable under regulations made for the purposes of subsection 7A(2) refers to that additional unit of measurement, the contract, dealing or other transaction does not contravene subsection (1) merely because it refers exclusively to that additional unit of measurement.
- (4) A contract dealing or other transaction made or entered into with respect to an interest in land does not contravene subsection (1) merely because it refers to units of measurement other than Australian legal units of measurement if:
- (a) in the case of land that is registered under a law of a State or Territory relating to the registration of interests in land—the folium of the register in which interests in the land are registered, or the duplicate certificate of title for the land, is expressed in, or contains or refers to a plan expressed in, units of measurement other than Australian legal units of measurement (whether or not also expressed in Australian legal units of measurement); or
  - (b) in any other case—all the muniments of title for the land are expressed in, or contain or refer to a plan expressed in, units of measurement other than Australian legal units of measurement (whether or not some of the muniments of title are also expressed in, or contain or refer to a plan that is also expressed in, Australian legal units of measurement).
- (5) Nothing in this section shall be taken to affect the validity of a contract, dealing or other transaction, or any interest derived under a contract, dealing or other transaction, merely because the contract, dealing or other transaction contravenes subsection (1).
- (6) A person who makes or enters into a contract, dealing or other transaction that contravenes subsection (1) commits an offence.

Penalty: 5 penalty units.

### **13 Contracts etc. relating to exportation or importation of goods**

The provisions of subsection 12(1) and of section 7 do not apply to or in relation to a contract, dealing or transaction made or entered into in connexion with the exportation of goods from, or the importation of goods into, Australia.

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**13A Futures contracts and contracts etc. relating to futures contracts**

- (1) Section 7 and subsection 12(1) do not apply in relation to a futures contract or a contract, dealing or transaction made or entered into in connection with a futures contract.
- (2) In subsection (1), *futures contract* has the same meaning as in the *Futures Industry Act 1986*.

**14 References in laws to units of measurement**

On and after the date from which the Australian legal units of measurement of a physical quantity are the sole legal units of measurement of that physical quantity, a reference in a law of the Commonwealth or of a Territory (whether the law was made before or after the commencement of this Act) to a unit of measurement of that physical quantity shall, if there is an Australian legal unit of measurement of that physical quantity of the same name and unless the contrary intention appears, be read as a reference to that Australian legal unit of measurement.

## **Part III—National Measurement Institute and Chief Metrologist**

### **16 Overview of Part**

#### **Overview of Part**

- (1) A National Measurement Institute is established within the Department.
- (2) The Secretary has metrological functions of the Commonwealth, but may delegate within the Department metrological functions and powers.
- (3) The position of Chief Metrologist is established and the functions of the Chief Metrologist identified.

### **17 National Measurement Institute**

There is to be a National Measurement Institute within the Department.

### **18 Metrological functions**

- (1) The Secretary has metrological functions of the Commonwealth.
- (2) Those functions include, but are not limited to, the following:
  - (a) adopting the International System of Units, and developing and adopting additional units of measurement for use in Australia;
  - (b) realising units of measurement through the development and maintenance of standards of measurement, reference materials and reference techniques;
  - (c) assisting industry, scientific organisations and government to develop and utilise measurement techniques, including by technology transfer;
  - (d) promoting best practice in measurement in industry and the scientific and wider community, including by training;

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- (e) providing measurement services to industry, scientific organisations and government, including by:
    - (i) measuring physical, chemical and biological quantities; and
    - (ii) providing calibration services; and
    - (iii) examining and approving patterns for measuring instruments;
  - (f) providing expertise in support of Australia's measurement standards and conformance infrastructure;
  - (g) promoting uniformity in national trade measurement policy and practice, including through work with Commonwealth, State and Territory agencies;
  - (h) facilitating international trade to the extent that it is affected by measurement;
  - (i) fulfilling Australia's international obligations with respect to measurement;
  - (j) conducting research in support of the functions mentioned in paragraphs (a) to (i).
- (3) The fact that the Secretary has the functions mentioned in this section does not limit the power of the Commonwealth to charge fees for things done in performing those functions.

**18A Chief Metrologist**

- (1) There is to be a Chief Metrologist, who is to be engaged under the *Public Service Act 1999*.
- (2) The Chief Metrologist has the functions conferred on him or her under this Act and the regulations.
- (3) The fact that the Chief Metrologist has the functions conferred on him or her under this Act and the regulations does not limit the power of the Commonwealth to charge fees for things done in performing those functions.

**18B Acting Chief Metrologist**

The Secretary may appoint a person to act as the Chief Metrologist:

- (a) during a vacancy in the office of Chief Metrologist (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chief Metrologist is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

### **18C Delegation by the Secretary**

- (1) The Secretary may delegate all or any of his or her functions or powers under this Act or the regulations to:
  - (a) an SES employee or acting SES employee in the Department; or
  - (b) the Chief Metrologist; or
  - (c) an APS employee within the National Measurement Institute who has the expertise appropriate to the function or power delegated.
- (2) The delegation must be in writing.
- (3) In exercising functions or powers under a delegation, the delegate must comply with any directions of the Secretary.

### **18D Delegation by the Chief Metrologist**

- (1) The Chief Metrologist may delegate all or any of his or her functions or powers under this Act or the regulations to an APS employee within the National Measurement Institute who has the expertise appropriate to the function or power delegated.
- (2) The delegation must be in writing.
- (3) In exercising functions or powers under a delegation, the delegate must comply with any directions of the Chief Metrologist.

## **Part IV—Using measuring instruments for trade**

### **Division 1—Overview of Part**

#### **18G Overview**

##### **Overview of Part**

- (1) Measuring instruments must be verified, used in a way that gives an accurate measurement, and be accurate.
- (2) Division 2 creates offences to deal with these matters.
- (3) Division 3 establishes the system for verifying measuring instruments.

## **Division 2—Requirements for use of measuring instruments for trade**

### **18GA Measuring instruments used for trade to be verified**

#### *Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person uses a measuring instrument for trade; and
  - (b) the measuring instrument is not verified.

Penalty: 100 penalty units.

#### *Strict liability offence*

- (2) A person commits an offence if:
- (a) the person uses a measuring instrument for trade; and
  - (b) the measuring instrument is not verified.

Penalty: 20 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) If:
- (a) a measuring instrument is on premises, or on a part of premises; and
  - (b) the consideration in respect of a transaction or the amount of a tax is determined on those premises, or that part of those premises;

it is presumed for the purposes of this section that the measuring instrument has been used for trade on the premises or that part of the premises unless the contrary is established.

- (5) If:
- (a) a measuring instrument is in or on a vehicle; and
  - (b) the consideration in respect of a transaction or the amount of a tax is determined in or on that vehicle;

it is presumed for the purposes of this section that the measuring instrument has been used for trade in or on the vehicle unless the contrary is established.

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**18GB Installing measuring instruments not of an approved pattern**

*Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person installs in or on any premises or vehicle a measuring instrument; and
  - (b) the measuring instrument is installed for use for trade; and
  - (c) the measuring instrument is not of an approved pattern.

Penalty: 200 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
- (a) the person installs in or on any premises or vehicle a measuring instrument; and
  - (b) the measuring instrument is installed for use for trade; and
  - (c) the measuring instrument is not of an approved pattern.

Penalty: 40 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**18GC Supplying measuring instruments not of an approved pattern**

*Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person sells or otherwise supplies a measuring instrument; and
  - (b) the measuring instrument is sold or otherwise supplied for use for trade; and
  - (c) the measuring instrument is not of an approved pattern.

Penalty: 200 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:

- (a) the person sells or otherwise supplies a measuring instrument; and
- (b) the measuring instrument is sold or otherwise supplied for use for trade; and
- (c) the measuring instrument is not of an approved pattern.

Penalty: 40 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **18GCA Letting for hire or loaning unverified measuring instruments**

#### *Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person lets for hire, or loans, a measuring instrument; and
  - (b) the measuring instrument is let, or loaned, for use for trade; and
  - (c) the measuring instrument is not verified.

Penalty: 200 penalty units.

#### *Strict liability offence*

- (2) A person commits an offence if:
- (a) the person lets for hire, or loans, a measuring instrument; and
  - (b) the measuring instrument is let, or loaned, for use for trade; and
  - (c) the measuring instrument is not verified.

Penalty: 40 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **18GD Inaccurate use of measuring instruments**

#### *Offence requiring fault element*

- (1) A person commits an offence if the person:
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- (a) uses a measuring instrument for trade; and
- (b) does so in such a way, or under such circumstances, that the measuring instrument gives an inaccurate measurement or gives other information (including a statement as to price) inaccurately.

Penalty: 200 penalty units.

*Strict liability offence*

- (2) A person commits an offence if the person:
  - (a) uses a measuring instrument for trade; and
  - (b) does so in such a way, or under such circumstances, that the measuring instrument gives an inaccurate measurement or gives other information (including a statement as to price) inaccurately.

Penalty: 40 penalty units.

*Offence requiring fault element*

- (3) A person commits an offence if:
  - (a) the person does, or fails to do, something in relation to a measuring instrument; and
  - (b) the person's act or omission causes, or is likely to cause, the measuring instrument to give an inaccurate measurement or to give other information (including a statement as to price) inaccurately when used for trade.

Penalty: 200 penalty units.

*Strict liability offence*

- (4) A person commits an offence if:
  - (a) the person does, or fails to do, something in relation to a measuring instrument; and
  - (b) the person's act or omission causes, or is likely to cause, the measuring instrument to give an inaccurate measurement or to give other information (including a statement as to price) inaccurately when used for trade.

Penalty: 40 penalty units.

- (5) Subsections (2) and (4) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **18GE Using or supplying inaccurate measuring instruments**

#### *Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person uses a measuring instrument for trade; and
  - (b) the measuring instrument gives an inaccurate measurement or gives other information (including a statement as to price) inaccurately.

Penalty: 200 penalty units.

#### *Strict liability offence*

- (2) A person commits an offence if:
- (a) the person uses a measuring instrument for trade; and
  - (b) the measuring instrument gives an inaccurate measurement or gives other information (including a statement as to price) inaccurately.

Penalty: 40 penalty units.

- (3) If:
- (a) a measuring instrument is on premises, or on a part of premises; and
  - (b) the consideration in respect of a transaction or the amount of a tax is determined on those premises, or that part of those premises;

it is presumed for the purposes of subsections (1) and (2) that the measuring instrument has been used for trade on the premises or that part of the premises unless the contrary is established.

- (4) If:
- (a) a measuring instrument is in or on a vehicle; and
  - (b) the consideration in respect of a transaction or the amount of a tax is determined in or on that vehicle;

it is presumed for the purposes of subsections (1) and (2) that the measuring instrument has been used for trade in or on the vehicle unless the contrary is established.

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*Offence requiring fault element*

- (5) A person commits an offence if:
- (a) the person lets for hire, or loans, a measuring instrument; and
  - (aa) the measuring instrument is let, or loaned, for use for trade; and
  - (b) the measuring instrument gives an inaccurate measurement or gives other information (including a statement as to price) inaccurately.

Penalty: 200 penalty units.

*Strict liability offence*

- (6) A person commits an offence if:
- (a) the person lets for hire, or loans, a measuring instrument; and
  - (aa) the measuring instrument is let, or loaned, for use for trade; and
  - (b) the measuring instrument gives an inaccurate measurement or gives other information (including a statement as to price) inaccurately.

Penalty: 40 penalty units.

- (7) Subsections (2) and (6) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Division 3—Verification of measuring instruments**

### **18GF Overview**

#### **Overview of Division**

- (1) This Division deals with the verification of measuring instruments.
- (2) Verification is defined in section 18GG. It is a process of ensuring that measuring instruments operate accurately.
- (3) Trade measurement inspectors, servicing licensees and employees of servicing licensees are permitted to verify measuring instruments (other than utility meters) (see section 18GH).
- (4) Utility meter verifiers are permitted to verify utility meters (see section 18GI).
- (5) Certain requirements must be met before a measuring instrument may be verified (see section 18GK).
- (6) This Division contains offences for persons who:
  - (a) use a verification mark when not permitted to do so (see section 18GM); and
  - (b) sell or supply measuring instruments that have been marked with a verification mark by a person not permitted to do so (see section 18GN); and
  - (c) mark measuring instruments in a misleading way (see section 18GO); and
  - (d) possess false verification marks (see section 18GP); and

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- (e) fail to obliterate verification marks if a measuring instrument's metrological performance is affected by repairs (see section 18GQ).

**18GG Meaning of *verified***

- (1) A measuring instrument is *verified* if:
- (a) either:
    - (i) a verifier is satisfied that the measuring instrument complies with the requirements for verification set out in section 18GK when tested in accordance with the national instrument test procedures and the measuring instrument is marked with a verification mark; or
    - (ii) if the measuring instrument is treated as one of a batch under the national instrument test procedures—a verifier is satisfied that measuring instruments of that batch comply with the requirements for verification set out in section 18GK when tested in accordance with those procedures and the measuring instrument is marked with a verification mark; and
  - (b) if the instrument is of a class for which a re-verification period is prescribed—the period since it was last verified or re-verified does not exceed that re-verification period.
- (2) The Chief Metrologist may determine, in writing, the national instrument test procedures. The determination is not a legislative instrument.
- (3) A re-verification period must not be prescribed for utility meters.
- (4) The regulations may:
- (a) prescribe circumstances in which a measuring instrument that is treated as one of a batch under the national instrument test procedures may be marked with a verification mark by a person other than the verifier; and
  - (b) provide for the provision of labour, facilities and equipment for the purposes of batch testing measuring instruments; and
  - (c) prescribe circumstances in which a measuring instrument is taken to be marked with a verification mark.

**18GH Who is permitted to verify measuring instruments other than utility meters?**

- (1) Subject to the limitations in this section, each of the following persons is permitted to verify a measuring instrument other than a utility meter:
  - (a) a trade measurement inspector;
  - (b) a servicing licensee;
  - (c) an employee of a servicing licensee.

Note 1: Trade measurement inspectors are appointed under Part IX.

Note 2: Servicing licensees are granted servicing licences under Part X.
- (2) A trade measurement inspector of a particular class may verify any measuring instrument that an inspector of that class is authorised to verify.
- (3) A servicing licensee may personally verify a measuring instrument if:
  - (a) the measuring instrument is of a class of measuring instruments that the licensee is licensed to verify; and
  - (b) the licensee is competent to verify the measuring instrument.
- (4) An employee of a servicing licensee may verify a measuring instrument if:
  - (a) the measuring instrument is of a class of measuring instruments that the licensee is licensed to verify; and
  - (b) the employee is competent to verify the measuring instrument.

**18GI Who is permitted to verify utility meters?**

A utility meter verifier may verify a utility meter.

Note: Utility meter verifiers are appointed under Part XIII.

**18GJ Register of verification marks**

The Secretary must keep a register of prescribed particulars relating to verification marks.

Section 18GK

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**18GK Requirements for verification**

The requirements for verification of a measuring instrument are:

- (a) the measuring instrument must operate within the appropriate limits of error that are permitted under the regulations; and
- (b) the measuring instrument must be of an approved pattern.

**18GL Standards of measurements to be used for verification**

- (1) The determination of whether the requirements for verification under section 18GK have been complied with must be made as required by section 10.
- (2) Subsection (1) does not apply if there is not an appropriate standard of measurement in respect of which the measuring instrument is to be verified.

**18GM Using a verification mark when not permitted to do so**

*Offence requiring fault element*

- (1) A person commits an offence if:
  - (a) the person marks a measuring instrument with a verification mark; and
  - (b) the person is not permitted to do so.

Penalty: 200 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
  - (a) the person marks a measuring instrument with a verification mark; and
  - (b) the person is not permitted to do so.

Penalty: 40 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**18GN Sale or supply of measuring instrument marked by someone not permitted to do so**

*Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person sells or otherwise supplies a measuring instrument for use for trade, or uses a measuring instrument for trade; and
  - (b) the measuring instrument is marked with a verification mark; and
  - (c) the person who marked the measuring instrument with the verification mark was not permitted to do so.

Penalty: 200 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
- (a) the person sells or otherwise supplies a measuring instrument for use for trade, or uses a measuring instrument for trade; and
  - (b) the measuring instrument is marked with a verification mark; and
  - (c) the person who marked the measuring instrument with the verification mark was not permitted to do so.

Penalty: 40 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**18GO Misleading marks**

*Offence requiring fault element—marking a measuring instrument with a misleading mark*

- (1) A person commits an offence if:
- (a) the person marks a measuring instrument; and
  - (b) the mark is not a verification mark but is likely to give the impression that it is a verification mark.

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Penalty: 200 penalty units.

*Strict liability offence—marking a measuring instrument with a misleading mark*

- (2) A person commits an offence if:
- (a) the person marks a measuring instrument; and
  - (b) the mark is not a verification mark but is likely to give the impression that it is a verification mark.

Penalty: 40 penalty units.

*Offence requiring fault element—using, selling or supplying a measuring instrument misleadingly marked*

- (3) A person commits an offence if:
- (a) the person:
    - (i) uses a measuring instrument for trade; or
    - (ii) sells or otherwise supplies a measuring instrument for use for trade; and
  - (b) the measuring instrument is marked; and
  - (c) the mark is not a verification mark but is likely to give the impression that it is a verification mark.

Penalty: 200 penalty units.

*Strict liability offence—using, selling or supplying a measuring instrument misleadingly marked*

- (4) A person commits an offence if:
- (a) the person:
    - (i) uses a measuring instrument for trade; or
    - (ii) sells or otherwise supplies a measuring instrument for use for trade; and
  - (b) the measuring instrument is marked; and
  - (c) the mark is not a verification mark but is likely to give the impression that it is a verification mark.

Penalty: 40 penalty units.

*Offence requiring fault element—possessing instrument for making misleading mark*

- (5) A person commits an offence if:
- (a) the person has an instrument or other thing in his or her possession; and
  - (b) the instrument or thing is designed for making a mark on a measuring instrument that is not a verification mark but is likely to give the impression that it is a verification mark.

Penalty: 200 penalty units.

*Strict liability offence—possessing instrument for making misleading mark*

- (6) A person commits an offence if:
- (a) the person has an instrument or other thing in his or her possession; and
  - (b) the instrument or thing is designed for making a mark on a measuring instrument that is not a verification mark but is likely to give the impression that it is a verification mark.

Penalty: 40 penalty units.

- (7) Subsections (2), (4) and (6) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**18GP Wrongful possession of an instrument for making a verification mark**

A person commits an offence if:

- (a) the person has an instrument or other thing in his or her possession; and
- (b) the instrument or thing is designed for marking a measuring instrument with a verification mark; and
- (c) the person is not permitted to mark a measuring instrument with that verification mark.

Penalty: 200 penalty units.

Section 18GQ

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**18GQ Obligation on repair of measuring instrument**

*Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person uses a measuring instrument for trade; and
  - (b) the person adjusts or repairs the measuring instrument, or causes the measuring instrument to be adjusted or repaired; and
  - (c) in adjusting or repairing the measuring instrument, the metrological performance of the measuring instrument is affected; and
  - (d) if the person causes the measuring instrument to be adjusted or repaired—the adjustment or repair of the measuring instrument is not performed by a servicing licensee or an employee of a servicing licensee or, in the case of a utility meter, by a utility meter verifier; and
  - (e) the person does not obliterate, or cause to be obliterated, any verification mark that the measuring instrument bears.

Penalty: 200 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
- (a) the person uses a measuring instrument for trade; and
  - (b) the person adjusts or repairs the measuring instrument, or causes the measuring instrument to be adjusted or repaired; and
  - (c) in adjusting or repairing the measuring instrument, the metrological performance of the measuring instrument is affected; and
  - (d) if the person causes the measuring instrument to be adjusted or repaired—the adjustment or repair of the measuring instrument is not performed by a servicing licensee or an employee of a servicing licensee or, in the case of a utility meter, by a utility meter verifier; and
  - (e) the person does not obliterate, or cause to be obliterated, any verification mark that the measuring instrument bears.

Penalty: 40 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Defence*

- (4) Subsections (1) and (2) do not apply if the effect on the measuring instrument can be corrected by normal operational adjustment of the measuring instrument.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

## Part V—General provisions on using measurement in trade

### 18H Overview

#### Overview of Part

- (1) This Part regulates the use of measurement in trade generally.
- (2) This Part deals with:
  - (a) articles that must be sold by measurement (sections 18HB and 18HC); and
  - (b) the units of measurement that must be used for certain transactions (section 18HD); and
  - (c) the scale intervals of measuring instruments used for certain articles (section 18HE); and
  - (d) unreliable methods of measurement (section 18HF); and
  - (e) the use of certain measuring instruments (section 18HG); and
  - (f) measuring instruments and methods of measurement used in monitoring compliance with this Act (section 18HH).
- (3) All trade measurement is to be a net measurement (section 18HI).

### 18HA When is an article packed in advance ready for sale?

An article is *packed in advance ready for sale* once the article is packed in the package in which it will be sold, regardless of whether the package is marked with a measurement or a

representation (including a statement as to price) by which the measurement of the article can be worked out.

**18HB Certain articles must be sold by measurement—articles packed in advance ready for sale**

*Offence requiring fault element—seller*

- (1) A person commits an offence if:
- (a) the person sells an article that is packed in advance ready for sale; and
  - (b) the packed article is of a class that, by regulation, must be sold by measurement; and
  - (c) either:
    - (i) the package in which the article is sold is marked with a price that is not determined by measurement; or
    - (ii) there is a marking on or near the receptacle in which the packed article is contained that is marked with a price that is not determined by measurement.

Penalty: 100 penalty units.

*Strict liability offence—seller*

- (2) A person commits an offence if:
- (a) the person sells an article that is packed in advance ready for sale; and
  - (b) the packed article is of a class that, by regulation, must be sold by measurement; and
  - (c) either:
    - (i) the package in which the article is sold is marked with a price that is not determined by measurement; or
    - (ii) there is a marking on or near the receptacle in which the packed article is contained that is marked with a price that is not determined by measurement.

Penalty: 20 penalty units.

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*Offence requiring fault element—possession, offer or exposure for sale*

- (3) A person commits an offence if:
- (a) the person possesses an article for sale, or offers or exposes it for sale; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the article is of a class that, by regulation, must be sold by measurement; and
  - (d) either:
    - (i) the package in which the article is sold is marked with a price that is not determined by measurement; or
    - (ii) there is a marking on or near the receptacle in which the packed article is contained that is marked with a price that is not determined by measurement.

Penalty: 100 penalty units.

*Strict liability offence—possession, offer or exposure for sale*

- (4) A person commits an offence if:
- (a) the person possesses an article for sale, or offers or exposes it for sale; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the article is of a class that, by regulation, must be sold by measurement; and
  - (d) either:
    - (i) the package in which the article is sold is marked with a price that is not determined by measurement; or
    - (ii) there is a marking on or near the receptacle in which the packed article is contained that is marked with a price that is not determined by measurement.

Penalty: 20 penalty units.

- (5) Subsections (2) and (4) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to offences against subsections (1), (2), (3) and (4).

**18HC Certain articles must be sold by measurement—other articles***Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person sells an article that is not packed in advance ready for sale; and
  - (b) the article is of a class that, by regulation, must be sold by measurement; and
  - (c) the price of the article is not determined by measurement.

Penalty: 100 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
- (a) the person sells an article that is not packed in advance ready for sale; and
  - (b) the article is of a class that, by regulation, must be sold by measurement; and
  - (c) the price of the article is not determined by measurement.

Penalty: 20 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**18HD Transactions based on measurement to be in prescribed units of measurement**

- (1) A person commits an offence if:
- (a) the person sells an article (whether packed in advance ready for sale or otherwise) or a utility for a price determined by reference to measurement of the article; and
  - (b) a unit of measurement is prescribed by the regulations for that article or utility, or articles or utilities of that class, for the purposes of this paragraph; and
  - (c) the price is not a price determined by reference to a measurement of the article or utility in that unit of measurement.

Penalty: 40 penalty units.

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- (2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to an offence against subsection (1).

### **18HE Measuring instruments used in transactions to have prescribed scale intervals**

- (1) A person commits an offence if:
- (a) the person sells an article (whether packed in advance ready for sale or otherwise) or a utility for a price determined by reference to measurement of the article; and
  - (b) the regulations prescribe scale intervals for measuring instruments used in the measurement of the article or utility, or articles or utilities of that class; and
  - (c) the price is not a price determined by reference to a measurement of the article or utility using a measuring instrument of those scale intervals.

Penalty: 40 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to an offence against subsection (1).

### **18HF Unreliable methods of measurement**

- (1) The regulations may prescribe unreliable methods of measurement of an article or utility or a class of articles or utilities.
- (2) If the regulations make provision under subsection (1):
- (a) the unreliable method of measurement must not be used in working out the amount of any tax (however described) payable by reference to measurement of the article or utility or an article or utility of that class; and
  - (b) no contract, dealing or other transaction is to be made or entered into that requires the unreliable method of measurement to be used in measuring the article or utility or an article or utility of that class for the purpose of

determining the consideration under that contract, dealing or transaction; and

- (c) to the extent that a contract is entered into requiring the unreliable method to be used for that purpose, the contract is null and void.

### **18HG Limiting use of certain measuring instruments**

#### *Offence requiring fault element*

- (1) A person commits an offence if:
  - (a) a measuring instrument is of a class that, by regulation, must only be used for prescribed purposes; and
  - (b) the person uses the measuring instrument for trade for another purpose.

Penalty: 100 penalty units.

#### *Strict liability offence*

- (2) A person commits an offence if:
  - (a) a measuring instrument is of a class that, by regulation, must only be used for prescribed purposes; and
  - (b) the person uses the measuring instrument for trade for another purpose.

Penalty: 20 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **18HH Measuring instruments and methods of measurement used in monitoring compliance with the Act**

- (1) The regulations may prescribe:
  - (a) measuring instruments, or classes of measuring instruments, to be used by trade measurement inspectors in the measurement of an article or utility, or a class of articles or utilities, for the purpose of monitoring compliance with this Act; and

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- (b) the methods of measurement of an article or utility, or a class of articles or utilities, to be used by trade measurement inspectors in monitoring compliance with this Act.
- (2) All courts, judges and persons acting judicially must presume that:
  - (a) a measuring instrument or a class of measuring instruments prescribed for an article or utility, or a class of articles or utilities, will, if used correctly, produce an accurate measurement of the article or utility, or articles or utilities of that class; and
  - (b) the use of the method of measurement prescribed for an article or utility, or a class of articles or utilities, will produce an accurate measurement of the article or utility, or articles or utilities of that class.

**18HI Articles sold by measurement to be sold by net measurement**

*Offence requiring fault element—sellers*

- (1) A person commits an offence if:
  - (a) the person sells an article (whether packed in advance ready for sale or otherwise) for a price determined by reference to measurement of the article; and
  - (b) the price is not determined by reference to the net measurement of the article when sold or, if an alternative time is prescribed in relation to the article, or articles of that class, at that alternative time.

Penalty: 100 penalty units.

*Strict liability offence—sellers*

- (2) A person commits an offence if:
  - (a) the person sells an article (whether packed in advance ready for sale or otherwise) for a price determined by reference to measurement of the article; and
  - (b) the price is not determined by reference to the net measurement of the article when sold or, if an alternative time is prescribed in relation to the article, or articles of that class, at that alternative time.

Penalty: 20 penalty units.

*Offence requiring fault element—possession, offer or exposure for sale*

- (3) A person commits an offence if:
- (a) the person possesses an article for sale, or offers or exposes it for sale, at a particular time (whether packed in advance ready for sale or otherwise) for a price determined by reference to measurement of the article; and
  - (b) the price is not determined by reference to the net measurement of the article at that time or, if an alternative time is prescribed in relation to the article, or articles of that class, at that alternative time.

Penalty: 100 penalty units.

*Strict liability offence—possession, offer or exposure for sale*

- (4) A person commits an offence if:
- (a) the person possesses an article for sale, or offers or exposes it for sale, at a particular time (whether packed in advance ready for sale or otherwise) for a price determined by reference to measurement of the article; and
  - (b) the price is not determined by reference to the net measurement of the article at that time or, if an alternative time is prescribed in relation to the article, or articles of that class, at that alternative time.

Penalty: 20 penalty units.

- (5) Subsections (2) and (4) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to offences against subsections (1), (2), (3) and (4).

## **Part VI—Articles packed in advance ready for sale**

### **Division 1—Overview of Part**

#### **18J Overview**

##### **Overview of Part**

- (1) This Part sets out the requirements for articles that are packed in advance ready for sale.
- (2) If an article is packed in advance ready for sale, the package must be marked with certain information such as the name and address of the packer. The use of certain prescribed expressions in relation to measurement on the package is prohibited (see Division 2).
- (3) It is an offence to pack, import or sell or possess, offer or expose for sale a package that contains less than the measurement represented. There are different methods for determining whether there is a shortfall. Division 3 deals with one of these methods, the Average Quantity System. Division 4 deals with cases where the existence of a shortfall is determined using other methods.
- (4) A permit may be obtained under Division 5 to import or sell or possess, offer or expose for sale certain articles that have been packed in advance ready for sale and that would otherwise breach Division 2.

## **Division 2—Marking packed articles**

### **Subdivision 2-A—Required package information**

#### **18JA Package must be marked with required package information—packer**

*Offence requiring fault element*

- (1) A person commits an offence if:
  - (a) the person packs an article; and
  - (b) the article is packed in advance ready for sale; and
  - (c) the packed article is of a class for which one or more of the following kinds of information is prescribed:
    - (i) the name and address of the person who packed the article or on whose behalf the article was packed;
    - (ii) the measurement of the article;
    - (iii) any other information prescribed for the purposes of this subparagraph; and
  - (d) the person does not mark the package with that information.

Penalty: 100 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
  - (a) the person packs an article; and
  - (b) the article is packed in advance ready for sale; and
  - (c) the packed article is of a class for which one or more of the following kinds of information is prescribed:
    - (i) the name and address of the person who packed the article or on whose behalf the article was packed;
    - (ii) the measurement of the article;
    - (iii) any other information prescribed for the purposes of this subparagraph; and
  - (d) the person does not mark the package with that information.

Penalty: 20 penalty units.

- (3) Subsection (2) is an offence of strict liability.

**Part VI** Articles packed in advance ready for sale

**Division 2** Marking packed articles

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Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Subsections (1) and (2) do not apply as a result of subparagraph (1)(c)(i) or (2)(c)(i) if the person knows that the article is to be sold on the premises on which it was packed for the consumption or use of the purchaser.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

- (5) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to offences against subsections (1) and (2).

**18JB Package must be marked with required package information—importer**

- (1) A person commits an offence if:
- (a) the person imports into Australia an article; and
  - (b) the article is packed in advance ready for sale; and
  - (c) the packed article is of a class for which one or more of the following kinds of information is prescribed:
    - (i) the name and address of the person who packed the article or on whose behalf the article was packed;
    - (ii) the measurement of the article;
    - (iii) any other information prescribed for the purposes of this subparagraph; and
  - (d) the package is not marked with that information (whether before the article is imported, or by the person after the article is imported).

Penalty: 100 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
- (a) the person imports into Australia an article; and
  - (b) the article is packed in advance ready for sale; and
  - (c) the packed article is of a class for which one or more of the following kinds of information is prescribed:
    - (i) the name and address of the person who packed the article or on whose behalf the article was packed;

- (ii) the measurement of the article;
- (iii) any other information prescribed for the purposes of this subparagraph; and
- (d) the package is not marked with that information (whether before the article is imported, or by the person after the article is imported).

Penalty: 20 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Subsections (1) and (2) do not apply if a permit in relation to the packed article has been issued under section 18JX.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

### **18JC Package must be marked with required package information—seller**

#### *Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person sells an article; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the packed article is of a class for which one or more of the following kinds of information is prescribed:
    - (i) the name and address of the person who packed the article or on whose behalf the article was packed;
    - (ii) the measurement of the article;
    - (iii) the price of the article;
    - (iv) any other information prescribed for the purposes of this subparagraph; and
  - (d) the package is not marked with that information.

Penalty: 100 penalty units.

#### *Strict liability offence*

- (2) A person commits an offence if:
- (a) the person sells an article; and

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- (b) the article has been packed in advance ready for sale; and
- (c) the packed article is of a class for which one or more of the following kinds of information is prescribed:
  - (i) the name and address of the person who packed the article or on whose behalf the article was packed;
  - (ii) the measurement of the article;
  - (iii) the price of the article;
  - (iv) any other information prescribed for the purposes of this subparagraph; and
- (d) the package is not marked with that information.

Penalty: 20 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Subsections (1) and (2) do not apply if a permit in relation to the packed article has been issued under section 18JX.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

- (5) Subsections (1) and (2) do not apply as a result of subparagraph (1)(c)(i) or (2)(c)(i) if:

- (a) the article is sold on the premises on which it was packed for the consumption or use of the purchaser; or
- (b) the article was packed outside Australia.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

- (6) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to offences against subsections (1) and (2).

**18JD Package must be marked with required package information—possession, offer or exposure for sale**

*Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person possesses an article for sale, or offers or exposes it for sale; and
  - (b) the article has been packed in advance ready for sale; and

- (c) the packed article is of a class for which one or more of the following kinds of information is prescribed:
  - (i) the name and address of the person who packed the article or on whose behalf the article was packed;
  - (ii) the measurement of the article;
  - (iii) the price of the article;
  - (iv) any other information prescribed for the purposes of this subparagraph; and
- (d) the package is not marked with that information.

Penalty: 100 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
  - (a) the person possesses an article for sale, or offers or exposes it for sale; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the packed article is of a class for which one or more of the following kinds of information is prescribed:
    - (i) the name and address of the person who packed the article or on whose behalf the article was packed;
    - (ii) the measurement of the article;
    - (iii) the price of the article;
    - (iv) any other information prescribed for the purposes of this subparagraph; and
  - (d) the package is not marked with that information.

Penalty: 20 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Subsections (1) and (2) do not apply if a permit in relation to the packed article has been issued under section 18JX.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

- (5) Subsections (1) and (2) do not apply as a result of subparagraph (1)(c)(i) or (2)(c)(i) if:

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- (a) the article is to be sold on the premises on which it was packed for the consumption or use of the purchaser; or
- (b) the article was packed outside Australia.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

- (6) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to offences against subsections (1) and (2).

**18JE Package must be marked in prescribed manner**

*Offence requiring fault element*

- (1) A person commits an offence if:
  - (a) the person would commit an offence under section 18JA, 18JB, 18JC or 18JD unless the person marked a package with information; and
  - (b) the manner in which that information is to be marked on the package is prescribed by the regulations; and
  - (c) the person does not mark the package in that manner.

Penalty: 100 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
  - (a) the person would commit an offence under section 18JA, 18JB, 18JC or 18JD unless the person marked a package with information; and
  - (b) the manner in which that information is to be marked on the package is prescribed by the regulations; and
  - (c) the person does not mark the package in that manner.

Penalty: 20 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Subsections (1) and (2) do not apply if a permit in relation to the packed article has been issued under section 18JX.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

## **Subdivision 2-B—Prohibited expressions**

### **18JF Using prohibited expressions—packer**

#### *Offence requiring fault element*

- (1) A person commits an offence if:
  - (a) the person packs an article; and
  - (b) the article is packed in advance ready for sale; and
  - (c) the packed article is of a class for which a prohibited expression in relation to the measurement of the article is prescribed for the purposes of this paragraph; and
  - (d) the person marks the package with the prohibited expression.

Penalty: 200 penalty units.

#### *Strict liability offence*

- (2) A person commits an offence if:
  - (a) the person packs an article; and
  - (b) the article is packed in advance ready for sale; and
  - (c) the packed article is of a class for which a prohibited expression in relation to the measurement of the article is prescribed for the purposes of this paragraph; and
  - (d) the person marks the package with the prohibited expression.

Penalty: 40 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to offences against subsections (1) and (2).

### **18JG Using prohibited expressions—seller**

#### *Offence requiring fault element*

- (1) A person commits an offence if:
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- (a) the person sells an article; and
- (b) the article has been packed in advance ready for sale; and
- (c) the packed article is of a class for which a prohibited expression in relation to the measurement of the article is prescribed for the purposes of this paragraph; and
- (d) the package is marked with the prohibited expression.

Penalty: 200 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
  - (a) the person sells an article; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the packed article is of a class for which a prohibited expression in relation to the measurement of the article is prescribed for the purposes of this paragraph; and
  - (d) the package is marked with the prohibited expression.

Penalty: 40 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Subsections (1) and (2) do not apply if a permit in relation to the packed article has been issued under section 18JX.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

- (5) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to offences against subsections (1) and (2).

**18JH Using prohibited expressions—possession, offer or exposure for sale**

*Offence requiring fault element*

- (1) A person commits an offence if:
  - (a) the person possesses an article for sale, or offers or exposes it for sale; and
  - (b) the article has been packed in advance ready for sale; and

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- (c) the packed article is of a class for which a prohibited expression in relation to the measurement of the article is prescribed for the purposes of this paragraph; and
- (d) the package is marked with the prohibited expression.

Penalty: 200 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
  - (a) the person possesses an article for sale, or offers or exposes it for sale; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the packed article is of a class for which a prohibited expression in relation to the measurement of the article is prescribed for the purposes of this paragraph; and
  - (d) the package is marked with the prohibited expression.

Penalty: 40 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Subsections (1) and (2) do not apply if a permit in relation to the packed article has been issued under section 18JX.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

- (5) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to offences against subsections (1) and (2).

## **Division 3—Average Quantity System for packed articles**

### **Subdivision 3-A—Preliminary**

#### **18JI Overview of Division**

##### **Overview of Division**

- (1) If an article is packed in advance ready for sale, the package may be marked with an AQS mark.
- (2) AQS stands for Average Quantity System. It is an internationally recognised system for sampling and testing groups of packages to determine whether, on average, they contain the quantities with which they are marked.
- (3) By marking a package with an AQS mark, a person represents that if the package is included in a group of like packages sampled and tested in accordance with AQS procedures, the group will be found on average to contain a measurement at least equal to the marked measurement.
- (4) This Division contains offences to deal with cases where this is not so (see Subdivision 3-C).
- (5) This Division also contains offences to deal with cases where misleading marks are used, or an AQS mark is placed in the wrong place (see Subdivision 3-B).

### **Subdivision 3-B—AQS marks**

#### **18JJ What is an AQS mark?**

An *AQS mark* is a mark prescribed by the regulations as an AQS mark.

#### **18JK AQS mark must be used in accordance with regulations**

- (1) The regulations may prescribe where an AQS mark is to be marked.

*Offence requiring fault element*

- (2) A person commits an offence if:
- (a) the person marks an AQS mark on a package; and
  - (b) the marking is done otherwise than in accordance with the regulations.

Penalty: 100 penalty units.

*Strict liability offence*

- (3) A person commits an offence if:
- (a) the person marks an AQS mark on a package; and
  - (b) the marking is done otherwise than in accordance with the regulations.

Penalty: 20 penalty units.

- (4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **18JL Using misleading marks**

*Offence requiring fault element—packer*

- (1) A person commits an offence if the person:
- (a) packs an article in advance ready for sale; and
  - (b) marks the article with a mark that is not an AQS mark, but that is likely to give the impression that it is an AQS mark.

Penalty: 200 penalty units.

*Strict liability offence—packer*

- (2) A person commits an offence if the person:
- (a) packs an article in advance ready for sale; and
  - (b) marks the article with a mark that is not an AQS mark, but that is likely to give the impression that it is an AQS mark.

Penalty: 40 penalty units.

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*Offence requiring fault element—possession, offer or exposure for sale*

- (3) A person commits an offence if:
- (a) the person possesses an article for sale, or offers or exposes it for sale; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the article is marked with a mark that is not an AQS mark, but that is likely to give the impression that it is an AQS mark.

Penalty: 200 penalty units.

*Strict liability offence—possession, offer or exposure for sale*

- (4) A person commits an offence if:
- (a) the person possesses an article for sale, or offers or exposes it for sale; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the article is marked with a mark that is not an AQS mark, but that is likely to give the impression that it is an AQS mark.

Penalty: 40 penalty units.

*Offence requiring fault element—seller*

- (5) A person commits an offence if:
- (a) the person sells an article; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the article is marked with a mark that is not an AQS mark, but that is likely to give the impression that it is an AQS mark.

Penalty: 200 penalty units.

*Strict liability offence—seller*

- (6) A person commits an offence if:
- (a) the person sells an article; and
  - (b) the article has been packed in advance ready for sale; and

- (c) the article is marked with a mark that is not an AQS mark, but that is likely to give the impression that it is an AQS mark.

Penalty: 40 penalty units.

- (7) Subsections (2), (4) and (6) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **Subdivision 3-C—Shortfall**

#### **18JM Shortfall offence—packer**

##### *Offence requiring fault element*

- (1) A person commits an offence if:
  - (a) the person packs an article; and
  - (b) the article is packed in advance ready for sale; and
  - (c) the package is marked with an AQS mark; and
  - (d) the person:
    - (i) marks the package with a measurement or minimum measurement of the article contained in the package; or
    - (ii) marks the package with a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; or
    - (iii) otherwise, by any document or statement, represents the measurement or minimum measurement of the article contained in the package, or makes a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
  - (e) the package is one of a group of packages of the same kind that, once packed, are on the same premises or in the same vehicle; and
  - (f) the number of packages in the group equals or exceeds the AQS threshold; and
  - (g) a sample of the group, selected in accordance with AQS sampling procedures, fails testing in accordance with AQS test procedures.

Penalty: 200 penalty units.

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*Strict liability offence*

- (2) A person commits an offence if:
- (a) the person packs an article; and
  - (b) the article is packed in advance ready for sale; and
  - (c) the package is marked with an AQS mark; and
  - (d) the person:
    - (i) marks the package with a measurement or minimum measurement of the article contained in the package; or
    - (ii) marks the package with a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; or
    - (iii) otherwise, by any document or statement, represents the measurement or minimum measurement of the article contained in the package, or makes a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
  - (e) the package is one of a group of packages of the same kind that, once packed, are on the same premises or in the same vehicle; and
  - (f) the number of packages in the group equals or exceeds the AQS threshold; and
  - (g) a sample of the group, selected in accordance with AQS sampling procedures, fails testing in accordance with AQS test procedures.

Penalty: 40 penalty units.

- (3) Subject to subsection (4), subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Absolute liability applies to paragraphs (1)(e), (1)(f), (2)(e) and (2)(f).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

- (5) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to offences against subsections (1) and (2).

### **18JN Shortfall offence—importer**

#### *Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person imports into Australia an article; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the package is marked with an AQS mark; and
  - (d) one of the following circumstances exist:
    - (i) the package is marked with a measurement or minimum measurement of the article contained in the package;
    - (ii) the package is marked with a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out;
    - (iii) a representation is otherwise made, by any document or statement, about the measurement or minimum measurement of the article contained in the package;
    - (iv) a representation is otherwise made (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
  - (e) the package is one of a group of packages of the same kind that, once imported, are on the same premises or in the same vehicle; and
  - (f) the number of packages in the group equals or exceeds the AQS threshold; and
  - (g) a sample of the group, selected in accordance with AQS sampling procedures, fails testing in accordance with AQS test procedures.

Penalty: 200 penalty units.

#### *Strict liability offence*

- (2) A person commits an offence if:
- (a) the person imports into Australia an article; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the package is marked with an AQS mark; and
  - (d) one of the following circumstances exist:
    - (i) the package is marked with a measurement or minimum measurement of the article contained in the package;

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- (ii) the package is marked with a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out;
- (iii) a representation is otherwise made, by any document or statement, about the measurement or minimum measurement of the article contained in the package;
- (iv) a representation is otherwise made (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
- (e) the package is one of a group of packages of the same kind that, once imported, are on the same premises or in the same vehicle; and
- (f) the number of packages in the group equals or exceeds the AQS threshold; and
- (g) a sample of the group, selected in accordance with AQS sampling procedures, fails testing in accordance with AQS test procedures.

Penalty: 40 penalty units.

- (3) Subject to subsection (4), subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Absolute liability applies to paragraphs (1)(e), (1)(f), (2)(e) and (2)(f).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

**18JO Shortfall offence—possession, offer or exposure for sale**

*Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person possesses an article for sale, or offers or exposes it for sale; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the package is marked with an AQS mark; and
  - (d) the package is marked with:
    - (i) a measurement or minimum measurement of the article contained in the package; or

- (ii) a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
- (e) the package is one of a group of packages of the same kind that, at the time of possession, offer or exposure, are on the same premises or in the same vehicle; and
- (f) the number of packages in the group equals or exceeds the AQS threshold; and
- (g) a sample of the group, selected in accordance with AQS sampling procedures, fails testing in accordance with AQS test procedures.

Penalty: 200 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
- (a) the person possesses an article for sale, or offers or exposes it for sale; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the package is marked with an AQS mark; and
  - (d) the package is marked with:
    - (i) a measurement or minimum measurement of the article contained in the package; or
    - (ii) a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
  - (e) the package is one of a group of packages of the same kind that, at the time of possession, offer or exposure, are on the same premises or in the same vehicle; and
  - (f) the number of packages in the group equals or exceeds the AQS threshold; and
  - (g) a sample of the group, selected in accordance with AQS sampling procedures, fails testing in accordance with AQS test procedures.

Penalty: 40 penalty units.

- (3) Subject to subsection (4), subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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- (4) Absolute liability applies to paragraphs (1)(e), (1)(f), (2)(e) and (2)(f).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

- (5) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to offences against subsections (1) and (2).

**18JP Shortfall offence—sale**

*Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person sells an article; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the package is marked with an AQS mark; and
  - (d) the package is marked with:
    - (i) a measurement or minimum measurement of the article contained in the package; or
    - (ii) a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
  - (e) the package is one of a group of packages of the same kind that, at the time of sale, are on the same premises or in the same vehicle; and
  - (f) the number of packages in the group equals or exceeds the AQS threshold; and
  - (g) a sample of the group, selected in accordance with AQS sampling procedures, fails testing in accordance with AQS test procedures.

Penalty: 200 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
- (a) the person sells an article; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the package is marked with an AQS mark; and
  - (d) the package is marked with:

- (i) a measurement or minimum measurement of the article contained in the package; or
- (ii) a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
- (e) the package is one of a group of packages of the same kind that, at the time of sale, are on the same premises or in the same vehicle; and
- (f) the number of packages in the group equals or exceeds the AQS threshold; and
- (g) a sample of the group, selected in accordance with AQS sampling procedures, fails testing in accordance with AQS test procedures.

Penalty: 40 penalty units.

- (3) Subject to subsection (4), subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Absolute liability applies to paragraphs (1)(e), (1)(f), (2)(e) and (2)(f).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

- (5) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to offences against subsections (1) and (2).

## **Division 4—Packed articles not marked with AQS mark**

### **Subdivision 4-A—Overview of Division**

#### **18JQ Overview**

##### **Overview of Division**

- (1) If an article that has been packed in advance ready for sale is not marked with an AQS mark, the existence of a shortfall is determined using a nationally recognised system of sampling and testing groups of packages.
- (2) If the group of packages is too small to allow meaningful testing in this way national single article test procedures are used.
- (3) This Division contains a series of shortfall offences based on these procedures for determining whether there is a shortfall.

### **Subdivision 4-B—Shortfall offences**

#### **18JR When is there a shortfall in the measurement of a packed article?**

There is a *shortfall* in the measurement of an article that has been packed in advance ready for sale and that is not marked with an AQS mark if:

- (a) all of the following conditions are met:
  - (i) the package is one of a group of packages of the same kind that are on the same premises or in the same vehicle;
  - (ii) the number of packages in the group equals or exceeds the national test threshold;
  - (iii) a sample of the group, selected in accordance with national sampling procedures, is tested in accordance with national group test procedures and the sample fails;or

- (b) the package is tested in accordance with national single article test procedures and the package fails.

### **18JS Shortfall offence—packer**

#### *Offence requiring fault element*

- (1) A person commits an offence if:
  - (a) the person packs an article; and
  - (b) the article is packed in advance ready for sale; and
  - (c) the package is not marked with an AQS mark; and
  - (d) the person:
    - (i) marks the package with a measurement or minimum measurement of the article contained in the package; or
    - (ii) marks the package with a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; or
    - (iii) otherwise, by any document or statement, represents the measurement or minimum measurement of the article contained in the package, or makes a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
  - (e) there is a shortfall in the measurement of the article contained in the package.

Penalty: 200 penalty units.

#### *Strict liability offence*

- (2) A person commits an offence if:
  - (a) the person packs an article; and
  - (b) the article is packed in advance ready for sale; and
  - (c) the package is not marked with an AQS mark; and
  - (d) the person:
    - (i) marks the package with a measurement or minimum measurement of the article contained in the package; or
    - (ii) marks the package with a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; or

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- (iii) otherwise, by any document or statement, represents the measurement or minimum measurement of the article contained in the package, or makes a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
- (e) there is a shortfall in the measurement of the article contained in the package.

Penalty: 40 penalty units.

- (3) Subject to subsection (4), subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Absolute liability applies to subparagraphs (a)(i) and (ii) of the definition of *shortfall* in section 18JR as applied for the purposes of paragraphs (1)(e) and (2)(e).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

- (5) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to offences against subsections (1) and (2).

**18JT Shortfall offence—importer**

*Offence requiring fault element*

- (1) A person commits an offence if:
  - (a) the person imports into Australia an article; and
  - (b) the article is packed in advance ready for sale; and
  - (c) the package is not marked with an AQS mark; and
  - (d) one of the following circumstances exist:
    - (i) the package is marked with a measurement or minimum measurement of the article contained in the package;
    - (ii) the package is marked with a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out;
    - (iii) a representation is otherwise made, by any document or statement, about the measurement or minimum measurement of the article contained in the package;

- (iv) a representation is otherwise made (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
- (e) there is a shortfall in the measurement of the article contained in the package.

Penalty: 200 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
- (a) the person imports into Australia an article; and
  - (b) the article is packed in advance ready for sale; and
  - (c) the package is not marked with an AQS mark; and
  - (d) one of the following circumstances exist:
    - (i) the package is marked with a measurement or minimum measurement of the article contained in the package;
    - (ii) the package is marked with a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out;
    - (iii) a representation is otherwise made, by any document or statement, about the measurement or minimum measurement of the article contained in the package;
    - (iv) a representation is otherwise made (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
  - (e) there is a shortfall in the measurement of the article contained in the package.

Penalty: 40 penalty units.

- (3) Subject to subsection (4), subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Absolute liability applies to subparagraphs (a)(i) and (ii) of the definition of **shortfall** in section 18JR as applied for the purposes of paragraphs (1)(e) and (2)(e).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

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**18JU Shortfall offence—possession, offer or exposure for sale**

*Offence requiring fault element—marking on package*

- (1) A person commits an offence if:
- (a) the person possesses an article for sale, or offers or exposes it for sale; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the package is not marked with an AQS mark; and
  - (d) the package is marked with:
    - (i) a measurement or minimum measurement of the article contained in the package; or
    - (ii) a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
  - (e) there is a shortfall in the measurement of the article contained in the package.

Penalty: 200 penalty units.

*Strict liability offence—marking on package*

- (2) A person commits an offence if:
- (a) the person possesses an article for sale, or offers or exposes it for sale; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the package is not marked with an AQS mark; and
  - (d) the package is marked with:
    - (i) a measurement or minimum measurement of the article contained in the package; or
    - (ii) a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
  - (e) there is a shortfall in the measurement of the article contained in the package.

Penalty: 40 penalty units.

*Offence requiring fault element—marking on receptacle containing package*

- (3) A person commits an offence if:
- (a) the person possesses an article for sale, or offers or exposes it for sale; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the package is not marked with an AQS mark; and
  - (d) the packed article is contained in a receptacle; and
  - (e) either of the following is marked on or near the receptacle:
    - (i) a measurement or minimum measurement of the article contained in the package;
    - (ii) a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
  - (f) there is a shortfall in the measurement of the article contained in the package.

Penalty: 200 penalty units.

*Strict liability offence—marking on receptacle containing package*

- (4) A person commits an offence if:
- (a) the person possesses an article for sale, or offers or exposes it for sale; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the package is not marked with an AQS mark; and
  - (d) the packed article is contained in a receptacle; and
  - (e) either of the following is marked on or near the receptacle:
    - (i) a measurement or minimum measurement of the article contained in the package;
    - (ii) a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
  - (f) there is a shortfall in the measurement of the article contained in the package.

Penalty: 40 penalty units.

- (5) Subject to subsection (6), subsections (2) and (4) are offences of strict liability.

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Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) Absolute liability applies to subparagraphs (a)(i) and (ii) of the definition of **shortfall** in section 18JR as applied for the purposes of paragraphs (1)(e), (2)(e), (3)(f) and (4)(f).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

- (7) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to offences against subsections (1), (2), (3) and (4).

**18JV Shortfall offence—seller**

*Offence requiring fault element—marking on package*

- (1) A person commits an offence if:
- (a) the person sells an article; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the package is not marked with an AQS mark; and
  - (d) the package is marked with:
    - (i) a measurement or minimum measurement of the article contained in the package; or
    - (ii) a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
  - (e) there is a shortfall in the measurement of the article contained in the package.

Penalty: 200 penalty units.

*Strict liability offence—marking on package*

- (2) A person commits an offence if:
- (a) the person sells an article; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the package is not marked with an AQS mark; and
  - (d) the package is marked with:
    - (i) a measurement or minimum measurement of the article contained in the package; or

- (ii) a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
- (e) there is a shortfall in the measurement of the article contained in the package.

Penalty: 40 penalty units.

*Offence requiring fault element—marking on receptacle containing package*

- (3) A person commits an offence if:
  - (a) the person sells an article; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the package is not marked with an AQS mark; and
  - (d) the packed article is contained in a receptacle; and
  - (e) either of the following is marked on or near the receptacle:
    - (i) a measurement or minimum measurement of the article contained in the package;
    - (ii) a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and
  - (f) there is a shortfall in the measurement of the article contained in the package.

Penalty: 200 penalty units.

*Strict liability offence—marking on receptacle containing package*

- (4) A person commits an offence if:
  - (a) the person sells an article; and
  - (b) the article has been packed in advance ready for sale; and
  - (c) the package is not marked with an AQS mark; and
  - (d) the packed article is contained in a receptacle; and
  - (e) either of the following is marked on or near the receptacle:
    - (i) a measurement or minimum measurement of the article contained in the package;
    - (ii) a representation (including a statement as to price) by which the measurement of the article contained in the package can be worked out; and

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- (f) there is a shortfall in the measurement of the article contained in the package.

Penalty: 40 penalty units.

- (5) Subject to subsection (6), subsections (2) and (4) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) Absolute liability applies to subparagraphs (a)(i) and (ii) of the definition of *shortfall* in section 18JR as applied for the purposes of paragraphs (1)(e), (2)(e), (3)(f) and (4)(f).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

- (7) Section 15.2 (extended geographical jurisdiction—category B) of the *Criminal Code* applies to offences against subsections (1), (2), (3) and (4).

## **Division 5—Permits**

### **18JW Overview**

#### **Overview of Division**

- (1) This Division creates a system of permits for the sale or possession, offer or exposure for the sale of certain articles that do not include required information on the package in the manner prescribed or that contain prohibited expressions on the package.
- (2) Permits may only be given for breaches that are minor and not misleading and where obliging the rectification of the breach would impose unnecessary costs on business.
- (3) Persons selling articles for which permits have been issued must give a copy of the permit to a purchaser who intends to on-sell the article.

### **18JX Permits for certain packed articles**

- (1) The Secretary may, in writing, issue a permit for the importation of an article packed in advance ready for sale if either of the following apply:
  - (a) the package does not include information of the kind prescribed for the purposes of section 18JB;
  - (b) the package is not marked with information of the kind prescribed for the purposes of section 18JB in the manner prescribed for the purposes of section 18JE.
- (2) The Secretary may, in writing, issue a permit for the sale of an article packed in advance ready for sale to which any of the following apply:
  - (a) the package does not include information of the kind prescribed for the purposes of section 18JC;
  - (b) the package is not marked with information of the kind prescribed for the purposes of section 18JC in the manner prescribed for the purposes of section 18JE;

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- (c) the package includes a prohibited expression of the kind prescribed for the purposes of section 18JG.
  - (3) The Secretary may, in writing, issue a permit for the possession for sale, or offer or exposure for sale, of an article packed in advance ready for sale to which any of the following apply:
    - (a) the package does not include information of the kind prescribed for the purposes of section 18JD;
    - (b) the package is not marked with information of the kind prescribed for the purposes of section 18JD in the manner prescribed for the purposes of section 18JE;
    - (c) the package includes a prohibited expression of the kind prescribed for the purposes of section 18JH.
  - (4) The Secretary may only issue a permit under this section if the Secretary is satisfied that:
    - (a) the breach is minor in nature; and
    - (b) the markings on the package are not misleading; and
    - (c) requiring rectification of the breach would impose an unnecessary cost on business.
  - (5) A permit under this section may be issued subject to such terms and conditions as are specified in the permit.
  - (6) Without limiting subsection (5), a permit under this section is limited to the importation, sale, possession for sale or offer or exposure for sale of the packed article within a specified period of no more than 6 months.
  - (7) The Secretary may, by notice in writing, given to the person to whom the permit was issued, extend that period.
  - (8) The Secretary may amend or cancel a permit by notice in writing given to the person to whom the permit was issued.
  - (9) If:
    - (a) a person sells a packed article for which a permit has been issued under this section; and
    - (b) the purchaser of the packed article intends to sell the packed article to another person;the first-mentioned person must give a copy of the permit and any notices under subsection (7) or (8) received by that person to the purchaser.
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Penalty for a contravention of this subsection: 50 penalty units.

**18JY Register of permits**

- (1) The Secretary must keep a register of prescribed particulars relating to permits issued under section 18JX.
- (2) The register must be published on the internet.

**18JZ Evidentiary certificate**

In any proceedings (including disciplinary proceedings) under this Act, a document, certified by the Secretary, and purporting to be a copy of a permit issued under this Division, is admissible as prima facie evidence of:

- (a) the fact that the permit was issued; and
- (b) the day on which or the period during which it was in force; and
- (c) the conditions on which the permit was in force.

## Part VII—Other articles

### 18K Overview

#### Overview of Part

- (1) This Part contains requirements in relation to articles that are sold for a price determined by reference to the measurement of the article.
- (2) If the purchaser is present at the point of sale, measurements must be made in such a way that the purchaser can see the measurement of the article. A seller who does not do so commits an offence (see section 18KA).
- (3) If the purchaser is not present at the point of sale, the seller must give the purchaser a written statement of the measurement of the article on delivery. It is an offence if the seller does not do so (see section 18KB).
- (4) It is an offence if a person sells packaging for an article and charges a price per unit of measurement of the packaging that is determined in the same way as, or directly or indirectly by reference to, the price per unit of measurement of the article (see section 18KC).
- (5) The Part also contains a shortfall offence (see section 18KD).

### 18KA Measurement must be open to scrutiny if purchaser present

#### *Offence requiring fault element*

- (1) A person commits an offence if:
  - (a) the person sells an article for a price determined by reference to measurement of the article; and
  - (b) the article is not packed in advance ready for sale; and
  - (c) the purchaser is present at the point of sale; and

- (d) the measurement is made in either of the following circumstances:
  - (i) the measuring process is not readily visible to the purchaser;
  - (ii) any reading or information displayed by the measuring instrument is not readily visible to the purchaser.

Penalty: 200 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
  - (a) the person sells an article for a price determined by reference to measurement of the article; and
  - (b) the article is not packed in advance ready for sale; and
  - (c) the purchaser is present at the point of sale; and
  - (d) the measurement is made in either of the following circumstances:
    - (i) the measuring process is not readily visible to the purchaser;
    - (ii) any reading or information displayed by the measuring instrument is not readily visible to the purchaser.

Penalty: 40 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**18KB Purchaser must receive invoice stating measurement if not present at sale**

*Offence requiring fault element*

- (1) A person commits an offence if:
  - (a) the person sells an article for a price determined by reference to measurement of the article; and
  - (b) the article is not packed in advance ready for sale; and
  - (c) the purchaser is not present at the point of sale; and
  - (d) the person does not give the purchaser a written statement of the measurement of the article at the time the article is delivered.

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Penalty: 200 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
- (a) the person sells an article for a price determined by reference to measurement of the article; and
  - (b) the article is not packed in advance ready for sale; and
  - (c) the purchaser is not present at the point of sale; and
  - (d) the person does not give the purchaser a written statement of the measurement of the article at the time the article is delivered.

Penalty: 40 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**18KC Articles sold by measurement—price of packaging**

*Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person sells an article for a price determined by reference to measurement of the article; and
  - (b) the article is not packed in advance ready for sale; and
  - (c) the person makes packaging available when the article is sold; and
  - (d) the person charges a price for the packaging; and
  - (e) the price per unit of measurement of the packaging is determined in the same way as, or directly or indirectly by reference to, the price per unit of measurement of the article.

Penalty: 200 penalty units.

*Strict liability offence*

- (2) A person commits an offence if:
- (a) the person sells an article for a price determined by reference to measurement of the article; and
  - (b) the article is not packed in advance ready for sale; and

- (c) the person makes packaging available when the article is sold; and
- (d) the person charges a price for the packaging; and
- (e) the price per unit of measurement of the packaging is determined in the same way as, or directly or indirectly by reference to, the price per unit of measurement of the article.

Penalty: 40 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **18KD Shortfall offence—sale**

#### *Offence requiring fault element*

- (1) A person commits an offence if:
- (a) the person sells an article; and
  - (b) the article has not been packed in advance ready for sale; and
  - (c) before or at the time of sale, the person:
    - (i) makes a representation about the measurement of the article; or
    - (ii) makes a representation (including a statement as to price) by which the measurement of the article can be worked out; and
  - (d) the measurement of the article sold is less than that represented; and
  - (e) in the case where the representation is made before the time of sale—the representation is not corrected before or at the time of sale.

Penalty: 200 penalty units.

#### *Strict liability offence*

- (2) A person commits an offence if:
- (a) the person sells an article; and
  - (b) the article has not been packed in advance ready for sale; and
  - (c) before or at the time of sale, the person:
    - (i) makes a representation about the measurement of the article; or

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- (ii) makes a representation (including a statement as to price) by which the measurement of the article can be worked out; and
- (d) the measurement of the article sold is less than that represented; and
- (e) in the case where the representation is made before the time of sale—the representation is not corrected before or at the time of sale.

Penalty: 40 penalty units.

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Part VIII—Enforcement of Parts IV to VII**

### **Division 1—Overview**

#### **18L Overview**

##### **Overview of Part**

- (1) This Part contains mechanisms for enforcing the requirements in Parts IV, V, VI and VII.
- (2) Division 2 provides for the giving of evidentiary certificates in relation to testing of packages under AQS, the national group test procedures and the national single article test procedures.
- (3) Division 3 sets up a system of infringement notices for contraventions of strict liability provisions as an alternative to the institution of proceedings in a court.

## Division 2—Evidentiary matters

### 18LA Evidentiary certificate—shortfall offences

#### *Evidentiary certificates in relation to AQS testing*

- (1) Subject to section 18LB, in any offence proceedings under Subdivision 3-C of Division 3 of Part VI, a certificate, signed by a trade measurement inspector, stating that:
  - (a) a particular package is one of a group of packages of the same kind that were on the same premises or in the same vehicle at a specified time; and
  - (b) the number of packages in the group equalled or exceeded the AQS threshold; and
  - (c) a sample of the group, selected in accordance with AQS sampling procedures, failed testing in accordance with AQS test procedures;

is admissible as prima facie evidence of the matters stated in the certificate.

#### *Evidentiary certificates in relation to national group test procedures*

- (2) Subject to section 18LB, in any offence proceedings under Subdivision 4-B of Division 4 of Part VI, a certificate, signed by a trade measurement inspector, stating that:
  - (a) a particular package is one of a group of packages of the same kind that were on the same premises or in the same vehicle at a specified time; and
  - (b) the number of packages in the group equalled or exceeded the national test threshold; and
  - (c) a sample of the group, selected in accordance with national sampling procedures, failed testing in accordance with the national group test procedures;

is admissible as prima facie evidence of the matters stated in the certificate.

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*Evidentiary certificates in relation to national single article test procedures*

- (3) Subject to section 18LB, in any offence proceedings under Subdivision 4-B of Division 4 of Part VI, a certificate, signed by a trade measurement inspector, stating that a package failed testing in accordance with the national single article test procedures is admissible as prima facie evidence of the matters stated in the certificate.
- (4) For the purposes of this section, a document purporting to be a certificate referred to in subsection (1), (2) or (3) is, unless the contrary is established, to be taken to be such a certificate and to have been duly given.

**18LB Certificate not to be admitted unless copy given to defendant 14 days before certificate to be admitted in evidence**

A certificate must not be admitted in evidence under section 18LA in offence proceedings under Part VI unless the person charged with the offence or a solicitor who has appeared for the person in those proceedings has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable evidence of the intention to produce the certificate as evidence in the proceedings.

**18LC Person giving certificate may be called to give evidence**

- (1) Subject to subsection (2), if, under section 18LA, a certificate is admitted in evidence in offence proceedings under Part VI, the person charged with the offence may require the person who gave the certificate to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the certificate.
- (2) Subsection (1) does not entitle the person charged to require the person who gave a certificate to be called as a witness for the prosecution unless:
  - (a) the prosecutor has been given at least 4 days notice of the person's intention to require the person who gave the certificate to be called; or
  - (b) the Court, by order, allows the person charged to require the person who gave the certificate to be called.

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**18LD Evidence in support or rebuttal of matters in certificate to be considered on its merits**

Any evidence given in support, or in rebuttal, of a matter stated in a certificate given under section 18LA must be considered on its merits, and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this Division.

**18LE Evidence—matters relating to packing**

- (1) If an article is packed in advance ready for sale and the package in which it is packed is marked with a name, that marking is evidence:
  - (a) if the name is of a person—that the article was packed by that person; or
  - (b) if the name is or was registered under a law relating to business names—that the article was packed by each of the persons in relation to whom the business name is or was registered.
- (2) If an article is packed in advance ready for sale and the package in which it is packed is marked with an address, that marking is evidence that the package was packed at that address.
- (3) If an article is packed in advance ready for sale and the package in which it is packed is marked with a date, that marking is evidence of the date on which the article was packed.
- (4) If an article is packed in advance ready for sale and the package in which it is packed is marked with any combination of numbers, letters or symbols to indicate where, when or by whom the article was packed, that marking is evidence of those matters.

## **Division 3—Infringement notices**

### **18LF When an infringement notice can be given**

- (1) If a trade measurement inspector has reasonable grounds to believe that a person has contravened a provision of this Act that is stated to be an offence of strict liability, the inspector may give the person an infringement notice relating to the contravention.
- (2) The infringement notice must be given within 12 months after the day on which the trade measurement inspector discovers the alleged contravention.

### **18LG Matters to be included in an infringement notice**

An infringement notice must:

- (a) set out the name of the person to whom the notice is given; and
- (b) set out the name of the person who gave the notice; and
- (c) set out brief details relating to the alleged contravention of the relevant provision, including the date of the alleged contravention; and
- (d) contain a statement to the effect that criminal proceedings will not be brought in relation to the matter if the penalty specified in the notice is paid to the Secretary, on behalf of the Commonwealth, within:
  - (i) 28 days after the notice is given; or
  - (ii) if the Secretary allows a longer period—that longer period; and
- (e) give an explanation of how payment of the penalty is to be made; and
- (f) set out such other matters (if any) as are specified in the regulations.

### **18LH Amount of penalty**

The penalty to be specified in an infringement notice relating to an alleged contravention of a provision in relation to which an infringement notice may be given must be a pecuniary penalty equal to 5 penalty units.

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**18LI Withdrawal of an infringement notice**

- (1) A trade measurement inspector may, by written notice (the *withdrawal notice*) given to a person, withdraw an infringement notice given to the person.
- (2) To be effective, the withdrawal notice must be given to the person within 28 days after the infringement notice was given.

*Refund of penalty if infringement notice withdrawn*

- (3) If:
  - (a) the penalty specified in the infringement notice is paid; and
  - (b) the infringement notice is withdrawn after the penalty is paid;the Commonwealth is liable to refund the penalty.

**18LJ What happens if the penalty is paid**

- (1) This section applies if:
  - (a) an infringement notice is given to a person under section 18LF; and
  - (b) the penalty is paid in accordance with the infringement notice; and
  - (c) the infringement notice is not withdrawn.
- (2) Any liability of the person for the alleged contravention is discharged.
- (3) Criminal proceedings may not be brought against the person for the alleged contravention.

**18LK Effect of this Division on criminal proceedings**

This Division does not:

- (a) require an infringement notice to be given in relation to an alleged contravention of a provision mentioned in section 18LF; or
- (b) affect the liability of a person to have criminal proceedings brought against the person for an alleged contravention of a provision mentioned in that section; or

- (c) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found in criminal proceedings to have contravened a provision mentioned in that section.

## **Division 4—Additional enforcement options**

### **18LL Overview**

#### **Overview of Division**

- (1) This Division contains alternative means of ensuring compliance with Parts IV, V, VI and VII.
- (2) The Secretary may accept an enforceable undertaking from a person in relation to compliance with Part IV, V, VI or VII (see section 18LM).
- (3) The Secretary may apply to the Federal Court of Australia or the Federal Circuit Court of Australia for an injunction to restrain a person from conduct that would be an offence under Part IV, V, VI or VII (see section 18LO).
- (4) The Secretary may publicise an offence under Part IV, V, VI or VII (see section 18LP).
- (5) If, in the purported execution of a contract, dealing or transaction, an offence under Part IV, V, VI or VII is committed, the contract, dealing or transaction is voidable (see section 18LQ).

### **18LM Accepting undertakings**

- (1) The Secretary may accept a written undertaking given by a person in connection with a matter relating to compliance with Part IV, V, VI or VII.
- (2) The person may vary or withdraw the undertaking at any time, but only with the consent of the Secretary.

### **18LN Enforcing undertakings**

- (1) If the Secretary considers that a person who gave an undertaking under section 18LM has breached a term of the undertaking, the Secretary may apply to the Federal Court of Australia or the

Federal Circuit Court of Australia for an order under subsection (2).

- (2) If the court is satisfied that the person has breached a term of the undertaking, the court may make one or more of the following orders:
  - (a) an order directing the person to comply with that term of the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the court considers appropriate.

### **18LO Injunctions**

- (1) If a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute an offence against Part IV, V, VI or VII, the Federal Court of Australia or the Federal Circuit Court of Australia may, on the application of the Secretary, grant an injunction:
  - (a) restraining the person from engaging in the conduct; or
  - (b) requiring the person to do an act or thing.
- (2) On an application, the court may, if it thinks it appropriate, grant an injunction by consent of all parties to the proceedings, whether or not the court is satisfied that the person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute an offence against Part IV, V, VI or VII.
- (3) The court may, if it thinks it desirable, grant an interim injunction pending its determination of an application.
- (4) The court is not to require the Secretary or anyone else, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (5) The court may vary or discharge an injunction it has granted.

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- (6) The power to grant or vary an injunction restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in such conduct; and
  - (b) whether or not the person has previously engaged in such conduct.
- (7) The power to grant or vary an injunction requiring a person to do an act or thing may be exercised:
  - (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
  - (b) whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

**18LP Secretary may publicise offences**

- (1) The Secretary may publicise, in any way he or she thinks appropriate, an offence against Part IV, V, VI or VII for which a person has been convicted.
- (2) This section does not:
  - (a) limit the Secretary's powers to publicise an offence against this Act; or
  - (b) prevent anyone else from publicising an offence against this Act; or
  - (c) affect any obligation (however imposed) on anyone to publicise an offence against this Act.

**18LQ Affected contracts etc. voidable**

- If:
- (a) a person is a party to a contract, dealing or other transaction; and
  - (b) in relation to the purported execution of the contract, dealing or other transaction the person commits an offence under Part IV, V, VI or VII;

the contract, dealing or other transaction is voidable at the option of the other party or parties to it.

## **Part IX—Trade measurement inspectors**

### **Division 1—Overview of Part**

#### **18M Overview**

##### **Overview of Part**

- (1) This Part contains provisions about trade measurement inspectors, who are responsible for monitoring compliance with this Act.
- (2) Division 2 provides for the appointment of trade measurement inspectors. Inspectors will be issued with identity cards.
- (3) Division 3 empowers trade measurement inspectors to enter certain premises and inspect certain vehicles to find out whether Part IV, V, VI or VII has been complied with.
- (4) Division 4 imposes obligations on trade measurement inspectors that must be complied with when inspectors are exercising powers.
- (5) Division 5 sets out the rights and responsibilities of controllers when business premises are being searched, when business vehicles are being inspected or when a warrant is being executed.
- (6) Division 6 contains provisions about warrants for the purposes of finding out whether Part IV, V, VI or VII has been complied with and warrants relating to the collection of evidential material.

## **Division 2—Appointment of trade measurement inspectors and identity cards**

### **18MA Appointment of trade measurement inspectors**

- (1) The Secretary may, by instrument in writing, appoint any of the following persons as a trade measurement inspector:
  - (a) an APS employee in the Department;
  - (b) an employee (whether or not an APS employee) of a Commonwealth authority;
  - (c) the holder of an office established by or under a law of the Commonwealth.
- (2) However, the Secretary must not appoint a person as a trade measurement inspector unless the person has the prescribed qualifications, knowledge or experience.
- (3) The regulations may prescribe classes of trade measurement inspectors by reference to either or both of the following:
  - (a) classes of powers to be exercised, or classes of functions or duties to be performed by the inspectors;
  - (b) the circumstances in which those classes of powers are to be exercised, or those classes of functions or duties are to be performed.
- (4) The Secretary must, in the instrument of appointment, specify to which class of trade measurement inspectors the person is appointed.
- (5) If a person is appointed to a class of trade measurement inspectors who may verify measuring instruments, the Secretary must allot the person an inspector's mark.
- (6) In exercising the powers or performing the functions and duties of a trade measurement inspector, a trade measurement inspector must comply with any directions of the Secretary.
- (7) The Secretary must not appoint a person as a trade measurement inspector unless the Secretary is satisfied that the person has the competencies appropriate to the exercise of the powers and the performance of the functions or duties of the class of trade measurement inspectors to which the person is appointed.

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**18MB Identity card**

- (1) The Secretary must issue an identity card to a trade measurement inspector in the form prescribed by the regulations. The identity card must:
  - (a) contain a photograph of the trade measurement inspector that is no more than 5 years old; and
  - (b) identify the class of trade measurement inspectors to which the inspector is appointed.
- (2) A person commits an offence if:
  - (a) the person has been issued with an identity card; and
  - (b) the person ceases to be a trade measurement inspector; and
  - (c) the person does not, immediately after so ceasing, return the identity card to the Secretary.

Penalty: 1 penalty unit.

- (3) A trade measurement inspector must carry the identity card at all times when exercising powers or performing functions as a trade measurement inspector.

**18MC Evidentiary certificate—appointment and class of trade measurement inspector**

- (1) In any proceedings (including disciplinary action) under this Act, a certificate, signed by the Secretary, stating that a person was, at a specified time, a trade measurement inspector of a particular class is admissible as prima facie evidence of the matters stated in the certificate.
- (2) A document purporting to be a certificate mentioned in subsection (1) is taken to be such a certificate and to have been duly given unless the contrary is established.

## **Division 3—Powers of trade measurement inspectors**

### **18MD Overview**

#### **Overview of Division**

- (1) Trade measurement inspectors have the power to enter business or residential premises or to inspect business vehicles. Inspectors also have the power to search and seize things. This includes powers to copy documents, record information and test articles and instruments.
- (2) A trade measurement inspector must not enter residential premises without consent or a warrant.
- (3) Trade measurement inspectors may collect evidential material (see section 18MF).
- (4) Section 18MG sets out the general powers of trade measurement inspectors to search and seize things.
- (5) Trade measurement inspectors may oblige a controller to answer questions or produce documents (see section 18MH).

### **18ME Monitoring powers**

- (1) A trade measurement inspector may:
  - (a) enter any business premises, or inspect any business vehicle, at any reasonable time of day; and
  - (b) exercise the powers set out in section 18MG;for the purposes of:
  - (c) finding out whether Part IV, V, VI or VII has been complied with; or
  - (d) finding out whether a condition of a servicing licence under Part X or a public weighbridge licence under Part XI has been complied with; or
  - (e) finding out whether a condition of an appointment of a utility meter verifier under Part XIII has been complied with.

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- (2) A trade measurement inspector may:
- (a) enter any residential premises at any reasonable time of day; and
  - (b) exercise the powers set out in section 18MG;
- for the purposes of:
- (c) finding out whether Part IV, V, VI or VII has been complied with; or
  - (d) finding out whether a condition of a servicing licence under Part X or a public weighbridge licence under Part XI has been complied with; or
  - (e) finding out whether a condition of an appointment of a utility meter verifier under Part XIII has been complied with.
- (3) However, a trade measurement inspector is not authorised to enter residential premises under subsection (2) unless:
- (a) the controller of the premises has consented to the entry or inspection and the inspector has shown his or her identity card if required by the controller; or
  - (b) the entry or inspection is made under a warrant issued under section 18MZ or 18MZA.
- (4) If the trade measurement inspector is on residential premises with the controller's consent, the inspector must leave the premises if the controller asks the inspector to do so.
- (5) If the trade measurement inspector:
- (a) is on residential premises under a warrant issued under section 18MZ or 18MZA for the purposes of:
    - (i) finding out whether Part IV, V, VI or VII has been complied with; or
    - (ii) finding out whether a condition of a servicing licence under Part X or a public weighbridge licence under Part XI has been complied with; or
    - (iii) finding out whether a condition of an appointment of a utility meter verifier under Part XIII has been complied with; and
  - (b) believes on reasonable grounds that there is evidential material on the premises;
- the inspector may secure the material pending obtaining of a warrant under section 18MZ or 18MZA to seize it.

### **18MF Collecting evidential material**

- (1) This section applies if a trade measurement inspector has reasonable grounds for suspecting that there may be evidential material on any premises or in or on any business vehicle.
- (2) The trade measurement inspector may:
  - (a) in the case of business premises or a business vehicle—enter the premises or inspect the vehicle; and
  - (b) in the case of residential premises—enter the premises:
    - (i) with the consent of the controller after producing his or her identity card for the inspection of the controller; or
    - (ii) under a warrant issued under section 18MZ or 18MZA; and
  - (c) exercise the powers set out in section 18MG in relation to looking for the evidential material; and
  - (d) seize the evidential material, if the inspector finds it on the premises, or in or on the vehicle.
- (3) If the evidential material referred to in subsection (1) is or includes information in a written or electronic form, a trade measurement inspector may operate equipment on the premises, or in or on the vehicle, to see whether any of the following contain the information:
  - (a) the equipment;
  - (b) a disk, tape or other storage device that:
    - (i) is on the premises, or in or on the vehicle; and
    - (ii) can be used with or is associated with the equipment.
- (4) If the trade measurement inspector, after operating the equipment, finds that the equipment, or a disk, tape or other storage device, contains the information mentioned in subsection (3), he or she may:
  - (a) seize the equipment or the disk, tape or other storage device; or
  - (b) if the information can, by using facilities at the premises, or in or on the vehicle, be put in documentary form—operate the facilities to put the information in that form and seize the documents so produced; or
  - (c) if the information can be transferred to a disk, tape or other storage device that:

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- (i) is brought to the premises or the vehicle; or
  - (ii) is at the premises, or in or on the vehicle, and whose use for the purpose has been agreed to in writing by the controller of the premises or vehicle;
- operate the equipment or other facilities to copy the information to the storage device and remove the storage device from the premises or vehicle.
- (5) A trade measurement inspector may seize equipment under paragraph (4)(a) only if:
  - (a) it is not practicable to put the relevant information in documentary form as mentioned in paragraph (4)(b) or to copy the records as mentioned in paragraph (4)(c); or
  - (b) possession of the equipment by the controller could constitute an offence.
- (6) If:
  - (a) in the course of searching for a particular thing, a trade measurement inspector finds another thing that the inspector believes on reasonable grounds to be evidential material; and
  - (b) the inspector believes, on reasonable grounds, that it is necessary to seize that other thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating an offence against this Act;the inspector may seize that other thing.
- (7) If the trade measurement inspector is on residential premises with the controller's consent, the inspector must leave the premises if the controller asks the inspector to do so.

**18MG General powers of trade measurement inspectors**

- (1) The powers that a trade measurement inspector may exercise in relation to premises under section 18ME and 18MF are as follows:
  - (a) to search the premises and any thing on the premises;
  - (b) to take photographs or make video or audio recordings or sketches of the premises or any thing on the premises;
  - (c) to sample and test measuring instruments, but only for the purposes of:
    - (i) finding out whether Part IV, V, VI or VII has been complied with; or

- (ii) finding out whether a condition of a servicing licence under Part X or a public weighbridge licence under Part XI has been complied with; or
  - (iii) finding out whether a condition of an appointment of a utility meter verifier under Part XIII has been complied with; or
  - (iv) looking for evidential material;
- (d) to inspect, examine, sample, measure, or conduct tests on any articles or packages on the premises, but only for the purposes of:
- (i) finding out whether Part IV, V, VI or VII has been complied with; or
  - (ii) finding out whether a condition of a servicing licence under Part X or a public weighbridge licence under Part XI has been complied with; or
  - (iii) finding out whether a condition of an appointment of a utility meter verifier under Part XIII has been complied with; or
  - (iv) looking for evidential material;
- (e) to inspect any book, record or document on the premises;
- (f) to take extracts from or make copies of any such book, record or document;
- (g) to use fuel or another energy source on the premises for the purpose of exercising powers in relation to the premises;
- (h) to take onto the premises such equipment and materials as the trade measurement inspector requires for the purpose of exercising powers in relation to the premises.
- (2) The powers that a trade measurement inspector may exercise in relation to a business vehicle under section 18ME or 18MF are as follows:
- (a) to search the vehicle and any thing in or on the vehicle;
  - (b) to take photographs or make video or audio recordings or sketches of the vehicle or any thing in or on the vehicle;
  - (c) to sample and test measuring instruments, but only for the purposes of:
    - (i) finding out whether Part IV, V, VI or VII has been complied with; or

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- (ii) finding out whether a condition of a servicing licence under Part X or a public weighbridge licence under Part XI has been complied with; or
  - (iii) finding out whether a condition of an appointment of a utility meter verifier under Part XIII has been complied with; or
  - (iv) looking for evidential material;
- (d) to inspect, examine, sample, measure, or conduct tests on any articles or packages in or on the vehicle, but only for the purposes of:
- (i) finding out whether Part IV, V, VI or VII has been complied with; or
  - (ii) finding out whether a condition of a servicing licence under Part X or a public weighbridge licence under Part XI has been complied with; or
  - (iii) finding out whether a condition of an appointment of a utility meter verifier under Part XIII has been complied with; or
  - (iv) looking for evidential material;
- (e) to inspect any book, record or document in or on the vehicle;
- (f) to take extracts from or make copies of any such book, record or document;
- (g) to use fuel or another energy source in or on the vehicle for the purpose of exercising powers in relation to the vehicle;
- (h) to take to, and into, the vehicle such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the vehicle.

*Sampling and testing articles and packages*

- (3) Without limiting subsections (1) and (2), the powers under paragraphs (1)(d) and (2)(d) include the power to:
- (a) sample articles or packages in accordance with AQS sampling procedures or national sampling procedures; and
  - (b) test articles or packages in accordance with AQS test procedures, national group test procedures or national single article test procedures.
- (4) The powers under paragraphs (1)(d) and (2)(d) may be exercised in relation to an article even though that might result in:

- (a) damage to, or the destruction of, the article or the package containing the article; or
  - (b) the reduction in the value of the article or the package containing the article.
- (5) The powers under paragraphs (1)(d) and (2)(d) may be exercised in relation to a package even though that might result in:
- (a) damage to, or the destruction of, the package; or
  - (b) the reduction in the value of the package.
- (6) However, a trade measurement inspector must not be more destructive in exercising a power under paragraph (1)(d) or (2)(d) than is reasonable for the purpose of:
- (a) finding out whether Part IV, V, VI or VII has been complied with; or
  - (b) finding out whether a condition of a servicing licence under Part X or a public weighbridge licence under Part XI has been complied with; or
  - (c) finding out whether a condition of an appointment of a utility meter verifier under Part XIII has been complied with; or
  - (d) collecting evidential material.

**18MH Trade measurement inspector may request persons to answer questions or produce documents**

- (1) If the trade measurement inspector was only authorised to enter residential premises because its controller consented to the entry—the inspector may ask the controller to:
- (a) answer any questions put by the inspector; and
  - (b) produce any book, record or document requested by the inspector.
- (2) If the trade measurement inspector was authorised to enter business premises under section 18ME or 18MF or to enter residential premises by a warrant under section 18MZ or 18MZA—the inspector may require any person in or on the premises to:
- (a) answer any questions put by the inspector; and
  - (b) produce any book, record or document requested by the inspector.

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- (3) If the trade measurement inspector was authorised to inspect a business vehicle under section 18ME or 18MF—the inspector may require its controller and any person in the vehicle to:
- (a) answer any questions put by the inspector; and
  - (b) produce any book, record or document requested by the inspector.

- (4) A person commits an offence if the person refuses or fails to comply with a requirement under subsection (2) or (3).

Penalty: 200 penalty units.

- (5) A person commits an offence of strict liability if the person refuses or fails to comply with a requirement under subsection (2) or (3).

Penalty: 40 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) A person is excused from complying with a requirement of subsection (2) or (3) if the answer to the question or the production of the document might tend to incriminate the person or expose the person to a penalty.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6), see subsection 13.3(3) of the *Criminal Code*.

**18MI English translation of book, record or document requested by a trade measurement inspector**

- (1) If:
- (a) a person gives a trade measurement inspector a book, record or document in response to a request under subsection 18MH(1); and
  - (b) all or part of the book, record or document is in a language other than English;

the inspector may ask the person to give a statement within a reasonable period and written in the English language, setting out those particulars in the book, document or record that are not written in English.

- (2) If:
- (a) a person gives a trade measurement inspector a book, record or document in response to a request under subsection 18MH(2) or (3); and
  - (b) all or part of the book, record or document is in a language other than English;
- the inspector may require the person to give a statement within a reasonable period and written in the English language, setting out those particulars in the book, document or record that are not written in English.
- (3) A person commits an offence if the person refuses or fails to comply with a requirement under subsection (2).
- Penalty: 200 penalty units.
- (4) A person commits an offence of strict liability if the person refuses or fails to comply with a requirement under subsection (2).
- Penalty: 40 penalty units.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (5) A person is excused from complying with a requirement of subsection (2) if the answer to the question or the production of the document might tend to incriminate the person or expose the person to a penalty.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

### **18MJ Power to give directions in relation to re-verification**

- (1) A trade measurement inspector may give reasonable directions to a person in possession of a measuring instrument for the purposes of facilitating re-verification of the instrument.
- (2) The directions may include (but are not limited to) directions as to the time and place at which the instrument is to be made available to an inspector.
- (3) If a direction given under this section specifies a time and place at which the instrument is to be made available to the inspector, or the inspector gives another direction that must be complied with within a specified period, and the direction is not complied with at

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that time or within that period, the instrument is taken not to be verified from that time or the end of that period.

Note: The person will commit an offence under Division 2 of Part IV if the person uses the measuring instrument for trade, or installs or supplies the measuring instrument for use for trade.

**18MK Power to verify measuring instruments on request**

- (1) A trade measurement inspector may examine a measuring instrument and test its calibration:
  - (a) for the purposes of another Act; or
  - (b) at the request of the person in possession of the measuring instrument;even if the measuring instrument is not required to be verified or re-verified under this Act.
- (2) A trade measurement inspector may charge the prescribed fee for verifying or re-verifying a measuring instrument under this section.

**18ML Evidentiary certificate—examination and calibration under section 18MK**

In any proceedings (including disciplinary proceedings) under a law of the Commonwealth, a certificate, signed by a trade measurement inspector:

- (a) stating that he or she has examined a measuring instrument or tested its calibration under section 18MK; and
  - (b) setting out the results of that examination and testing;
- is admissible as prima facie evidence of the matters stated in the certificate.

**18MM Trade measurement inspector must obliterate verification mark**

A trade measurement inspector must obliterate a verification mark on a measuring instrument if, in the course of exercising powers or performing functions or duties under this Act or the regulations, the inspector becomes aware that:

- (a) the measuring instrument no longer complies with the requirements for verification set out in section 18GK when

tested in accordance with the national instrument test procedures; or

- (b) if the measuring instrument is treated as one of a batch under the national instrument test procedures—the measuring instrument is one of a batch that no longer complies with the requirements for verification set out in section 18GK when tested in accordance with those procedures.

## **Division 4—Obligations of trade measurement inspectors**

### **18MN Trade measurement inspector must produce identity card on request**

- (1) A trade measurement inspector is not entitled to exercise any powers under Division 3 in relation to premises if:
  - (a) the controller of the premises requires the inspector to produce his or her identity card for inspection by the controller; and
  - (b) the inspector fails to comply with the requirement.
- (2) A trade measurement inspector is not entitled to exercise any powers under Division 3 in relation to a business vehicle if:
  - (a) the controller of the vehicle requires the inspector to produce his or her identity card for inspection by the controller; and
  - (b) the inspector fails to comply with the requirement.

### **18MO Details of warrant to be given to controller etc.**

- (1) If a warrant in relation to residential premises is being executed and the controller of the premises or another person who apparently represents the controller is present at the premises, the trade measurement inspector must make available to that person a copy of the warrant.
- (2) The trade measurement inspector must identify himself or herself to that person.
- (3) The copy of the warrant need not include the signature of the magistrate who issued the warrant.

### **18MP Consent to enter residential premises**

- (1) Before obtaining the consent of a person for the purposes of paragraph 18ME(3)(a) or subparagraph 18MF(2)(b)(i), the trade measurement inspector must inform the person that he or she may refuse consent.

- (2) An entry or inspection by a trade measurement inspector by virtue of a person's consent is not lawful unless the person voluntarily consented to the entry or inspection.

**18MQ Announcement on entry or inspection**

- (1) A trade measurement inspector must, on entering business premises under section 18ME or 18MF or residential premises under a warrant under section 18MZ or 18MZA:
- (a) announce to the controller that he or she is authorised to enter the premises; and
  - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) A trade measurement inspector must, on inspecting a business vehicle under section 18ME or 18MF:
- (a) announce to the controller that he or she is authorised to inspect the vehicle; and
  - (b) give the controller or any person in the vehicle an opportunity to allow the inspection.

**18MR Compensation for damage to electronic equipment**

- (1) This section applies if:
- (a) as a result of equipment being operated as mentioned in section 18MF:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

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- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the controller of the premises or vehicle, or the controller's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) Compensation is payable out of money appropriated by the Parliament.
- (6) For the purposes of subsection (1):  
*damage*, in relation to data, includes damage by erasure of data or addition of other data.

**18MS Copies of seized things to be provided**

- (1) Subject to subsection (3), if a trade measurement inspector seizes from premises, either under a warrant or otherwise:
  - (a) a document, film, computer file or other thing that can be readily copied; or
  - (b) a storage device, the information in which can be readily copied;the inspector must, if requested to do so by the controller of the premises, or another person who apparently represents the controller, and who is present when the thing is seized, give a copy of the thing or the information to that person as soon as practicable after the seizure.
- (2) Subject to subsection (3), if a trade measurement inspector seizes, from a vehicle:
  - (a) a document, film, computer file or other thing that can be readily copied; or
  - (b) a storage device, the information in which can be readily copied;the inspector must, if requested to do so by the controller of the vehicle, or another person who apparently represents the controller, and who is present when the thing is seized, give a copy of the

thing or the information to that person as soon as practicable after the seizure.

- (3) Subsections (1) and (2) do not apply if:
- (a) the thing that has been seized was seized under paragraph 18MF(4)(b) or (c); or
  - (b) possession by the controller of the document, film, computer file, thing or information could constitute an offence.

### **18MT Receipts for things seized**

- (1) If a thing is seized under this Part, the trade measurement inspector must provide a receipt for the thing.
- (2) If 2 or more things are seized or moved, they may be covered in the one receipt.

### **18MU Retention of seized things**

- (1) Subject to any contrary order of a court, if a trade measurement inspector seizes a thing under this Part, a trade measurement inspector must return it if:
  - (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
  - (b) the period of 6 months after its seizure ends;whichever first occurs, unless the thing is forfeited or forfeitable to the Commonwealth.
- (2) At the end of the 6 months specified in subsection (1), a trade measurement inspector must take reasonable steps to return the thing to the person from whom it was seized, unless:
  - (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 6 months and have not been completed (including an appeal to a court in relation to those proceedings); or
  - (b) the inspector may retain the thing because of an order under section 18MV; or
  - (c) a trade measurement inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy or dispose of the thing.

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- (3) The thing may be returned under subsection (2) either unconditionally or on such terms and conditions as the Secretary sees fit.

**18MV Magistrate may permit a thing to be retained**

- (1) A trade measurement inspector may apply to a magistrate for an order that he or she may retain the thing for a further period if:
- (a) before the end of 6 months after the seizure; or
  - (b) before the end of a period previously specified in an order of a magistrate under this section;
- proceedings in respect of which the thing may afford evidence have not commenced.
- (2) If the magistrate is satisfied that it is necessary for a trade measurement inspector to continue to retain the thing:
- (a) for the purposes of an investigation as to whether an offence against this Act has been committed; or
  - (b) to enable evidence of an offence against this Act to be secured for the purposes of a prosecution;
- the magistrate may order that a trade measurement inspector may retain the thing for a period (not being a period exceeding 3 years) specified in the order.
- (3) Before making the application, the trade measurement inspector must:
- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
  - (b) if it is practicable to do so, notify each person whom the trade measurement inspector believes to have such an interest of the proposed application.

## **Division 5—Controller's rights and responsibilities**

### **18MW Controller entitled to be present during search**

- (1) If:
  - (a) business premises are being searched; or
  - (b) a warrant in relation to residential premises is being executed;the controller of the premises, or another person who apparently represents the controller is, if present at the premises, entitled to observe the search being conducted.
- (2) If a business vehicle is being inspected, the controller of the vehicle, or another person who apparently represents the controller, is, if present, entitled to observe the inspection being conducted.
- (3) The right to observe the search or inspection being conducted ceases if the person impedes the search or inspection.
- (4) This section does not prevent 2 or more areas of the premises or vehicle being searched or inspected at the same time.

### **18MX Controller must provide trade measurement inspector with facilities and assistance**

- (1) If:
  - (a) a person is the controller of business premises, or a business vehicle; and
  - (b) a trade measurement inspector enters the premises, or inspects the vehicle, under section 18ME or 18MF;the person must provide the inspector, or any person assisting the inspector, with all reasonable facilities and assistance for the effective execution of the inspector's powers under Division 3.
- (2) If:
  - (a) a person is the controller of residential premises to which a warrant issued under section 18MZ or 18MZA relates; and
  - (b) a trade measurement inspector executing the warrant enters the premises under the warrant;

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the person must provide the inspector, or any person assisting the inspector, with all reasonable facilities and assistance for the effective execution of the warrant.

- (3) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct contravenes subsection (1) or (2).

Penalty for a contravention of this subsection: 30 penalty units.

## **Division 6—Warrants**

### **18MY Overview**

#### **Overview of Division**

- (1) This Division contains provisions allowing warrants to be issued in relation to residential premises for the purposes of finding out whether Part IV, V, VI or VII has been complied with or for the collection of evidential material.
- (2) There is a special process available for the issue of warrants in urgent cases (see section 18MZB).
- (3) Warrants are issued by magistrates in their personal capacity.

### **18MZ Monitoring warrants**

- (1) A trade measurement inspector may apply to a magistrate for a warrant under this section in relation to residential premises.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more trade measurement inspectors should have access to the premises for the purposes of:
  - (a) finding out whether Part IV, V, VI or VII has been complied with; or
  - (b) finding out whether a condition of a servicing licence under Part X or a public weighbridge licence under Part XI has been complied with; or
  - (c) finding out whether a condition of an appointment of a utility meter verifier under Part XIII has been complied with.
- (3) The magistrate must not issue the warrant unless the trade measurement inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

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- (4) The warrant must:
- (a) authorise one or more trade measurement inspectors (whether or not named in the warrant):
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in section 18MG in relation to the premises; and
  - (b) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
  - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
  - (d) state the purpose for which the warrant is issued.

**18MZA Warrants relating to the collection of evidential material**

- (1) A trade measurement inspector may apply to a magistrate for a warrant under this section in relation to residential premises.
  - (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material in or on the premises.
  - (3) The magistrate must not issue the warrant unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
  - (4) The warrant must:
    - (a) name one or more trade measurement inspectors; and
    - (b) authorise the persons so named, with such assistance:
      - (i) to enter the premises; and
      - (ii) to exercise the powers set out in sections 18MF and 18MG in relation to premises; and
      - (iii) to seize the evidential material; and
    - (c) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
    - (d) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect; and
    - (e) state the purpose for which the warrant is issued.
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**18MZB Urgent warrant for the collection of evidential material**

- (1) If, in an urgent case, a trade measurement inspector considers it necessary to do so, the inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 18MZA in relation to residential premises.
- (2) Before applying for the warrant, the trade measurement inspector must prepare an information of the kind mentioned in subsection 18MZA(2) in relation to the premises that sets out the grounds on which the warrant is sought.
- (3) If it is necessary to do so, the trade measurement inspector may apply for the warrant before the information is sworn or affirmed.
- (4) The magistrate:
  - (a) may require oral communication to the extent that it is practicable in the circumstances; and
  - (b) may make a recording of the whole or any part of any such oral communication.
- (5) If the magistrate is satisfied:
  - (a) after having considered the terms of the information; and
  - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 18MZA if the application had been made under that section.
- (6) If the magistrate completes and signs the warrant:
  - (a) the magistrate must tell the trade measurement inspector by telephone, fax or other electronic means:
    - (i) what the terms of the warrant are; and
    - (ii) the day on which and the time at which the warrant was signed; and
    - (iii) the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
  - (b) the magistrate must record on the warrant the reasons for granting the warrant; and

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- (c) the trade measurement inspector must:
  - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
  - (ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.
- (7) The trade measurement inspector must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:
  - (a) the form of warrant completed by the inspector; and
  - (b) the information referred to in subsection (2), which must have been duly sworn or affirmed.
- (8) When the magistrate receives those documents, the magistrate must:
  - (a) attach them to the warrant that the magistrate completed and signed; and
  - (b) deal with them in the way in which the magistrate would have dealt with the information if the application had been made under section 18MZA.
- (9) A form of warrant duly completed under subsection (5) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.
- (10) If:
  - (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
  - (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.
- (11) A reference in this Part to a warrant under section 18MZA includes a reference to a warrant signed by a magistrate under this section.

**18MZC Powers conferred on magistrates in their personal capacity**

- (1) A power conferred on a magistrate by this Part is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (2) The magistrate need not accept the power conferred.
- (3) The magistrate must not exercise a power conferred by this Part unless the conferral of the power is in accordance with an agreement between the Commonwealth and the State or Territory concerned.

**18MZD Immunity of magistrates**

A magistrate exercising a power mentioned in subsection 18MZC(1) has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

## Part X—Servicing licensees

### 18N Overview

#### Overview of Part

- (1) Servicing licences are granted by the Secretary on application.
- (2) The Secretary must refuse an application if the applicant does not meet certain suitability requirements.
- (3) There are conditions that are common to all servicing licences. In addition, the Secretary may impose conditions on a servicing licence. New conditions may be imposed, or existing conditions amended or revoked, during the life of the licence.
- (4) Servicing licences are granted for a period but may be renewed on application.

### 18NA Application for a servicing licence

- (1) A person may make an application to the Secretary to be granted a servicing licence.
- (2) Two or more persons who carry on business together as partners may make an application jointly for the partnership to be granted a servicing licence.
- (3) The application:
  - (a) must be in the form approved by the Secretary; and
  - (b) must be accompanied by the application fee prescribed for the purposes of this paragraph; and
  - (c) must be accompanied by such other material as is prescribed.
- (4) The Secretary may, by notice in writing to an applicant, request the applicant to provide to the Secretary information or documents of the kind specified in the notice within a specified period of not less than 14 days.

- (5) The Secretary may refuse the application if the notice is not complied with.

### **18NB Granting a servicing licence**

- (1) The Secretary must grant an application for a servicing licence unless there are grounds for refusal under this Act.

Note: The Secretary may refuse to grant a servicing licence:

- (a) if the applicant fails to comply with a request for further information or documents (see subsection 18NA(4)); or
  - (b) because of other circumstances set out in section 18NC.
- (2) The Secretary must give the applicant written notice of the decision on the application within 28 days after the application is made (the *consideration period*).
- (3) If the Secretary requests an applicant under subsection 18NA(4) to provide information or documents, the time taken by the applicant to provide the information or documents is not to be included in the consideration period.
- (4) If the Secretary grants an applicant a servicing licence, the Secretary must:
- (a) approve a mark for use by the servicing licensee and employees of the servicing licensee when verifying measuring instruments; and
  - (b) include details of the mark in the notice given to the applicant under subsection (2); and
  - (c) specify the period for which the licence is granted in the notice given to the applicant under subsection (2).
- (5) If the Secretary fails to give the applicant written notice of the decision under subsection (2) within the consideration period the Secretary is, at the end of the period, taken to have refused to grant the application.

### **18NC Circumstances in which servicing licence must be refused**

- (1) The Secretary must refuse an application by an applicant to be granted a servicing licence if:
- (a) the applicant is an individual who has not reached the age of 18 years; or

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- (b) the applicant holds a licence under this Act that is suspended; or
  - (c) the applicant is disqualified under this Act from holding a licence; or
  - (d) neither the applicant nor any employee of the applicant has the competencies appropriate to perform the functions and duties of a verifier; or
  - (e) the applicant is not likely to carry on the activities of a servicing licensee honestly and fairly; or
  - (f) the applicant is in any other way not a fit and proper person to be a servicing licensee.
- (2) Without limiting the generality of paragraph (1)(f), the Secretary may have regard to any or all of the following matters in determining whether the applicant is a fit and proper person to be a servicing licensee:
- (a) whether the applicant has, during the period of 10 years that immediately preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence (whether under the law of the Commonwealth or any other law) involving fraud or dishonesty;
  - (b) whether the applicant was, when the application was made, the subject of a charge pending in relation to such an offence;
  - (c) whether the applicant has, at any time, been convicted of an offence against this Act or an earlier corresponding law;
  - (d) whether the applicant has been refused a licence under this Act or an earlier corresponding law.

**18ND Where the applicant is a body corporate**

If the applicant is a body corporate, paragraph 18NC(1)(f) and paragraphs 18NC(2)(a) to (d) apply as if a reference to the applicant included a reference to a person concerned in the management of the applicant.

**18NE Where the applicant is a partnership**

- (1) If the applicant is a partnership, this Part applies as if:
  - (a) a reference to the applicant, other than in paragraph 18NC(1)(d), were a reference to each member of the partnership; and

- (b) the reference to the applicant in paragraph 18NC(1)(d) were a reference to any partner in the partnership.
- (2) If the Secretary grants a servicing licence to a partnership, the licence must state:
  - (a) the names of all the partners; and
  - (b) if the partnership has a registered business name, the registered business name.
- (3) Each of the partners named on the servicing licence is taken to be a servicing licensee for the purposes of this Act.

**18NF Register of servicing licences**

The Secretary must keep a register of prescribed particulars relating to servicing licences.

**18NG Conditions may be imposed on servicing licences**

- (1) The Secretary may impose conditions on a servicing licence.
- (2) A condition may be imposed at the time the servicing licence is granted or at a later time.
- (3) A condition may be amended or revoked at any time.
- (4) However, if a condition is to be imposed or amended after a servicing licence is granted, the Secretary must invite the servicing licensee to make written submissions in relation to the proposed condition or amendment before imposing the condition, or making the amendment.
- (5) The invitation must:
  - (a) be in writing; and
  - (b) state the period of not less than 14 days within which the submission must be made.
- (6) Without limiting the generality of subsection (1), a condition may restrict to a specified class or classes the measuring instruments that may be verified under the servicing licence.
- (7) The Secretary must notify the servicing licensee in writing of:
  - (a) the terms of any condition imposed on the servicing licence; and

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- (b) the terms of any condition of the servicing licence as amended; and
  - (c) the revocation of any condition of the servicing licence.
- (8) The amendment or revocation of a condition of the servicing licence takes effect on the later of:
- (a) the day on which the notice is given; or
  - (b) the day specified in the notice.

**18NH Conditions on all servicing licences**

A servicing licence is subject to the following conditions:

- (a) if the servicing licensee is an individual—a condition that the servicing licensee must not personally verify a measuring instrument unless he or she is competent to do so;
- (b) a condition that the servicing licensee must not employ a person to verify a measuring instrument unless he or she is competent to do so;
- (c) a condition that the servicing licensee or an employee of the servicing licensee must not mark a measuring instrument with the servicing licensee's mark without first obliterating any other verification mark that the instrument already bears;
- (d) a condition that any obliteration by the servicing licensee or an employee of the servicing licensee of a verification mark without verification of the measuring instrument must be reported in writing to the Secretary within 14 days or such shorter period as is specified in the licence;
- (e) a condition that if the servicing licensee or an employee of the servicing licensee determines, when examining or testing a measuring instrument, that the instrument could not be verified, the servicing licensee must report the fact in writing to the Secretary within 14 days or such shorter period as is specified in the licence unless a report of the matter is also required under paragraph (d);
- (f) a condition that the servicing licensee or an employee of the servicing licensee must not verify a measuring instrument without using such equipment as is specified by the Secretary when granting the licence;
- (g) a condition that if the servicing licensee's mark is made by an employee of the servicing licensee, the servicing licensee

must at all times be able from that mark to identify the employee to the Secretary;

- (h) a condition that the date on which the servicing licensee or an employee of the servicing licensee verifies a measuring instrument must be included with the servicing licensee's mark;
- (i) a condition that the servicing licensee must provide such classes and denominations, as are determined by the Secretary, of reference standards of measurement as are necessary for the exercise of the powers or the performance of the functions of the servicing licensee;
- (j) such other conditions as may be prescribed.

### **18NI Application to amend a condition of a servicing licence**

- (1) A servicing licensee may apply to the Secretary for an amendment of a condition of the servicing licence imposed under section 18NG.
- (2) The application:
  - (a) must be in writing in the form approved by the Secretary; and
  - (b) must be accompanied by the application fee prescribed for the purposes of this paragraph; and
  - (c) must be accompanied by such other material as is prescribed.
- (3) The Secretary may:
  - (a) grant the application; or
  - (b) refuse the application.
- (4) The Secretary must give the servicing licensee written notice of the decision on the application within 28 days after the application is made.
- (5) If the Secretary fails to give the servicing licensee written notice of the decision within that period, the Secretary is, at the end of the period, taken to have refused to grant the application.

### **18NJ Application to change servicing licensee due to change of partnership**

- (1) This section applies if:
    - (a) a partnership is a servicing licensee; and
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- (b) there is or is proposed to be a change to the membership of the partnership (the *change*) with at least one partner before the change continuing as a partner after the change.
- (2) The partnership may apply to the Secretary to amend the servicing licence to state the partners who are or will be the partners after the change.
- (3) The application:
  - (a) must be in writing in the form approved by the Secretary; and
  - (b) must include information about how the partnership has changed or is proposed to change; and
  - (c) must include information about any new partner that the new partner would have to have given to the Secretary if the new partner were applying to be a servicing licensee; and
  - (d) must be accompanied by the application fee prescribed for the purposes of this paragraph.
- (4) To the extent the change involves a person ceasing to be a partner, the Secretary must grant the application and amend the servicing licence to remove the name of the partner from the licence.
- (5) To the extent the change involves a new partner being admitted to the partnership, the Secretary must, after considering the application:
  - (a) grant the application and amend the servicing licence to include the name of the new partner; or
  - (b) refuse the application.The Secretary must notify the partnership in writing of the decision.
- (6) The Secretary must refuse an application under subsection (2) if the Secretary would have had to refuse an application under section 18NC if the new partner were applying to be a servicing licensee.
- (7) From the day on which the amendment of the servicing licence takes effect, the licence is taken to be held by the partnership as it exists on that day.
- (8) The amendment of the servicing licence takes effect:

- (a) if the partnership changed more than 28 days before the application for amendment of the licence was made—at the start of that 28th day; or
- (b) if the partnership is changed on or after that 28th day but before the end of the day on which the application is decided—on the day on which the partnership was changed; or
- (c) if the partnership changes on a later day—on that later day.

**18NK Application for renewal of servicing licence**

- (1) A servicing licensee may apply to the Secretary for the renewal of the licensee's servicing licence.
- (2) The application:
  - (a) must be in the form approved by the Secretary; and
  - (b) must be accompanied by the application fee prescribed for the purposes of this paragraph; and
  - (c) must be accompanied by such other material as is prescribed.
- (3) The Secretary may, by notice in writing to an applicant, request the applicant to provide to the Secretary information or documents of the kind specified in the notice within a specified period of not less than 14 days.
- (4) The Secretary may refuse the application if the notice is not complied with.

**18NL Renewal of servicing licence**

- (1) The Secretary must grant an application for the renewal of a servicing licence unless:
  - (a) the Secretary would have had to refuse the application under section 18NC if it had been an application made under section 18NA; or
  - (b) the Secretary decides to refuse the application under subsection 18NK(4).
- (2) The Secretary must give the applicant written notice of the decision on the application within 28 days after the application is made (the *consideration period*) and, if the renewal is granted, specify the period of the renewal in the notice.

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- (3) The notice must specify the period for which the licence is renewed.
- (4) If the Secretary requests an applicant under subsection 18NK(3) to provide information or documents, the time taken by the applicant to provide the information or documents is not to be included in the consideration period.
- (5) If the Secretary fails to give the applicant written notice of the decision under subsection (2) within the consideration period the Secretary is, at the end of the period, taken to have refused to grant the application.

**18NM Surrender and transfer of servicing licence**

- (1) A servicing licensee may surrender the licence by notice in writing given to the Secretary.
- (2) Subject to section 18NJ, a servicing licence is not transferable.

**18NN Order preventing employment of certain persons**

- (1) The Secretary may, by order in writing, direct that a specified person:
  - (a) is not to be employed by a servicing licensee to verify any measuring instrument; or
  - (b) is not to be employed by a servicing licensee to verify a specified class or classes of measuring instruments; or
  - (c) is to be employed by a servicing licensee to verify any measuring instrument, or verify a specified class or classes of measuring instrument, only in compliance with specified conditions.
- (2) The Secretary must not make such an order unless satisfied that it is necessary to do so because of the person's lack of competency, or lack of fitness in any other respect, to exercise the functions concerned.
- (3) If the Secretary makes an order under this section, the Secretary must:
  - (a) serve a copy of the order on the person to whom it relates (if the person's whereabouts are known to the Secretary); and

- (b) serve a copy of the order on each servicing licensee that the Secretary knows is employing that person when the order is made.

The order comes into force on the last day on which it is served.

- (4) It is a condition of the servicing licence of that servicing licensee that the servicing licensee must not employ a person in contravention of an order in force under this section.

### **18NO Offence—breaching a condition of a servicing licence**

- (1) A person commits an offence if:
  - (a) the person is a servicing licensee; and
  - (b) the person engages or fails to engage in conduct; and
  - (c) the conduct or failure is in breach of a condition of the person's servicing licence.

Penalty: 30 penalty units.

- (2) A person commits an offence if:
  - (a) the person is a servicing licensee; and
  - (b) an employee of the person engages or fails to engage in conduct; and
  - (c) the conduct or failure is in breach of a condition of the person's servicing licence; and
  - (d) the person expressly, tacitly or impliedly authorises or permits the conduct or failure.

Penalty: 30 penalty units.

- (3) A person commits an offence if:
  - (a) the person is an employee of a servicing licensee; and
  - (b) the person engages or fails to engage in conduct; and
  - (c) the conduct or failure is in breach of a condition of the servicing licensee's servicing licence; and
  - (d) the conduct or failure is not within the actual or apparent scope of the person's employment.

Penalty: 30 penalty units.

- (4) Subsections (1), (2) and (3) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Part XI—Public weighbridges**

### **Division 1—Public weighbridge licences**

#### **18P Overview**

##### **Overview of Part**

- (1) Public weighbridge licences are granted by the Secretary on application.
- (2) The Secretary must refuse an application if the applicant does not meet certain suitability requirements.
- (3) There are conditions that are common to all public weighbridge licences. In addition, the Secretary may impose conditions on a public weighbridge licence. New conditions may be imposed, or existing conditions amended or revoked, during the life of the licence.
- (4) Public weighbridge licences are granted for a period, but may be renewed on application.

#### **18PA Application for a public weighbridge licence**

- (1) A person may make an application to the Secretary for a public weighbridge licence for a single weighbridge.
- (2) 2 or more persons who carry on business together as partners may make an application jointly for a public weighbridge licence for a single weighbridge.
- (3) The application:
  - (a) must be in the form approved by the Secretary; and
  - (b) must be accompanied by the application fee prescribed for the purposes of this paragraph; and
  - (c) must be accompanied by such other material as is prescribed.
- (4) The Secretary may, by notice in writing to an applicant, request the applicant to provide information or documents of the kind

specified in the notice to the Secretary within a specified period of not less than 14 days.

- (5) The Secretary may refuse the application if the notice is not complied with.

### **18PB Granting a public weighbridge licence**

- (1) The Secretary must grant an application for a public weighbridge licence for a single weighbridge unless there are grounds for refusal under this Act.

Note: The Secretary may refuse to grant a public weighbridge licence:

- (a) if the applicant fails to comply with a request for further information or documents (see subsection 18PA(4)); or
  - (b) because of other circumstances set out in section 18PC.
- (2) The Secretary must give the applicant written notice of the decision on the application within 28 days after the application is made (the *consideration period*).
- (3) The notice must specify the period for which the licence is granted.
- (4) If the Secretary requests an applicant under subsection 18PA(4) to provide information or documents, the time taken by the applicant to provide the information or documents is not to be included in the consideration period.
- (5) If the Secretary fails to give the applicant written notice of the decision under subsection (2) within the consideration period the Secretary is, at the end of the period, taken to have refused to grant the application.

### **18PC Circumstances in which public weighbridge licence must be refused**

- (1) The Secretary must refuse an application by an applicant for a public weighbridge licence for a single weighbridge if:
- (a) the applicant is an individual who has not reached the age of 18 years; or
  - (b) the applicant holds a licence under this Act that is suspended; or
  - (c) the applicant is disqualified under this Act from holding a licence under this Act; or

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- (d) neither:
    - (i) the applicant; nor
    - (ii) an employee of the applicant; nor
    - (iii) a person who has contracted with the applicant to operate the weighbridge; nor
    - (iv) any employee of a person mentioned in subparagraph (iii);is competent to operate a public weighbridge; or
  - (e) the applicant or a person who has contracted with the applicant to operate the weighbridge is not likely to carry on the operation of a public weighbridge honestly and fairly; or
  - (f) the applicant or a person who has contracted with the applicant to operate the weighbridge is in any other way not a fit and proper person to operate a public weighbridge; or
  - (g) the Secretary considers that the weighbridge is not suitable for use as a public weighbridge.
- (2) Without limiting the generality of paragraph (1)(f), the Secretary may have regard to any or all of the following matters in determining whether the applicant or a person who has contracted with the applicant to operate the weighbridge (the **contractor**) is a fit and proper person to operate a public weighbridge:
- (a) whether the applicant or the contractor has, during the period of 10 years that immediately preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence (whether under the law of the Commonwealth or any other law) involving fraud or dishonesty;
  - (b) whether the applicant or the contractor was, when the application was made, the subject of a charge pending in relation to such an offence;
  - (c) whether the applicant or the contractor has, at any time, been convicted of an offence against this Act or an earlier corresponding law;
  - (d) whether the applicant or the contractor has been refused a licence under this Act or an earlier corresponding law.

### **18PD Where the applicant is a body corporate**

If the applicant or the person who has contracted with the applicant to operate the weighbridge is a body corporate, paragraph 18PC(1)(f) and paragraphs 18PC(2)(a) to (d) apply as if a reference to the applicant or the person who has contracted with the applicant to operate the weighbridge included a reference to a person concerned in the management of the body corporate.

### **18PE Where the applicant is a partnership**

- (1) If the applicant is a partnership, this Division applies as if:
  - (a) a reference to the applicant, other than in subparagraph 18PC(1)(d)(i), were a reference to each member of the partnership; and
  - (b) the reference to the applicant in subparagraph 18PC(1)(d)(i) were a reference to any partner in the partnership.
- (2) If the Secretary grants a public weighbridge licence to a partnership the licence must state:
  - (a) the names of all the partners; and
  - (b) if the partnership has a registered business name, the registered business name.
- (3) Each of the partners named on the public weighbridge licence is taken to be a public weighbridge licensee for the purposes of this Act.

### **18PF Register of public weighbridge licences**

The Secretary must keep a register of prescribed particulars relating to public weighbridge licences.

### **18PG Conditions may be imposed on public weighbridge licences**

- (1) The Secretary may impose conditions on a public weighbridge licence.
- (2) A condition may be imposed at the time the public weighbridge licence is granted or at a later time.
- (3) A condition may be amended or revoked at any time.

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- (4) However, if a condition is to be imposed or amended after a public weighbridge licence is granted, the Secretary must invite the public weighbridge licensee to make written submissions in relation to the proposed condition or amendment before imposing the condition, or making the amendment.
- (5) The invitation must:
  - (a) be in writing; and
  - (b) state the period of not less than 14 days within which the submission must be made.
- (6) The Secretary must notify the public weighbridge licensee in writing of:
  - (a) the terms of any condition imposed on the public weighbridge licence; and
  - (b) the terms of any condition of the public weighbridge licence as amended; and
  - (c) the revocation of any condition of the public weighbridge licence.
- (7) The amendment or revocation of a condition of the public weighbridge licence takes effect on the later of:
  - (a) the day on which the notice is given; or
  - (b) the day specified in the notice.

**18PH Conditions on all public weighbridge licences**

- (1) A public weighbridge licence is subject to the following conditions:
  - (a) a condition that the weighbridge mentioned in the licence is to be located at the place stated in the licence;
  - (b) a condition that the public weighbridge licensee must ensure that, if the weighbridge mentioned in the licence is made available as a public weighbridge, it is not operated by any person other than:
    - (i) the public weighbridge licensee; or
    - (ii) an employee of the public weighbridge licensee; or
    - (iii) a person who has contracted with the public weighbridge licensee to operate the weighbridge; or
    - (iv) an employee of a person mentioned in subparagraph (iii);

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- (c) if the public weighbridge licensee is an individual—a condition that the public weighbridge licensee must not personally operate the weighbridge mentioned in the licence unless competent to do so;
  - (d) a condition that the public weighbridge licensee must not employ a person to operate the weighbridge mentioned in the licence unless the person is competent to do so;
  - (e) a condition that the public weighbridge licensee must not contract with another person to operate the weighbridge mentioned in the licence unless:
    - (i) where the contractor will operate the weighbridge personally—the contractor is competent to do so; and
    - (ii) where an employee of the contractor will operate the weighbridge—the employee is competent to do so;
  - (f) such other conditions as may be prescribed.
- (2) The condition mentioned in paragraph (1)(b) does not apply to the operation of a weighbridge if:
- (a) the weighbridge is approved in writing by the Secretary for direct operation by the public; and
  - (b) the public weighbridge licensee ensures that:
    - (i) the weighbridge is not operated otherwise than in accordance with that condition; and
    - (ii) the weighbridge is operated only during such periods and in accordance with such conditions as specified in the approval.

**18PI Application to amend a condition of a public weighbridge licence**

- (1) A public weighbridge licensee may apply to the Secretary for an amendment of a condition of the licensee's public weighbridge licence imposed under section 18PG.
- (2) The application:
  - (a) must be in writing in the form approved by the Secretary; and
  - (b) must be accompanied by the application fee prescribed for the purposes of this paragraph; and
  - (c) must be accompanied by such other material as is prescribed.

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- (3) The Secretary may:
  - (a) grant the application; or
  - (b) refuse the application.
- (4) The Secretary must give the public weighbridge licensee written notice of the decision on the application within 28 days after the application is made.
- (5) If the Secretary fails to give the public weighbridge licensee written notice of the decision within that period, the Secretary is, at the end of the period, taken to have refused to grant the application.

**18PJ Application to change public weighbridge licensee due to change of partnership**

- (1) This section applies if:
  - (a) a partnership is a public weighbridge licensee; and
  - (b) there is or is proposed to be a change to the membership of the partnership (the *change*) with at least one partner before the change continuing as a partner after the change.
- (2) The partnership may apply to the Secretary to amend the public weighbridge licence to state the partners who are or will be the partners after the change.
- (3) The application:
  - (a) must be in writing in the form approved by the Secretary; and
  - (b) must include information about how the partnership has changed or is proposed to change; and
  - (c) must include information about any new partner that the new partner would have to have given to the Secretary if the new partner were applying to be a public weighbridge licensee; and
  - (d) must be accompanied by the application fee prescribed for the purposes of this paragraph.
- (4) To the extent the change involves a person ceasing to be a partner, the Secretary must grant the application and amend the public weighbridge licence to remove the name of the partner from the licence.

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- (5) To the extent the change involves a new partner being admitted to the partnership, the Secretary must, after considering the application:
  - (a) grant the application and amend the public weighbridge licence to include the name of the new partner; or
  - (b) refuse the application.The Secretary must notify the partnership in writing of the decision.
- (6) The Secretary must refuse an application under subsection (2) if the Secretary would have had to refuse an application under section 18PC if the new partner were applying to be a public weighbridge licensee.
- (7) From the day on which the amendment of the public weighbridge licence takes effect, the licence is taken to be held by the partnership as it exists on that day.
- (8) The amendment of the public weighbridge licence takes effect:
  - (a) if the partnership changed more than 28 days before the application for amendment of the licence was made—at the start of that 28th day; or
  - (b) if the partnership is changed on or after that 28th day but before the end of the day on which the application is decided—on the day on which the partnership was changed; or
  - (c) if the partnership changes on a later day—on that later day.

**18PK Application to contract out the operation of the public weighbridge**

- (1) This section applies if, during the term of a public weighbridge licence:
  - (a) the public weighbridge licensee enters into, or proposes to enter into, a contract with another person to operate the public weighbridge (the *contractor*); and
  - (b) the public weighbridge licensee did not apply for the public weighbridge licence on the basis that the contractor would operate the public weighbridge.
- (2) The public weighbridge licensee may apply to the Secretary to amend the public weighbridge licence to state the person who will

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operate the public weighbridge after the contract or variation takes effect.

- (3) The application:
- (a) must be in writing in the form approved by the Secretary; and
  - (b) must include a copy of the contract or proposed contract; and
  - (c) must include any information about the contractor, or proposed contractor, that the public weighbridge licensee would have to have given to the Secretary if the licensee had applied for the public weighbridge licence on the basis that the contractor would operate the public weighbridge; and
  - (d) must be accompanied by the application fee prescribed for the purposes of this paragraph.
- (4) The Secretary must, after considering the application:
- (a) grant the application and amend the public weighbridge licence to include the name of the contractor; or
  - (b) refuse the application.

The Secretary must notify the public weighbridge licensee in writing of the decision.

- (5) The Secretary must refuse an application under subsection (2) if the Secretary would have had to refuse an application under section 18PC if the public weighbridge licensee were applying for a public weighbridge licence on the basis that the contractor would operate the public weighbridge.

**18PL Application for renewal of public weighbridge licence**

- (1) A public weighbridge licensee may apply to the Secretary for the renewal of the licensee's public weighbridge licence.
- (2) The application:
- (a) must be in the form approved by the Secretary; and
  - (b) must be accompanied by the application fee prescribed for the purposes of this paragraph; and
  - (c) must be accompanied by such other material as is prescribed.
- (3) The Secretary may, by notice in writing to an applicant, request the applicant to provide to the Secretary information or documents of the kind specified in the notice within a specified period of not less than 14 days.

- (4) The Secretary may refuse the application if the notice is not complied with.

### **18PM Renewal of public weighbridge licence**

- (1) The Secretary must grant an application for the renewal of a public weighbridge licence unless:
  - (a) the Secretary would have had to refuse the application under section 18PC if it had been an application made under section 18PA; or
  - (b) the Secretary decides to refuse the application under subsection 18PL(4).
- (2) The Secretary must give the applicant written notice of the decision on the application within 28 days after the application is made (the *consideration period*) and, if the renewal is granted, specify the period of the renewal in the notice.
- (3) The notice must specify the period for which the licence is granted.
- (4) If the Secretary requests an applicant under subsection 18PL(3) to provide information or documents, the time taken by the applicant to provide the information or documents is not to be included in the consideration period.
- (5) If the Secretary fails to give the applicant written notice of the decision under subsection (2) within the consideration period the Secretary is, at the end of the period, taken to have refused to grant the application.

### **18PN Surrender and transfer of public weighbridge licence**

- (1) A public weighbridge licensee may surrender the licence by notice in writing given to the Secretary.
- (2) Subject to section 18PJ, a public weighbridge licence is not transferable.

### **18PO Effect of relocation of licensed public weighbridge**

- (1) This section applies if a public weighbridge licensee moves a weighbridge from the location at which it was inspected before it was licensed to another location at the place stated in the licence.

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- (2) The public weighbridge licence for the weighbridge is taken to have been surrendered under section 18PN.

**18PP If weighbridge no longer suitable for use as public weighbridge**

- (1) This section applies if the Secretary decides a licensed public weighbridge is no longer suitable for use as a public weighbridge.
- (2) The Secretary may give the public weighbridge licensee for the weighbridge a notice stating:
- (a) why the Secretary considers the weighbridge is no longer suitable for use as a public weighbridge; and
  - (b) that the licensee may make a written submission to the Secretary within 28 days stating why the licensee considers the public weighbridge licence should not be revoked.
- (3) After considering any submissions made to the Secretary within the relevant period, the Secretary may:
- (a) decide to take no further action against the public weighbridge licensee; or
  - (b) revoke the public weighbridge licence.
- (4) The Secretary must give the public weighbridge licensee written notice of the Secretary's decision under subsection (3) within 14 days after making the decision.

**18PQ Order preventing employment of certain persons**

- (1) The Secretary may, by order in writing, direct that a specified person:
- (a) is not to be employed by a public weighbridge licensee to perform duties relating to the operation of any public weighbridge; or
  - (b) is to be employed by a public weighbridge licensee to perform duties relating to the operation of any public weighbridge only in compliance with specified conditions.
- (2) The Secretary must not make such an order unless satisfied that it is necessary to do so because of the person's lack of competency, or lack of fitness in any other respect, to exercise the functions concerned.

- (3) If the Secretary makes an order under this section, the Secretary must:
- (a) serve a copy of the order on the person to whom it relates (if the person's whereabouts are known to the Secretary); and
  - (b) serve a copy of the order on each public weighbridge licensee that the Secretary knows is employing that person when the order is made.

The order comes into force on the last day on which it is served.

- (4) It is a condition of each public weighbridge licence of that public weighbridge licensee that the licensee must not employ a person in contravention of an order in force under this section.

### **18PR Order preventing contract with certain person to operate public weighbridge**

- (1) The Secretary may, by order in writing, direct that:
- (a) a public weighbridge licensee must terminate any contract with a specified person to operate any public weighbridge; or
  - (b) a public weighbridge licensee is to continue to contract with a specified person to operate any public weighbridge only in compliance with specified conditions.

- (2) The Secretary must not make such an order unless satisfied that it is necessary to do so because of the person's lack of competency, or lack of fitness in any other respect, to exercise the functions concerned.

- (3) If the Secretary makes an order under this section, the Secretary must:
- (a) serve a copy of the order on the person to whom it relates (if the person's whereabouts are known to the Secretary); and
  - (b) serve a copy of the order on each public weighbridge licensee that the Secretary knows has contracted with the person when the order is made.

The order comes into force on the last day on which it is served.

- (4) It is a condition of each public weighbridge licence of that public weighbridge licensee that the licensee must comply with an order in force under this section.

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- (5) It is a condition of each contract entered into by the public weighbridge licensee, either before or after the public weighbridge licence is granted, that the licensee may vary or terminate the contract if required to do so to comply with an order in force under this section.

**18PS Order preventing employee of a public weighbridge contractor from operating public weighbridge**

- (1) The Secretary may, by order in writing, direct that a specified person:
- (a) is not to be employed by a person who has contracted with a public weighbridge licensee to operate a public weighbridge (a *contractor*) to perform duties relating to the operation of any public weighbridge; or
  - (b) is to be employed by a contractor to perform duties relating to the operation of any public weighbridge only in compliance with specified conditions.
- (2) The Secretary must not make such an order unless satisfied that it is necessary to do so because of the person's lack of competency, or lack of fitness in any other respect, to exercise the functions concerned.
- (3) If the Secretary makes an order under this section, the Secretary must:
- (a) serve a copy of the order on the person to whom it relates (if the person's whereabouts are known to the Secretary); and
  - (b) serve a copy of the order on each contractor that the Secretary knows employs the person when the order is made; and
  - (c) serve a copy of the order on each public weighbridge licensee who the Secretary knows has contracted with each such contractor to operate a public weighbridge.
- The order comes into force on the last day on which it is served.
- (4) It is a condition of each public weighbridge licence of each of those public weighbridge licensees that the licensee must terminate a contract for the operation of a public weighbridge with any contractor who employs the person in contravention of an order in force under this section.

- (5) It is a condition of each contract for the operation of a public weighbridge entered into by a public weighbridge licensee, either before or after the public weighbridge licence is granted, that the licensee may terminate the contract if required to do so to comply with subsection (4).

## Division 2—Offences in relation to public weighbridges

### 18PT Offence—making a weighbridge available as a public weighbridge when not licensed etc.

- (1) A person commits an offence if:
  - (a) the person makes a weighbridge available as a public weighbridge; and
  - (b) the person is not:
    - (i) a public weighbridge licensee; or
    - (ii) an employee of a public weighbridge licensee; or
    - (iii) a person who has contracted with a public weighbridge licensee to operate the weighbridge as a public weighbridge; or
    - (iv) an employee of a person mentioned in subparagraph (iii).

Penalty: 30 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 18PU Offence—breaching a condition of a public weighbridge licence

#### *Public weighbridge licensee*

- (1) A person commits an offence if:
  - (a) the person is a public weighbridge licensee; and
  - (b) the person engages or fails to engage in conduct; and
  - (c) the conduct or failure is in breach of a condition of the person's public weighbridge licence.

Penalty: 30 penalty units.

- (2) A person commits an offence if:
  - (a) the person is a public weighbridge licensee; and
  - (b) an employee of the person engages or fails to engage in conduct; and

- (c) the conduct or failure is in breach of a condition of the person's public weighbridge licence; and
- (d) the person expressly, tacitly or impliedly authorises or permits the conduct or failure.

Penalty: 30 penalty units.

*Employee of public weighbridge licensee*

- (3) A person commits an offence if:
  - (a) the person is an employee of a public weighbridge licensee; and
  - (b) the person engages or fails to engage in conduct; and
  - (c) that conduct or failure is in breach of a condition of the public weighbridge licensee's licence; and
  - (d) the conduct or failure is not within the actual or apparent scope of the person's employment.

Penalty: 30 penalty units.

*Person who contracts with public weighbridge licensee to operate weighbridge*

- (4) A person commits an offence if:
  - (a) the person contracts with a public weighbridge licensee to operate a public weighbridge; and
  - (b) the person engages or fails to engage in conduct; and
  - (c) the conduct or failure is in breach of a condition of the public weighbridge licensee's licence.

Penalty: 30 penalty units.

- (5) A person commits an offence if:
  - (a) the person contracts with a public weighbridge licensee to operate a public weighbridge; and
  - (b) an employee of the person engages or fails to engage in conduct; and
  - (c) the conduct or failure is in breach of a condition of the public weighbridge licensee's licence; and
  - (d) the person expressly, tacitly or impliedly authorises or permits the conduct or failure.

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Penalty: 30 penalty units.

*Employee of person who contracts with public weighbridge licensee to operate weighbridge*

- (6) A person commits an offence if:
- (a) the person is an employee of a person who contracts with a public weighbridge licensee to operate a public weighbridge; and
  - (b) the person engages or fails to engage in conduct; and
  - (c) that conduct or failure is in breach of a condition of the public weighbridge licensee's licence; and
  - (d) the conduct or failure is not within the actual or apparent scope of the person's employment.

Penalty: 30 penalty units.

- (7) Subsections (1) to (6) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Part XII—Disciplinary action against servicing licensees and public weighbridge licensees**

### **18Q Overview**

#### **Overview of Part**

- (1) This Part contains provisions about the disciplinary action that may be taken against servicing licensees and public weighbridge licensees.
- (2) Section 18QA sets out the grounds on which disciplinary action may be taken.
- (3) The kinds of disciplinary action that may be taken are:
  - (a) reprimanding the licensee; or
  - (b) imposing a condition on the licence; or
  - (c) suspending the licence; or
  - (d) cancelling the licence; or
  - (e) accepting an enforceable undertaking from the licensee; or
  - (f) publicising information about particular disciplinary action.

### **18QA Grounds for disciplinary action**

- (1) Each of the following constitutes grounds for disciplinary action against a servicing licensee or a public weighbridge licensee:
  - (a) the licensee has failed to comply with a provision of this Act, or with a condition of the licence;
  - (b) the licensee has been found guilty of an offence involving fraud or dishonesty;

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- (c) in the case of a servicing licensee—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;
  - (d) in the case of a public weighbridge licensee—continuously, for a period prescribed by the regulations, neither:
    - (i) the licensee; nor
    - (ii) an employee of the licensee; nor
    - (iii) a person who contracts with the licensee to operate the weighbridge; nor
    - (iv) an employee of a person mentioned in subparagraph (iii);has the competencies appropriate to operate the public weighbridge;
  - (e) the activities to which the licence relates are being carried on in a dishonest or unfair manner;
  - (f) the Secretary would be required by sections 18NC or 18PC to refuse an application for a licence by the licensee (if the licensee were not already licensed);
  - (g) the licensee has been refused a licence under this Act or an earlier corresponding law;
  - (h) the licensee is the subject of disciplinary action under section 18QC or under the equivalent provision of an earlier corresponding law;
  - (i) the licensee is not, for any other reason, a fit and proper person to continue to hold a licence.
- (2) A ground for disciplinary action under subsection (1) exists in relation to a licensee that is a partnership if:
- (a) in relation to the grounds mentioned in paragraphs (a), (b), (f), (g), (h) and (i)—the ground exists in relation to any one or more of the members of the partnership; and
  - (b) in relation to the grounds mentioned in paragraphs (c) and (d)—neither the partners nor anyone else mentioned in those paragraphs has the competencies mentioned in those paragraphs.
- (3) A ground for disciplinary action under paragraph (1)(i) exists in relation to a licensee that is a body corporate if it exists in relation to a person concerned in the management of the body corporate.

**18QB Notice to licensee of grounds for disciplinary action**

- (1) If the Secretary reasonably suspects that there are grounds for disciplinary action against a servicing licensee or a public weighbridge licensee, the Secretary may serve a written notice on the licensee:
  - (a) giving full particulars of those grounds, including particulars for the reasons for any general ground; and
  - (b) calling on the licensee to show cause within a reasonable period specified in the notice why the Secretary should not take disciplinary action on those grounds against the licensee under section 18QC.
- (2) A licensee on whom such a notice is served may, within the period allowed by the notice, make a written submission to the Secretary on the matters concerned.

**18QC Taking disciplinary action**

- (1) If, after consideration of any submissions made by the licensee within the period allowed, the Secretary is satisfied that grounds for disciplinary action against a licensee have been established, the Secretary may:
  - (a) reprimand the licensee; or
  - (b) impose a condition on the licence; or
  - (c) suspend the licence for up to 12 months; or
  - (d) act under any combination of 2 or more of paragraphs (a), (b) and (c); or
  - (e) cancel the licence and disqualify the former licensee permanently or for a specified period from holding a licence.
- (2) The Secretary may take the disciplinary action by written notice given to the licensee.
- (3) That notice takes effect:
  - (a) at the end of the period for lodging an application for a review of the decision by the Administrative Appeals Tribunal; and
  - (b) if such an application has been made within that period—on determination or abandonment of the application, unless the Administrative Appeals Tribunal orders otherwise.

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### **18QD Accepting undertakings**

- (1) The Secretary may, either instead of or in addition to taking disciplinary action under section 18QC, accept a written undertaking given by the licensee.
- (2) The licensee may vary or withdraw the undertaking at any time, but only with the consent of the Secretary.

### **18QE Enforcing undertakings**

- (1) If the Secretary considers that a licensee who gave an undertaking under section 18QD has breached a term of the undertaking, the Secretary may apply to the Federal Court of Australia or the Federal Circuit Court of Australia for an order under subsection (2).
- (2) If the court is satisfied that the licensee has breached a term of the undertaking, the court may make one or more of the following orders:
  - (a) an order directing the licensee to comply with that term of the undertaking;
  - (b) an order directing the licensee to pay to the Commonwealth an amount up to the amount of any financial benefit that the licensee has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the court considers appropriate.

### **18QF Secretary may publicise grounds on which disciplinary action taken, etc.**

- (1) The Secretary may publicise, in any way he or she thinks appropriate, the grounds on which disciplinary action is taken against a licensee, and the disciplinary action taken.
- (2) This section does not:
  - (a) limit the Secretary's powers to publicise those details; or
  - (b) prevent anyone else from publicising those details; or

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- (c) affect any obligation (however imposed) on anyone to publicise those details.

## **Part XIII—Utility meter verifiers**

### **Division 1—Appointment of utility meter verifiers on application**

#### **18R Applying to be a utility meter verifier**

- (1) A person may apply for appointment as a utility meter verifier.
- (2) An application must be:
  - (a) made in the form approved by the Secretary; and
  - (b) given to the Secretary.

#### **18RA Appointment of utility meter verifiers**

- (1) The Secretary may, in writing, appoint a person who has applied under section 18R to be a utility meter verifier.
- (2) The appointment must specify the class or classes of utility meters that the utility meter verifier may verify under the appointment.
- (2A) The Secretary must not specify a class of utility meter that the utility meter verifier may verify unless the Secretary is satisfied that the verifier, or an employee of the verifier, is competent to test that class of utility meter.
- (3) An appointment is subject to:
  - (a) the conditions set out in paragraphs 18RB(a) to (g); and
  - (b) any other conditions that the Secretary imposes.
- (4) The Secretary may impose a condition referred to in paragraph (3)(b) at the time of making the appointment or after the appointment is made. The Secretary may vary or revoke a condition at any time.
- (5) Except when acting under section 18RG (following a breach of conditions), the Secretary must not impose, vary or revoke a condition unless the utility meter verifier has first been consulted.

### **18RB Conditions on appointment of utility meter verifiers**

The appointment of a person as a utility meter verifier under section 18RA is subject to the following conditions:

- (a) if the verifier is an individual—that the verifier must not personally verify a utility meter unless he or she is competent to test that class of utility meter;
- (aa) that the verifier must not employ a person to verify a utility meter unless that person is competent to test that class utility meter;
- (b) if the verifier employs persons to verify utility meters—that the verifier provide a list to the Secretary of the employees who will verify utility meters;
- (c) that the verifier, and its employees (if any), comply with the requirements of this Act;
- (d) that the verifier, and its employees (if any), comply with the requirements of a trade measurement inspector made under this Act;
- (e) that the verifier maintain such reference standards of measurement as the Secretary specifies in writing;
- (f) that the verifier participate in such training in respect of the verification of utility meters as the Secretary requires in writing;
- (g) that the verifier report as required in writing by the Secretary concerning its role as a utility meter verifier.

### **18RC Secretary must allocate utility meter verifier's mark**

When the Secretary appoints a utility meter verifier under section 18RA, the Secretary must allocate the following utility meter verifier's marks for use by the verifier, or its employees (if any), when verifying utility meters:

- (a) if the verifier will be personally undertaking the verification—a mark for use by the verifier; and
- (b) if the verifier will be employing persons to undertake the verification—a separate mark for use by each employee.

### **18RCA NATA accredited verifiers**

For the purposes of subsection 18RA(2A), and for the purposes of the conditions set out in paragraphs 18RB(a) and (aa), a person

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who is accredited by the National Association of Testing  
Authorities to test a class of utility meter is taken to be competent  
to test that class of utility meter.

## **Division 2—Disciplinary action against utility meter verifiers appointed on application**

### **18RD Notice to utility meter verifier of intention to take disciplinary action**

If the Secretary is of the opinion that there may be grounds for taking disciplinary action under section 18RG against a utility meter verifier appointed under section 18RA because it is in breach of a condition of its appointment, the Secretary must:

- (a) give the verifier written notice of the Secretary's opinion specifying the reasons for the opinion; and
- (b) invite the verifier to make a written submission to the Secretary within 14 days.

### **18RE Secretary may seek further information**

The Secretary may ask the utility meter verifier, in writing, to give to the Secretary, within the period specified in the request, information for the purpose of making a decision under section 18RG.

### **18RF Secretary must consider utility meter verifier's submission and information in making a decision under section 18RG**

In making a decision under section 18RG in respect of a utility meter verifier, the Secretary must have regard to the matters raised in the verifier's submission (if any) and any information received by the Secretary under section 18RE.

### **18RG Taking of disciplinary action against a utility meter verifier**

- (1) If the Secretary is satisfied that a utility meter verifier appointed under section 18RA has breached a condition of its appointment, the Secretary may decide:
  - (a) to take any or all of the following actions in respect of the breach:
    - (i) to reprimand the verifier;

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- (ii) to vary or revoke a condition of the verifier's appointment or to impose a further condition on the verifier's appointment;
    - (iii) to suspend the verifier's appointment for up to 12 months; or
  - (b) to revoke the verifier's appointment.
- (2) The following actions take effect on a day specified in writing by the Secretary:
- (a) a variation or revocation of a condition of a utility meter verifier's appointment;
  - (b) the imposition of a further condition on a utility meter verifier's appointment;
  - (c) the revocation of a utility meter verifier's appointment.
- (3) Written notice of a decision of the Secretary under this section must be given to the utility meter verifier concerned. The notice must also include reasons for the decision.
- (4) The day specified by the Secretary under subsection (2) must not be a day earlier than the seventh day after the day on which written notice of the Secretary's decision under this section is given to the utility meter verifier.

### **Division 3—Appointing Commonwealth or State officials etc. as utility meter verifiers**

#### **18RH Appointment of Commonwealth or State officials etc. as utility meter verifiers**

- (1) The Secretary may, in writing, appoint one or more of the following person to be utility meter verifiers:
  - (a) an APS employee (whether or not in the Department);
  - (b) a Commonwealth authority;
  - (c) an employee (whether or not an APS employee) of a Commonwealth authority;
  - (d) the holder of an office established by or under a law of the Commonwealth;
  - (e) a body corporate established for a public purpose by or under a law of a State or Territory;
  - (f) a State or Territory officer.
- (2) The Secretary may appoint a body or person mentioned in paragraph (1)(e) or (f) only if the State or Territory concerned agrees to the appointment.
- (3) The appointment must specify:
  - (a) the class or classes of utility meters that the utility meter verifier may verify under the appointment; and
  - (b) the period of the appointment.
- (4) An appointment is subject to conditions that the Secretary imposes.
- (5) The Secretary may impose a condition at the time of making the appointment or after the appointment is made.

#### **18RI Secretary must allocate verification marks to utility meter verifiers appointed under section 18RH**

When the Secretary appoints a utility meter verifier under section 18RH, the Secretary must allocate the following verification marks for use by the verifier, or its employees (if any), when verifying utility meters:

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- (a) if the verifier will be personally undertaking the verification—a mark for use by the verifier; and
- (b) if the verifier will be employing persons to undertake the verification—a separate mark for use by each employee.

**Part XIV—Miscellaneous****19 Maintaining of standards of measurement etc. before regulations prescribing units take effect**

Where regulations that prescribe units of measurement of physical quantities are made under section 7A, but the regulations are not, or part of the regulations is not, to take effect immediately upon the date of notification of the regulations in the *Gazette*:

- (a) standards of measurement of those physical quantities may be maintained under section 8;
- (b) the powers conferred by section 8A may be exercised; and
- (c) State primary standards of measurement, and reference standards of measurement, of those physical quantities may be verified, and certificates issued in respect of the verification;

at any time after the date of notification of the regulations in the *Gazette*, as if the whole of the regulations had taken effect on that date.

**19A Patterns of instruments**

- (1) The regulations may make provision for or in relation to:
  - (a) the examination of patterns of measuring instruments;
  - (b) the approval and verification of patterns of measuring instruments as patterns of measuring instruments suitable for:
    - (i) use for trade; and
    - (ii) any other legal purpose;
  - (c) the issuing of certificates in respect of the approval and verification of patterns of measuring instruments; and
  - (d) the reception in evidence of a document purporting to be such a certificate and the admission as prima facie evidence of the matters stated in the document.
- (2) The regulations made under subsection (1) may provide that:
  - (a) examinations may be carried out;
  - (b) approvals may be given; and

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- (c) certificates may be issued;  
by the Chief Metrologist, a delegate of the Chief Metrologist or  
another person on behalf of the Chief Metrologist.
- (4) Without limiting the matters that may be provided for in  
regulations made for the purposes of subsection (1), the regulations  
may provide that the granting of approval of a pattern of a  
measuring instrument as a pattern suitable for use for trade may be  
made subject to the retention of the measuring instrument or a part  
of the measuring instrument by the Chief Metrologist.
- (7) Before the Governor-General makes a regulation for the purposes  
of subsection (1), the Minister must also either:
  - (a) be satisfied that the regulation is not inconsistent with a  
specification published by the International Organisation of  
Legal Metrology regarding the examination and approval of  
patterns of measuring instrument; or
  - (b) if the regulation is inconsistent with a specification—be  
satisfied that:
    - (i) the inconsistency is in the national interest; or
    - (ii) it is not practicable to comply with the specification  
because of particular circumstances applying in  
Australia.
- (8) The Chief Metrologist may charge the prescribed fee for:
  - (a) the examination of patterns of measuring instruments under  
this section; and
  - (b) the approval and verification of patterns of measuring  
instruments as patterns of measuring instruments under this  
section; and
  - (c) the issuing of certificates in respect of the approval and  
verification of patterns of measuring instruments under this  
section.

**19AAA Tolerances**

- (1) The regulations may provide that a certificate issued under  
paragraph 19A(1)(c) in respect of a pattern of a measuring  
instrument (*original instrument*) must specify:

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- (a) the limits of error that may be tolerated in a measuring instrument of the same kind as the original instrument when the instrument is tested for the purposes of this Act; and
  - (b) the procedures to be followed to ascertain whether the instrument operates within those limits of error.
- (2) If a certificate issued under paragraph 19A(1)(c) and in force immediately before the commencement of this section specifies an amount as the amount of error that may be tolerated when an instrument of the same kind as the original instrument is verified for the purposes of a law referred to in subparagraph (1)(a)(ii), the certificate has effect after the commencement of this section as if the amount were specified as being the limits of error that may be tolerated when the instrument is:
- (a) verified for the purposes of that law; or
  - (b) tested for the purposes of this Act.

**19AAB Measuring instrument—accordance with pattern**

- (1) The regulations may provide for:
- (a) the requirements that are to be satisfied before a measuring instrument with an approved pattern is taken, for the purposes of this Act, to be in accordance with the pattern; and
  - (b) the procedures to be followed to ascertain whether measuring instruments with an approved pattern are in accordance with the pattern.
- (2) The regulations may provide that the procedures referred to in paragraph (1)(b) may be carried out:
- (a) by the Chief Metrologist; or
  - (b) by a delegate of the Chief Metrologist; or
  - (c) by another person on behalf of the Chief Metrologist.
- (5) Any regulations made under this section must provide adequate safeguards for the rights of persons affected.

**19B Offences**

A person shall not falsely represent:

- (a) that a pattern of a measuring instrument is in accordance with a pattern approved under the regulations; or
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- (b) that a measuring instrument is in accordance with a pattern so approved.

Penalty: 60 penalty units.

**19C Offences committed by employees—liability of employee**

A person is not criminally responsible for an offence against a provision of Part IV, V, VI or VII if:

- (a) a physical element of the offence is committed by the person as an employee; and
- (b) the person was acting within the actual or apparent scope of his or her employment.

**19D Offences committed by employees—liability of employer**

- (1) If a physical element of an offence against a provision of Part IV, V, VI or VII is committed by an employee of a person (the *employer*) other than a body corporate acting within the actual or apparent scope of his or her employment, the physical element must also be attributed to the employer.
- (2) If intention, knowledge or recklessness is a fault element in relation to a physical element of the offence, that fault element must be attributed to the employer if the employer expressly, tacitly or impliedly authorised or permitted the commission of the offence.

**19E Offences committed by agents—liability of agent**

A person is not criminally responsible for an offence against a provision of Part IV, V, VI or VII if:

- (a) a physical element of the offence is committed by the person as an agent of another person; and
- (b) the person was acting within the actual or apparent scope of his or her authority.

**19F Offences committed by agents—liability of principal**

- (1) If a physical element of an offence against a provision of Part IV, V, VI or VII is committed by an agent of a person (the *principal*) other than a body corporate acting within the actual or apparent

scope of his or her authority, the physical element must also be attributed to the principal.

- (2) If intention, knowledge or recklessness is a fault element in relation to a physical element of the offence, that fault element must be attributed to the principal if the principal expressly, tacitly or impliedly authorised or permitted the commission of the offence.

### **19H Protected information**

- (1) This section applies to a person:
- (a) who is or has been a trade measurement inspector; or
  - (b) who is or has been employed or engaged by the Department; or
  - (c) who is performing, or has performed, functions or duties under this Act.
- (2) A person to whom this section applies commits an offence if:
- (a) the person obtains protected information; and
  - (b) the person does any of the following:
    - (i) copies, or makes a record of, the protected information;
    - (ii) uses the protected information;
    - (iii) discloses the protected information to any person.

Penalty: Imprisonment for 2 years.

- (3) Subsection (2) does not apply if:
- (a) the person copies, records, uses or discloses the protected information for the purposes of performing functions or exercising powers under this Act; or
  - (b) the person obtains the protected information for any other lawful purpose; or
  - (c) the person obtains consent from the person to whom the protected information relates for the copying, recording, use or disclosure of the protected information; or
  - (d) the person believes, on reasonable grounds, that the copying, recording, use or disclosure of the protected information is necessary for the purpose of preserving the safety of another person or other persons.

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Note 1: A defendant bears an evidential burden in relation to a matter in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

Note 2: The *Privacy Act 1988* also imposes limitations on the use or disclosure of protected information if it is personal information for the purposes of that Act.

- (4) Except where it is necessary to do so for the purposes of giving effect to this Act, the person must not be required to:
- (a) produce to a court a document containing protected information; or
  - (b) disclose protected information to a court.
- (5) In this section:

***court*** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

***personal information*** has the same meaning as in the *Privacy Act 1988*.

***protected information*** means information acquired under or for the purposes of this Act that is:

- (a) personal information; or
- (b) information that relates to the personal affairs or business affairs of a person.

**19J Review by Administrative Appeals Tribunal of decisions under this Act**

An application may be made to the Administrative Appeals Tribunal for the review of each of the following decisions:

- (a) a decision under section 18JX to refuse to issue a permit;
- (b) a decision under section 18NB to refuse an application by a person to be a servicing licensee;
- (c) a decision under section 18NG to impose a condition on a servicing licence;
- (d) a decision under subsection 18NG(3) to amend a condition of a servicing licence;
- (e) a decision under section 18NI to refuse an application to amend a condition of a servicing licence;

- (f) a decision under section 18NJ to refuse an application to amend a servicing licence because of a change in the partnership holding the licence;
- (g) a decision under section 18NL to refuse to renew a servicing licence;
- (h) a decision under section 18NN to make an order in respect of a person;
- (i) a decision under section 18PB to refuse an application by a person to be a public weighbridge licensee;
- (j) a decision under section 18PG to impose a condition on a public weighbridge licence;
- (k) a decision under subsection 18PG(3) to amend a condition of a public weighbridge licence;
- (l) a decision under section 18PI to refuse an application to amend a condition of a public weighbridge licence;
- (m) a decision under section 18PJ to refuse an application to amend a public weighbridge licence because of a change in the partnership holding the licence;
- (n) a decision under section 18PM to refuse to renew a public weighbridge licence;
- (o) a decision under section 18PP to revoke a public weighbridge licence;
- (p) a decision under section 18PQ, 18PR or 18PS to make an order in respect of a person;
- (q) a decision under section 18QC to take disciplinary action against a servicing licensee or a public weighbridge licensee;
- (r) a decision under section 18RA to refuse an application by a person to be a utility meter verifier;
- (s) a decision under paragraph 18RA(3)(b) to impose a condition on a utility meter verifier's appointment;
- (t) a decision under subsection 18RA(4) to vary or revoke a condition on a utility meter verifier's appointment;
- (u) a decision under section 18RG to take disciplinary action against a utility meter verifier.

Section 19K

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**19K Jurisdiction of the Federal Court of Australia and the Federal Circuit Court of Australia**

Jurisdiction is conferred on the Federal Court of Australia and the Federal Circuit Court of Australia in respect of matters arising under the following provisions:

- (a) section 18LN;
- (b) section 18LO;
- (c) in relation to the Federal Court of Australia only—section 18MR;
- (d) section 18QE.

**19L Fees recoverable as a debt due to the Commonwealth**

A fee payable under this Act may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

**19M Rights may be amended, suspended or cancelled etc.**

- (1) A right granted under this Act is granted on the basis that:
  - (a) where the right is a servicing licence:
    - (i) it may be amended under section 18NG or 18NI or paragraph 18QC(1)(b); and
    - (ii) it may be suspended or cancelled under paragraph 18QC(1)(c) or (e); and
  - (b) where the right is a public weighbridge licence:
    - (i) it may be amended under section 18PG or 18PI or paragraph 18QC(1)(b); and
    - (ii) it may be suspended or cancelled under paragraph 18QC(1)(c) or (e); and
  - (c) where the right is a permit granted under section 18JX—it may be amended or cancelled under subsection 18JX(8); and
  - (d) where the right is in relation to an appointment as a utility meter verifier:
    - (i) it may be amended under section 18RA or 18RG; and
    - (ii) it may be suspended or revoked under section 18RG;
  - (e) in the case of any right—it may be cancelled, revoked, terminated or amended by or under subsequent legislation; and

- (f) no compensation is payable if the right is cancelled, revoked, terminated or amended as mentioned in any of the above paragraphs.
- (2) For the purposes of this section, *right* includes anything that is property within the meaning of paragraph 51(xxxi) of the Constitution.

**19N Compensation for acquisition of property**

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

**19P Evidentiary matters—signature of Secretary or trade measurement inspector**

A document purporting to be signed by the Secretary or a trade measurement inspector is taken to be signed by that person unless the contrary is established.

**19Q Chief Metrologist may determine matters**

- (1) The Chief Metrologist may determine, in writing:
  - (a) AQS sampling procedures for the purposes of Subdivision 3-C of Division 3 of Part VI; and
  - (b) AQS test procedures for the purposes of Subdivision 3-C of Division 3 of Part VI; and

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- (c) national group test procedures for the purposes of Subdivision 4-B of Division 4 of Part VI; and
  - (d) national sampling procedures for the purposes of Subdivision 4-B of Division 4 of Part VI; and
  - (e) national single article test procedures for the purposes of Subdivision 4-B of Division 4 of Part VI.
- (2) A determination under subsection (1) is not a legislative instrument.

**20 Regulations**

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular:
- (aa) providing for the verification of standards of measurement; and
  - (a) providing for or in relation to the issuing of certificates in respect of the verification of standards of measurement, for the reception in evidence of a document purporting to be such a certificate and for such a certificate to be prima facie evidence of the matters stated in it; and
  - (aaa) providing for the provision, maintenance, custody and care of standards of measurement; and
  - (b) providing that a reference standard of measurement of a particular denomination that was found, upon verification, not to be greater or less than that denomination by an amount exceeding an amount specified in the regulations is, unless otherwise stated in the certificate issued in respect of the verification of the standard, to be deemed to be of a value equal to its denomination; and
  - (c) providing for the certification of reference materials; and
  - (d) providing for the certification of measuring instruments; and
  - (e) providing for or in relation to the issuing of certificates in respect of the certification of reference materials or measuring instruments, for the reception in evidence of a document purporting to be such a certificate and for such a certificate to be prima facie evidence of the matters stated in it; and

- (ea) providing for or in relation to the issuing of certificates in respect of measurements of an article, for reception in evidence of a document purporting to be such a certificate and for such a certificate to be prima facie evidence of the matters stated in it; and
- (f) providing for the exemption from the operation of Part IV of classes of gas, electricity and water meters; and
- (g) providing for sampling plans for utility meter verification; and
- (h) providing for the positioning of, and access to, utility meters in order to facilitate their use for trade and their verification; and
- (i) providing for the Commonwealth to audit the verification of utility meters used for trade undertaken by utility meter verifiers and the provision of labour, facilities and equipment for those purposes; and
- (j) providing for the verification of measuring instruments used for trade; and
- (ja) providing for the positioning of, and access to, measuring instruments in order to facilitate their use by a person for trade, their examination by a verifier and their verification; and
- (jb) providing for the sealing of a measuring instrument that has been verified; and
- (jc) providing for quality assurance for measuring instruments used by persons for trade, and the provision of labour, facilities and equipment for that purpose; and
- (jd) providing for matters applicable to weighbridges, whether or not public weighbridges, including their installation, functioning, operation, examination, testing, suitability and use; and
- (je) providing for the functions of operators of public weighbridges; and
- (jf) regulating the advertising of articles (including articles packed in advance ready for sale) in so far as the advertising relates to measurement; and
- (jg) providing for the keeping of records relating to measuring instruments and articles or utilities sold, or to be sold, by measurement; and
- (k) prescribing a fee for applications; and

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- (l) prescribing a fee for activities undertaken in respect of:
    - (i) the examination and certification of patterns of measuring instruments; and
    - (ii) the verification of measuring instruments used for trade; and
    - (iii) the issue of a certificate in relation to the verification of a measuring instrument used for trade; and
    - (iv) the issue of a permit for a packed article under Division 5 of Part VI; and
  - (m) providing for the time for payment of a fee; and
  - (n) prescribing appropriate limits of error for a measuring instrument for the purposes of the definition of *measuring instrument gives an inaccurate measurement*; and
  - (o) prescribing the re-verification period for a class of measuring instrument; and
  - (p) prescribing AQS marks; and
  - (q) prescribing AQS thresholds for the purposes of Subdivision 3-C of Division 3 of Part VI; and
  - (t) prescribing the circumstances in which a group of packages is taken to have failed testing in accordance with AQS test procedures; and
  - (x) prescribing national test thresholds for the purposes of Subdivision 4-B of Division 4 of Part VI; and
  - (y) prescribing the circumstances in which a group of packages is taken to have failed testing in accordance with national group test procedures; and
  - (z) prescribing the circumstances in which a package is taken to have failed testing in accordance with national single article test procedures; and
  - (za) provide for the issue of infringement notices that specify penalties of no more than 5 penalty units for specified offences against the regulations.
- (2) The regulations may set a fee mentioned in subsection (1) by setting the amount of the fee or a way of working out the fee.
- (3) A fee mentioned in subsection (1) must not be such as to amount to taxation.

## Endnote 1—Legislation history

**Endnotes****Endnote 1—Legislation history**

This endnote sets out details of the legislation history of the *National Measurement Act 1960*.

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
Weights and Measures (National Standards) Act 1960	64, 1960	30 Nov 1960	28 Dec 1960	
Weights and Measures (National Standards) Act 1964	6, 1964	4 May 1964	4 May 1964	—
Statute Law Revision (Decimal Currency) Act 1966	93, 1966	29 Oct 1966	1 Dec 1966	—
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973	ss. 9(1) and 10
Weights and Measures (National Standards) Amendment Act 1978	158, 1978	28 Nov 1978	ss. 1, 2, 10, 11 and 13: Royal Assent Remainder: 23 Oct 1979 ( <i>see Gazette</i> 1979, No. S212)	—
Weights and Measures (National Standards) Amendment Act 1984	77, 1984	25 June 1984	7 Sept 1984 ( <i>see Gazette</i> 1984, No. S353)	ss. 8(2), 11(2) and 13(2)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	s. 3: (a)	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1986	76, 1986	24 June 1986	s. 3: Royal Assent (b)	s. 9

## Endnotes

### Endnote 1—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	s. 3: (c)	s. 5(1)
Industry, Technology and Commerce Legislation Amendment Act 1989	91, 1989	27 June 1989	s. 15: 14 Dec 1988 Part 4 (ss. 20–25): 30 Nov 1989 ( <i>see Gazette</i> 1989, No. S371) Part 5 (ss. 26, 27): 1 Aug 1989 ( <i>see Gazette</i> 1989, No. S262) Remainder: Royal Assent	—
Industry, Technology and Commerce Legislation Amendment Act 1991	66, 1991	15 June 1991	15 June 1991	ss. 2(2)–(4) and 23(2)
Prime Minister and Cabinet Legislation Amendment Act 1991	199, 1991	18 Dec 1991	18 Dec 1991	—
Industry, Technology and Commerce Legislation Amendment Act 1992	168, 1992	11 Dec 1992	Part 5 (ss. 14, 15): 30 July 1975 Remainder: Royal Assent	—
Industry, Science and Technology Legislation Amendment Act 1994	108, 1994	12 July 1994	Div. 2 of Part 2 (ss. 4–6): 9 Aug 1994 Div. 5 of Part 2 (ss. 13–15): 13 July 1994 Remainder: Royal Assent	ss. 4, 7, 9 and 13
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 4 (items 104, 105): Royal Assent (d)	—
Industry, Science and Tourism Legislation Amendment Act 1997	91, 1997	30 June 1997	Schedule 1 (item 21): Royal Assent (e)	—

## Endnote 1—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Schedule 2 (items 995–1003): 1 Jan 1998 ( <i>see Gazette</i> 1997, No. GN49) ( <i>f</i> )	—
National Measurement Amendment Act 1998	90, 1998	14 July 1998	14 July 1998	—
National Measurement Amendment (Utility Meters) Act 1999	9, 1999	31 Mar 1999	Schedule 1: 1 Oct 1999 Remainder: Royal Assent	Sch. 1 (item 14)
Corporate Law Economic Reform Program Act 1999	156, 1999	24 Nov 1999	Schedule 10 (item 101): 13 Mar 2000 ( <i>see Gazette</i> 2000, No. S114) ( <i>g</i> )	—
Industry, Science and Resources Legislation Amendment (Application of Criminal Code) Act 2001	140, 2001	1 Oct 2001	2 Oct 2001	s. 4
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97)
National Measurement Amendment Act 2004	27, 2004	25 Mar 2004	Schedule 1 (items 1–66): 1 July 2004 ( <i>see Gazette</i> 2004, No. GN22) Schedule 2 (items 1, 4): ( <i>h</i> ) Remainder: Royal Assent	Sch. 1 (items 50, 54, 67–88) and Sch. 2 (item 3)
National Measurement Amendment Act 2008	137, 2008	8 Dec 2008	1 July 2009	Sch. 2

## Endnotes

### Endnote 1—Legislation history

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Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
National Measurement Amendment Act 2010	142, 2010	15 Dec 2010	Schedule 1: 16 Dec 2010 Remainder: Royal Assent	Sch. 1 (item 33)
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 822–824) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Personal Liability for Corporate Fault Reform Act 2012	180, 2012	10 Dec 2012	Schedule 6 (item 23): 11 Dec 2012	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Schedule 1 (item 421): 12 Apr 2013 ( <i>see</i> s. 2(1)) Schedule 2 (item 2): ( <i>i</i> )	—

- (a) The *National Measurement Act 1960* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsections 2(1) and (30) of which provide as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
  - (30) The amendment of subsection 3(3) of the *National Measurement Act 1960* made by this Act shall be deemed to have come into operation immediately after the commencement of the *Weights and Measures (National Standards) Amendment Act 1984*.  
The *Weights and Measures (National Standards) Amendment Act 1984* came into operation on 7 September 1984 (*see Gazette* 1984, No. S353).
- (b) The *National Measurement Act 1960* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1986*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (c) The *National Measurement Act 1960* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsections 2(1) and (25) of which provide as follows:

## Endnote 1—Legislation history

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- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (25) The following amendments of the *National Measurement Act 1960* made by this Act shall come into operation on 1 January 1988:
- (a) the insertion of the definition of ***interest in land*** in subsection 3(1);
  - (b) the amendment of section 12;
  - (c) the insertion of section 12A.
- (d) The *National Measurement Act 1960* was amended by Schedule 4 (items 104 and 105) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (e) The *National Measurement Act 1960* was amended by Schedule 1 (item 21) only of the *Industry, Science and Tourism Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (f) The *National Measurement Act 1960* was amended by Schedule 2 (items 995–1003) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (g) The *National Measurement Act 1960* was amended by Schedule 10 (item 101) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(c) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
    - (c) the items in Schedules 10, 11 and 12.
- (h) Subsection 2(1) (items 2, 4 and 6) of the *National Measurement Amendment Act 2004* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

## Endnotes

### Endnote 1—Legislation history

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1, Parts 1, 2 and 3	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 July 2004
4. Schedule 2, item 1	Immediately after the commencement of the provision(s) covered by table item 2.	1 July 2004
6. Schedule 2, item 4	Immediately after the commencement of the provision(s) covered by table item 2.	1 July 2004
(i)	Subsection 2(1) (items 2 and 3) of the <i>Federal Circuit Court of Australia (Consequential Amendments) Act 2013</i> provides as follows: (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.	
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1	At the same time as item 1 of Schedule 1 to the <i>Federal Circuit Court of Australia Legislation Amendment Act 2012</i> commences.	12 April 2013
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	12 April 2013

## Endnote 2—Amendment history

**Endnote 2—Amendment history**

This endnote sets out the amendment history of the *National Measurement Act 1960*.

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
<b>Part I</b>	
Heading to Part I.....	ad. No. 158, 1978
s. 1.....	am. No. 77, 1984
s. 2.....	rep. No. 216, 1973
s. 3.....	am. No. 6, 1964; No. 216, 1973; No. 158, 1978; No. 77, 1984; No. 65, 1985; No. 141, 1987; No. 91, 1989; No. 66, 1991; No. 168, 1992; No. 90, 1998; No. 9, 1999; No. 27, 2004; No. 137, 2008; No. 142, 2010
s. 3A.....	ad. No. 137, 2008
s. 4.....	am. No. 77, 1984; No. 9, 1999; No. 137, 2008; No. 142, 2010
s. 4A.....	ad. No. 9, 1999
s. 4B.....	ad. No. 137, 2008
s. 5.....	am. No. 77, 1984
s. 6A.....	ad. No. 140, 2001
<b>Part II</b>	
Heading to Part II.....	ad. No. 158, 1978
s. 7.....	am. No. 77, 1984 rs. No. 66, 1991
s. 7A.....	ad. No. 66, 1991
s. 7B.....	ad. No. 66, 1991 am. No. 27, 2004; No. 137, 2008
s. 8.....	am. No. 6, 1964; No. 158, 1978; No. 77, 1984; No. 141, 1987; No. 27, 2004
s. 8AA.....	ad. No. 91, 1997 am. No. 27, 2004
s. 8A.....	ad. No. 6, 1964 am. No. 77, 1984; No. 27, 2004; No. 137, 2008
s. 9.....	rs. No. 6, 1964

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
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<b>Provision affected</b>	<b>How affected</b>
	am. No. 77, 1984; No. 141, 1987; No. 27, 2004
Heading to s. 10.....	am. No. 142, 2010
s. 10.....	am. No. 158, 1978; No. 77, 1984; No. 168, 1992; No. 142, 2010
s. 11.....	rs. No. 77, 1984
s. 12.....	am. No. 77, 1984; No. 141, 1987; No. 9, 1999
s. 12A.....	ad. No. 141, 1987 am. No. 9, 1999; No. 142, 2010
s. 13.....	am. No. 158, 1978; No. 77, 1984; No. 9, 1999
s. 13A.....	ad. No. 141, 1987 am. No. 9, 1999
s. 14.....	am. No. 77, 1984
s. 15.....	rep. No. 77, 1984
<b>Part III</b>	
Heading to Part III .....	ad. No. 158, 1978 rs. No. 27, 2004
Part III .....	rs. No. 27, 2004
s. 16.....	am. No. 6, 1964; No. 158, 1978; No. 152, 1997 rs. No. 27, 2004
s. 17.....	rs. No. 158, 1978 am. No. 77, 1984; No. 141, 1987; No. 108, 1994; No. 152, 1997 rs. No. 27, 2004
s. 18.....	rs. No. 77, 1984 am. No. 91, 1989; No. 168, 1992; No. 108, 1994; No. 9, 1999 rs. No. 27, 2004
s. 18AAA.....	ad. No. 77, 1984 am. No. 9, 1999 rep. No. 27, 2004
s. 18AA .....	ad. No. 158, 1978 am. No. 141, 1987; No. 43, 1996 rep. No. 27, 2004

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## Endnote 2—Amendment history

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exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
s. 18AB.....	ad. No. 158, 1978 am. No. 141, 1987 rep. No. 27, 2004
s. 18AC.....	ad. No. 158, 1978 am. No. 77, 1984; No. 141, 1987; No. 152, 1997; No. 156, 1999 rep. No. 27, 2004
s. 18AD .....	ad. No. 158, 1978 am. No. 77, 1984 rep. No. 152, 1997
s. 18AE.....	ad. No. 158, 1978 am. No. 77, 1984; No. 141, 1987; No. 108, 1994; No. 152, 1997 rep. No. 27, 2004
s. 18AF .....	ad. No. 158, 1978 rep. No. 27, 2004
ss. 18AG, 18AH .....	ad. No. 141, 1987 rep. No. 27, 2004
s. 18AI.....	ad. No. 141, 1987 am. No. 159, 2001 rep. No. 27, 2004
s. 18AJ.....	ad. No. 141, 1987 am. No. 90, 1998 rep. No. 27, 2004
s. 18AK .....	ad. No. 141, 1987 rep. No. 27, 2004
s. 18AL.....	ad. No. 141, 1987 am. No. 43, 1996 rep. No. 27, 2004
ss. 18AM–18AP .....	ad. No. 141, 1987 am. No. 152, 1997 rep. No. 27, 2004

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
ss. 18AQ, 18AR.....	ad. No. 141, 1987 rep. No. 27, 2004
s. 18A.....	ad. No. 6, 1964 am. No. 93, 1966; No. 216, 1973; No. 77, 1984; No. 65, 1985; No. 199, 1991 rs. No. 27, 2004
s. 18B.....	ad. No. 158, 1978 rs. No. 27, 2004 am. No. 46, 2011
Note to s. 18B.....	ad. No. 46, 2011
s. 18C.....	ad. No. 158, 1978 rep. No. 152, 1997 ad. No. 27, 2004
s. 18D.....	ad. No. 158, 1978 am. No. 108, 1994; No. 152, 1997 rs. No. 27, 2004
s. 18DA.....	ad. No. 108, 1994 rep. No. 152, 1997
s. 18E.....	ad. No. 158, 1978 am. No. 76, 1986 rep. No. 152, 1997
s. 18F.....	ad. No. 158, 1978 am. No. 141, 1987; No. 108, 1994; No. 152, 1997 rep. No. 27, 2004
 <b>Part IV</b>	
Heading to Part IV.....	ad. No. 158, 1978 rs. No. 141, 1987 rep. No. 27, 2004 ad. No. 137, 2008

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## Endnote 2—Amendment history

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Provision affected	How affected
Part IV .....	rep. No. 27, 2004 ad. No. 137, 2008

**Division 1**

Heading to Div. 1 of .....	ad. No. 141, 1987
Part IV	rep. No. 27, 2004 ad. No. 137, 2008
s. 18G .....	ad. No. 158, 1978 rep. No. 152, 1997 ad. No. 9, 1999 rs. No. 137, 2008

**Division 2**

Heading to Div. 2 of .....	ad. No. 141, 1987
Part IV	rep. No. 27, 2004 ad. No. 137, 2008
s. 18GA .....	ad. No. 137, 2008
Heading to s. 18GB .....	am. No. 142, 2010
s. 18GB.....	ad. No. 137, 2008 am. No. 142, 2010
Heading to s. 18GC .....	am. No. 142, 2010
s. 18GC.....	ad. No. 137, 2008 am. No. 142, 2010
s. 18GCA.....	ad. No. 142, 2010
s. 18GD .....	ad. No. 137, 2008
s. 18GE.....	ad. No. 137, 2008 am. No. 142, 2010

**Division 3**

s. 18GF .....	ad. No. 137, 2008
s. 18GG .....	ad. No. 137, 2008 am. No. 142, 2010
ss. 18GH–18GQ .....	ad. No. 137, 2008

**Part V**

## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
Heading to Part V .....	ad. No. 158, 1978 rep. No. 27, 2004 ad. No. 137, 2008
Part V .....	ad. No. 158, 1978 rep. No. 27, 2004 ad. No. 137, 2008
s. 18H .....	ad. No. 158, 1978 am. No. 91, 1989 rep. No. 152, 1997 ad. No. 9, 1999 am. No. 27, 2004 rs. No. 137, 2008
ss. 18HA–18HI .....	ad. No. 137, 2008
Part VA .....	ad. No. 9, 1999 rep. No. 137, 2008
<b>Part VI</b>	
Heading to Part VI .....	ad. No. 158, 1978 rs. No. 137, 2008
Part VI .....	rs. No. 137, 2008
<b>Division 1</b>	
s. 18J .....	ad. No. 9, 1999 rep. No. 140, 2001 ad. No. 137, 2008
<b>Division 2</b>	
<b>Subdivision 2-A</b>	
ss. 18JA–18JE .....	ad. No. 137, 2008
<b>Subdivision 2-B</b>	
ss. 18JF–18JH .....	ad. No. 137, 2008
<b>Division 3</b>	
<b>Subdivision 3-A</b>	

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## Endnote 2—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 18JI .....	ad. No. 137, 2008
<b>Subdivision 3-B</b>	
ss. 18JJ–18JL.....	ad. No. 137, 2008
<b>Subdivision 3-C</b>	
ss. 18JM–18JP .....	ad. No. 137, 2008
<b>Division 4</b>	
<b>Subdivision 4-A</b>	
s. 18JQ.....	ad. No. 137, 2008
<b>Subdivision 4-B</b>	
ss. 18JR–18JV .....	ad. No. 137, 2008
<b>Division 5</b>	
ss. 18JW–18JZ.....	ad. No. 137, 2008
<b>Part VII</b>	
Heading to Part VII .....	ad. No. 137, 2008
s. 18K .....	ad. No. 9, 1999
	rs. No. 137, 2008
ss. 18KA–18KD .....	ad. No. 137, 2008
<b>Part VIII</b>	
Heading to Part VIII .....	ad. No. 137, 2008
<b>Division 1</b>	
Heading to Div. 1 of .....	ad. No. 137, 2008
Part VIII	
s. 18L.....	ad. No. 9, 1999
	rs. No. 137, 2008
<b>Division 2</b>	
ss. 18LA–18LE.....	ad. No. 137, 2008
<b>Division 3</b>	
ss. 18LF–18LK.....	ad. No. 137, 2008
<b>Division 4</b>	
s. 18LL .....	ad. No. 137, 2008
	am. No. 13, 2013

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## Endnotes

### Endnote 2—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 18LM .....	ad. No. 137, 2008
s. 18LN .....	ad. No. 137, 2008 am. No. 13, 2013
s. 18LO .....	ad. No. 137, 2008 am. No. 13, 2013
s. 18LP .....	ad. No. 137, 2008
s. 18LQ .....	ad. No. 137, 2008
<b>Part IX</b>	
Heading to Part IX .....	ad. No. 137, 2008
<b>Division 1</b>	
Heading to Div. 1 of Part IX .....	ad. No. 137, 2008
s. 18M .....	ad. No. 9, 1999 rs. No. 137, 2008
<b>Division 2</b>	
s. 18MA .....	ad. No. 137, 2008 am. No. 142, 2010
ss. 18MB, 18MC .....	ad. No. 137, 2008
<b>Division 3</b>	
ss. 18MD–18MM .....	ad. No. 137, 2008
<b>Division 4</b>	
ss. 18MN–18MV .....	ad. No. 137, 2008
<b>Division 5</b>	
ss. 18MW, 18MX .....	ad. No. 137, 2008
<b>Division 6</b>	
ss. 18MY, 18MZ .....	ad. No. 137, 2008
ss. 18MZA–18MZD .....	ad. No. 137, 2008
<b>Part X</b>	
Heading to Part X .....	ad. No. 137, 2008
s. 18N .....	ad. No. 9, 1999 rs. No. 137, 2008

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## Endnote 2—Amendment history

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Provision affected	How affected
ss. 18NA–18NO .....	ad. No. 137, 2008
<b>Part XI</b>	
Heading to Part XI.....	ad. No. 137, 2008
<b>Division 1</b>	
Heading to Div. 1 of .....	ad. No. 137, 2008
Part XI	
s. 18P.....	ad. No. 9, 1999
	rs. No. 137, 2008
ss. 18PA–18PS .....	ad. No. 137, 2008
<b>Division 2</b>	
ss. 18PT, 18PU.....	ad. No. 137, 2008
<b>Part XII</b>	
Heading to Part XII .....	ad. No. 137, 2008
s. 18Q.....	ad. No. 9, 1999
	rs. No. 137, 2008
s. 18QA.....	ad. No. 137, 2008
s. 18QB.....	ad. No. 137, 2008
s. 18QC.....	ad. No. 137, 2008
s. 18QD .....	ad. No. 137, 2008
s. 18QE.....	ad. No. 137, 2008
	am. No. 13, 2013
s. 18QF .....	ad. No. 137, 2008
<b>Part XIII</b>	
Heading to Part XIII .....	ad. No. 137, 2008
<b>Division 1</b>	
Heading to Div. 1 of .....	ad. No. 137, 2008
Part XIII	
s. 18R .....	ad. No. 9, 1999
	rs. No. 137, 2008
ss. 18RA, 18RB.....	ad. No. 137, 2008
	am. No. 142, 2010

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## Endnotes

### Endnote 2—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 18RC.....	ad. No. 137, 2008
s. 18RCA.....	ad. No. 142, 2010
<b>Division 2</b>	
ss. 18RD–18RG.....	ad. No. 137, 2008
<b>Division 3</b>	
ss. 18RH, 18RI.....	ad. No. 137, 2008
ss. 18S, 18T.....	ad. No. 9, 1999 rep. No. 137, 2008
s. 18U.....	ad. No. 9, 1999 am. No. 27, 2004 rep. No. 137, 2008
ss. 18V–18Y.....	ad. No. 9, 1999 rep. No. 137, 2008
s. 18Z.....	ad. No. 9, 1999 rs. No. 27, 2004 rep. No. 137, 2008
Heading to s. 18ZA.....	rs. No. 27, 2004 rep. No. 137, 2008
ss. 18ZA, 18ZB.....	ad. No. 9, 1999 am. No. 27, 2004 rep. No. 137, 2008
Heading to s. 18ZC.....	am. No. 27, 2004 rep. No. 137, 2008
ss. 18ZC, 18ZD.....	ad. No. 9, 1999 am. No. 27, 2004 rep. No. 137, 2008
Heading to s. 18ZE.....	rs. No. 27, 2004 rep. No. 137, 2008
s. 18ZE.....	ad. No. 9, 1999 am. No. 27, 2004

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## Endnote 2—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	rep. No. 137, 2008
ss. 18ZF, 18ZG.....	ad. No. 9, 1999
	rs. No. 27, 2004
	rep. No. 137, 2008
Heading to s. 18ZH.....	rs. No. 27, 2004
	rep. No. 137, 2008
s. 18ZH.....	ad. No. 9, 1999
	am. No. 27, 2004
	rep. No. 137, 2008
Heading to s. 18ZI.....	rs. No. 27, 2004
	rep. No. 137, 2008
ss. 18ZI–18ZK.....	ad. No. 9, 1999
	am. No. 27, 2004
	rep. No. 137, 2008
ss. 18ZKA, 18ZKB.....	ad. No. 27, 2004
	rep. No. 137, 2008
s. 18ZL.....	ad. No. 9, 1999
	rep. No. 137, 2008
ss. 18ZM, 18ZN.....	ad. No. 9, 1999
	am. No. 27, 2004
	rep. No. 137, 2008
ss. 18ZO–18ZV.....	ad. No. 9, 1999
	rep. No. 137, 2008
s. 18ZW.....	ad. No. 9, 1999
	rs. No. 27, 2004
	rep. No. 137, 2008
ss. 18ZX, 18ZY.....	ad. No. 9, 1999
	rep. No. 137, 2008
s. 18ZZ.....	ad. No. 9, 1999
	am. No. 27, 2004

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## Endnotes

### Endnote 2—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	rep. No. 137, 2008
s. 18ZZA .....	ad. No. 9, 1999
	rep. No. 137, 2008
ss. 18ZZB–18ZZF .....	ad. No. 9, 1999
	rep. No. 137, 2008
<b>Part XIV</b>	
Heading to Part XIV .....	ad. No. 137, 2008
s. 19 .....	am. No. 6, 1964; No. 158, 1978; No. 77, 1984; No. 27, 2004
s. 19A .....	ad. No. 6, 1964
	am. No. 77, 1984; No. 91, 1989; No. 168, 1992; No. 27, 2004; No. 137, 2008
s. 19AAA.....	ad. No. 168, 1992
	am. No. 137, 2008
s. 19AAB.....	ad. No. 168, 1992
	am. No. 27, 2004; No. 137, 2008
s. 19AA .....	ad. No. 158, 1978
	rep. No. 27, 2004
s. 19B .....	ad. No. 6, 1964
	am. No. 93, 1966; No. 158, 1978; No. 77, 1984; No. 91, 1989; No. 27, 2004; No. 142, 2010
s. 19C .....	ad. No. 158, 1978
	rep. No. 152, 1997
	ad. No. 137, 2008
s. 19D .....	ad. No. 137, 2008
s. 19E.....	ad. No. 137, 2008
s. 19F.....	ad. No. 137, 2008
s. 19G.....	ad. No. 137, 2008
	rep. No. 180, 2012
s. 19H.....	ad. No. 137, 2008
s. 19J.....	ad. No. 137, 2008
Heading to s. 19K.....	rs. No. 13, 2013

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## Endnote 2—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 19K.....	ad. No. 137, 2008 am. No. 13, 2013
s. 19L.....	ad. No. 137, 2008
s. 19M.....	ad. No. 137, 2008
s. 19N.....	ad. No. 137, 2008
s. 19P.....	ad. No. 137, 2008
s. 19Q.....	ad. No. 142, 2010
s. 20.....	am. No. 77, 1984; No. 168, 1992; No. 90, 1998; No. 9, 1999; No. 27, 2004; No. 137, 2008; No. 142, 2010

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## Endnotes

Endnote 3—Uncommenced amendments [none]

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### **Endnote 3—Uncommenced amendments [none]**

There are no uncommenced amendments.

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Endnote 4—Misdescribed amendments [none]

**Endnote 4—Misdescribed amendments [none]**

There are no misdescribed amendments.