



National Measurement Amendment (Utility Meters) Act 1999

No. 9, 1999



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An Act to amend the *National Measurement Act 1960*, and for related purposes

Contents

1 Short title.....	1
2 Commencement.....	1
3 Schedule(s).....	2
Schedule 1—Amendments of the National Measurement Act 1960 relating to utility meters	3
4A Application of Act—utility meters used for trade	4
Part VA—Utility meters	5
Division 1—Preliminary	5
18G Overview of Part.....	5
18H Definitions.....	6
18J Application of <i>Criminal Code</i>	7
Division 2—Requirements for use of utility meters for trade	7
18K Overview of Division	7
18L Utility meters used for trade to be verified	8
18M Installing unverified utility meters.....	8
18N Supplying unverified utility meters	8
18P Inaccurate use of utility meters	9
18Q Using or supplying inaccurate utility meter.....	9
18R Transactions by utility meters to be in prescribed units of measurement.....	10
Division 3—Verification of utility meters	10
18S Overview	10
18T Meaning of <i>verification</i>	11
18U Who is permitted to verify utility meters?.....	11
18V Requirements for verification.....	11
18W Standards of measurements to be used for verification.....	12
18X Offences relating to verification	12
18Y Repairer to obliterate verification mark.....	13
Division 4—Verifiers of utility meters	14
18Z Overview.....	14
18ZA Commission is a verifying authority	15
18ZB Application for approval as a verifying authority of utility meters	15
18ZC Appointment of verifying authorities	15

18ZD	Conditions on appointment of verifying authorities.....	16
18ZE	Commission must allocate verification marks.....	16
18ZF	Commission to keep register of verification marks	17
18ZG	Notice to verifying authority of intention to take disciplinary action.....	17
18ZH	Commission may seek further information	17
18ZI	Commission must consider authority’s submission and information in making a decision under section 18ZJ	17
18ZJ	Taking of disciplinary action against a verifying authority.....	17
18ZK	Review of decisions	18
Division 5—Enforcement		19
18ZL	Overview of Division	19
Subdivision A—Appointment of authorised officers and identity cards		19
18ZM	Appointment of authorised officers.....	19
18ZN	Identity cards.....	20
Subdivision B—Powers of authorised officers		20
18ZO	Powers available to authorised officers for monitoring compliance	20
18ZP	Offence powers.....	21
18ZQ	General powers of authorised officers under this Part.....	22
18ZR	Authorised officer may request persons to answer questions	23
Subdivision C—Obligations of authorised officers		24
18ZS	Authorised officer must produce identity card on request	24
18ZT	Details of warrant to be given to occupier etc.	24
18ZU	Consent	24
18ZV	Announcement before entry.....	25
18ZW	Compensation for damage to electronic equipment	25
18ZX	Copies of seized things to be provided.....	26
18ZY	Receipts for things seized under warrant	26
18ZZ	Retention of seized things.....	26
18ZZA	Magistrate may permit a thing to be retained	27
Subdivision D—Occupier’s rights and responsibilities		28
18ZZB	Occupier entitled to be present during search	28
18ZZC	Occupier to provide authorised officer with all facilities and assistance.....	28
Subdivision E—Warrants		28
18ZZD	Monitoring warrants	28

18ZZE Offence related warrants	29
18ZZF Offence related warrants by telephone	30

**Schedule 2—Miscellaneous amendments of the National
Measurement Act 1960** **34**



National Measurement Amendment (Utility Meters) Act 1999

No. 9, 1999

An Act to amend the *National Measurement Act 1960*, and for related purposes

[Assented to 31 March 1999]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *National Measurement Amendment (Utility Meters) Act 1999*.

2 Commencement

- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

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- (2) Subject to subsection (3), Schedule 1 commences on a day to be fixed by Proclamation.
 - (3) If Schedule 1 does not commence under subsection (2) within 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments of the National Measurement Act 1960 relating to utility meters

1 Subsection 3(1)

Insert:

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 VA by the regulations.

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

2 Subsection 3(1)

Insert:

verification, in respect of a utility meter, has the meaning given in section 18T.

3 Subsection 3(1)

Insert:

verifying authority, in respect of the verification of utility meters, means the Commission or a person appointed under section 18ZC.

4 After subsection 3(3)

Insert:

- (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.

5 At the end of paragraphs 4(1)(a), (b) and (d)

Add “and”.

6 After paragraph 4(1)(d)

Insert:

- (e) to provide for a system of verification of utility meters used for trade;

7 After subsection 4(1)

Insert:

- (1A) Subsections (2) and (3) do 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

8 After section 4

Insert:

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.

9 After paragraph 18(1)(ea)

Insert:

- (eb) to verify utility meters used for trade;
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- (ec) to take appropriate steps to ensure that utility meters used for trade are verified and used and dealt with as required by Part VA;

10 At the end of paragraphs 18AAA(a), (b), (c) and (d)

Add “and”.

11 After paragraph 18AAA(b)

Insert:

- (ba) enter into contracts and appoint agents; and

12 After Part V

Insert:

Part VA—Utility meters

Division 1—Preliminary

18G Overview of Part

Overview of Part

- (1) This Part applies to utility meters used for trade.
- (2) Division 2 sets out the requirements that apply to utility meters used for trade.
- (3) Division 3 deals with the verification of utility meters.
- (4) Division 4 deals with verifying authorities (applications for appointment, appointment of verifying authorities, conditions on appointment, disciplinary action for breaches of conditions of appointment).
- (5) Division 5 deals with enforcement powers in respect of utility meters.

Note: For *use for trade* see subsection 3(1).

18H Definitions

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

approved pattern, in relation to a utility meter, means a pattern approved for the meter 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 utility meter was first verified.

authorised officer means a person appointed as an authorised officer under section 18ZM.

evidential material means any of the following:

- (a) any thing with respect to which an offence against this Part 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.

marking a utility meter with a verification mark has the meaning given in subsection (3).

meter gives an inaccurate measurement has the meaning given in subsection (2).

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

occupier, in relation to premises, means the person apparently in charge of the premises.

seize includes secure against interference.

verification mark means a mark allocated for use by the Commission under section 18ZE.

verifier means a person to whom the Commission has allocated a verification mark under section 18ZE.

- (2) For the purposes of this Part, a *meter gives an inaccurate measurement* if the meter does not operate within the appropriate limits of error that are permitted under the regulations.
- (3) A reference in this Part to a person *marking a utility meter with a verification mark* includes the marking of the utility meter itself, the affixing of a label to the utility meter or the marking of a label affixed to the utility meter.

18J Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Part.

Division 2—Requirements for use of utility meters for trade

18K Overview of Division

Overview of Division

- (1) This Division provides that a utility meter used for trade is required to be:
 - (a) verified (see section 18L); and
 - (b) used in a way that gives an accurate measurement (see section 18P); and
 - (c) accurate (see section 18Q).

Note: For *verification* see section 18T.
- (2) This Division imposes the following requirements regarding utility meters used for trade:
 - (a) that a person must not install an unverified utility meter (see section 18M);

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|--|
| <p>(b) that a person must not supply an unverified utility meter (see section 18N).</p> <p>(3) This Division also imposes a requirement that gas, electricity and water are to be sold by reference to a prescribed measurement (see section 18R).</p> |
|--|

18L Utility meters used for trade to be verified

A person is guilty of an offence if:

- (a) the person uses a utility meter for trade; and
- (b) the utility meter is not verified.

Penalty: 50 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *verification* see section 18T.

18M Installing unverified utility meters

A person is guilty of an offence if:

- (a) the person installs in or on any premises a utility meter for use for trade; and
- (b) the meter is not verified.

Penalty: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *verification* see section 18T.

18N Supplying unverified utility meters

A person is guilty of an offence if:

- (a) the person sells or otherwise supplies a utility meter for use for trade; and
- (b) the meter is not verified.

Penalty: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *verification* see section 18T.

18P Inaccurate use of utility meters

- (1) A person is guilty of an offence if the person:
- (a) uses a utility meter for trade; and
 - (b) does so in such a way that the meter gives an inaccurate measurement or gives other information inaccurately.

Penalty: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *meter gives an inaccurate measurement* see section 18H.

- (2) A person is guilty of an offence if:
- (a) the person does, or fails to do, something in relation to a utility meter; and
 - (b) the person's act or omission causes, or is likely to cause, the meter to give an inaccurate measurement or to give other information inaccurately.

Penalty: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *meter gives an inaccurate measurement* see section 18H.

18Q Using or supplying inaccurate utility meter

- (1) A person is guilty of an offence if:
- (a) the person uses a utility meter for trade; and
 - (b) the meter gives an inaccurate measurement or gives other information inaccurately.

Penalty: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *meter gives an inaccurate measurement* see section 18H.

- (2) A person is guilty of an offence if:
- (a) the person sells or otherwise supplies a utility meter for use for trade; and
 - (b) the meter gives an inaccurate measurement or gives other information inaccurately.

Penalty: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *meter gives an inaccurate measurement* see section 18H.

18R Transactions by utility meters to be in prescribed units of measurement

A person is guilty of an offence if:

- (a) the person sells a quantity of gas, electricity or water for a price; and
- (b) the price is not a price determined by reference to a measurement of a quantity in the unit of measurement required by the regulations.

Penalty: 50 penalty units.

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

Division 3—Verification of utility meters

18S Overview

Overview of Division

- (1) This Division deals with verification of utility meters.
- (2) Verification is defined in section 18T.
- (3) The matter of who is permitted to verify utility meters is dealt with in section 18U.

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- | |
|---|
| <p>(4) The requirements for verification are dealt with in section 18V.</p> <p>(5) The offences associated with verification are set out in sections 18X and 18Y.</p> |
|---|

18T Meaning of *verification*

A utility meter is verified when it does not already bear a verification mark and a verifier permitted to verify the meter:

- (a) is satisfied that the utility meter complies with the requirements for verification set out in section 18V; and
- (b) marks the meter with the verifier's verification mark.

Note: For *verification mark* see section 18H.

18U Who is permitted to verify utility meters?

A person is permitted to verify utility meters if:

- (a) the person is:
 - (i) a verifying authority; or
 - (ii) an employee of a verifying authority; or
 - (iii) in the case of the Commission, an officer or agent of the Commission; and
- (b) the verification is done in accordance with the conditions of the verifying authority's appointment (if any); and
- (c) the verification complies with the requirements in the regulations as to sampling plans and marking of utility meters.

Note: For *verifying authority* see subsection 3(1).

18V Requirements for verification

The requirements for verification of a utility meter are:

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

Note: For *approved pattern* see section 18H.

18W Standards of measurements to be used for verification

The determination of whether the requirements of verification under section 18V have been complied with must be made as required by section 10.

18X Offences relating to verification

- (1) A person is guilty of an offence if:
- (a) the person marks a utility meter with a verification mark; and
 - (b) the person is not permitted to do so.

Penalty: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 18U for when a person is permitted to mark a utility meter with a verification mark.

Note 3: For *verification mark* see section 18H.

- (2) Subsection (1) does not apply to the employee of a verifying authority who marks a utility meter with a verification mark if:
- (a) the employee does so in breach of a condition of the verifying authority's appointment; and
 - (b) the verifying authority failed to make the employee aware of the condition.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

Note 2: For *verifying authority* see subsection 3(1).

- (3) A person is guilty of an offence if:
- (a) the person marks a utility meter with a verification mark; and
 - (b) the mark is not a verification mark but is likely to give the impression that it is a verification mark.

Penalty: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *verification mark* see section 18H.

- (4) A person is guilty of 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 utility meter with a verification mark; and
- (c) the person is not permitted to mark a utility meter with that verification mark.

Penalty: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *verification mark* see section 18H.

Note 3: See section 18U for when a person is permitted to mark a utility meter with a verification mark.

(5) A person is guilty of 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 utility meter that is not a verification mark but is likely to give the impression that it is such a mark.

Penalty: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *verification mark* see section 18H.

(6) A person is guilty of an offence if:

- (a) the person sells or otherwise supplies a utility meter for use for trade, or uses a utility meter for trade; and
- (b) the utility meter is marked in contravention of subsection (1) or (3).

Penalty: 200 penalty units.

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

18Y Repairer to obliterate verification mark

(1) A person is guilty of an offence if:

- (a) the person, in repairing a utility meter, does anything to the utility meter that affects its metrological performance; and
- (b) the person does not obliterate any verification mark that the meter bears.

Penalty: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *obliterate* see section 18H.

- (2) Subsection (1) does not apply if the effect on the meter can be corrected by normal operational adjustment of the meter.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

Division 4—Verifiers of utility meters

18Z Overview

Overview of Division

- (1) This Division deals with verifiers (verifying authorities, their employees and, in the case of the Commission, its officers or agents).
- (2) The Commission is a verifying authority (see section 18ZA).
- (3) Other persons may apply for appointment as verifying authorities (see section 18ZB).
- (4) The Commission appoints verifying authorities subject to conditions (see sections 18ZC and 18ZD).
- (5) The Commission allocates verification marks for use by verifiers (see section 18ZE) and there is a register of those marks (see section 18ZF).
- (6) The Commission may take disciplinary action against a verifying authority that breaches a condition of its appointment (see section 18ZJ).

(7) There is a right to appeal to the Administrative Appeals Tribunal in certain circumstances (see section 18ZK).
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18ZA Commission is a verifying authority

- (1) The Commission is a verifying authority.
- (2) The Commission may verify any class of utility meters.

18ZB Application for approval as a verifying authority of utility meters

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

18ZC Appointment of verifying authorities

- (1) The Commission may, in writing, appoint a person who has applied under section 18ZB to be a verifying authority to verify utility meters.
- (2) The appointment must specify the class or classes of utility meters that the verifying authority may verify under the appointment.
- (3) An appointment is subject to:
 - (a) the conditions set out in paragraphs 18ZD(a) to (g); and
 - (b) any other conditions that the Commission imposes.
- (4) The Commission may impose a condition referred to in paragraph (3)(b) at the time of making the appointment or after the appointment is made. The Commission may vary or revoke a condition at any time.
- (5) Except when acting under subparagraph 18ZJ(1)(a)(ii) (following a breach of conditions), the Commission must not impose, vary or revoke a condition unless the verifying authority has first been consulted.

18ZD Conditions on appointment of verifying authorities

The appointment of a person as a verifying authority is subject to the following conditions:

- (a) that the authority is accredited by the National Association of Testing Authorities to test the class or classes of utility meters specified in the authority's appointment;
- (b) if the authority employs persons to verify utility meters—that the authority provide a list to the Commission of the employees who will be verifying utility meters;
- (c) that the authority, and its employees (if any), comply with the requirements of this Part;
- (d) that the authority, and its employees (if any), comply with the requirements of authorised officers made under Division 5 (dealing with enforcement);
- (e) that the authority maintain such reference standards of measurement as the Commission specifies in writing;
- (f) that the authority participate in such training in respect of the verification of utility meters as the Commission requires in writing;
- (g) that the authority report as required in writing by the Commission concerning its role as a verifying authority.

18ZE Commission must allocate verification marks

- (1) When the Commission appoints a verifying authority, the Commission must allocate the following verification marks for use by the authority, or its employees (if any), when verifying utility meters:
 - (a) if the authority will be personally undertaking the verification—a mark for use by the authority; and
 - (b) if the authority will be employing persons to undertake the verification—a separate mark for use by each employee.
- (2) The Commission must allocate a separate mark for use by:
 - (a) each employee and officer of the Commission who verifies utility meters when the employee or officer undertakes the verification of utility meters; and

- (b) each agent of the Commission who verifies utility meters when the agent undertakes the verification of utility meters on behalf of the Commission.

18ZF Commission to keep register of verification marks

The Commission must keep a register of verification marks.

18ZG Notice to verifying authority of intention to take disciplinary action

If the Commission is of the opinion that there may be grounds for taking disciplinary action under section 18ZJ against a verifying authority because it is in breach of a condition of its appointment, the Commission must:

- (a) give the authority written notice of the Commission's opinion specifying the reasons for the opinion; and
- (b) invite the authority to make a written submission to the Commission within 28 days.

18ZH Commission may seek further information

The Commission may ask the verifying authority, in writing, to give to it, within the period specified in the request, information for the purpose of making a decision under section 18ZJ.

18ZI Commission must consider authority's submission and information in making a decision under section 18ZJ

In making a decision under section 18ZJ in respect of a verifying authority, the Commission must have regard to the matters raised in the authority's submission (if any) and any information received by the Commission under section 18ZH.

18ZJ Taking of disciplinary action against a verifying authority

- (1) If the Commission is satisfied that a verifying authority has breached a condition of its appointment, the Commission may decide:

- (a) to take any or all of the following actions in respect of the breach:
 - (i) to reprimand the authority;
 - (ii) to vary or revoke a condition of the authority's appointment imposed under paragraph 18ZC(3)(b) or to impose a further condition on the authority's appointment;
 - (iii) to suspend the authority's appointment for up to 12 months; or
 - (b) to revoke the authority's appointment.
- (2) The following actions take effect on a day specified in writing by the Commission:
- (a) a variation or revocation of a condition of an authority's appointment;
 - (b) the imposition of a further condition on an authority's appointment;
 - (c) the revocation of an authority's appointment.
- (3) Written notice of a decision of the Commission under this section must be given to the verifying authority concerned. The notice must also include reasons for the decision.
- (4) The day specified by the Commission under subsection (2) must not be a day earlier than the seventh day after the day on which written notice of the Commission's decision under this section is given to the authority.

18ZK Review of decisions

A person whose interests are affected may apply to the Administrative Appeals Tribunal for review of a decision of the Commission:

- (a) under section 18ZC to refuse to appoint the person as a verifying authority; and
 - (b) under paragraph 18ZC(3)(b) to impose a condition on a verifying authority's appointment; and
 - (c) under subsection 18ZC(4) to vary or revoke a condition on a verifying authority's appointment; and
-

- (d) under section 18ZJ to take disciplinary action in respect of a verifying authority.

Division 5—Enforcement

18ZL Overview of Division

Overview of Division

- (1) This Division deals with authorised officers and the enforcement and monitoring powers available to authorised officers in respect of utility meters.
- (2) Subdivision A deals with the appointment of authorised officers and identity cards.
- (3) Subdivision B sets out the general powers of authorised officers under this Part.
- (4) Subdivision C sets out the obligations of authorised officers.
- (5) Subdivision D sets out the rights and responsibilities of occupiers.
- (6) Subdivision E deals with warrants.

Subdivision A—Appointment of authorised officers and identity cards

18ZM Appointment of authorised officers

- (1) The Commission may, in writing, appoint an officer or employee of the Commission or an agent of the Commission to be an authorised officer for the purposes of exercising the powers of an authorised officer under this Part.
- (2) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any directions of the Commission.

18ZN Identity cards

- (1) The Commission must issue an identity card to an authorised officer in the form prescribed by the regulations. The identity card must contain a recent photograph of the authorised officer.
- (2) A person is guilty of an offence if:
 - (a) the person has been issued with an identity card; and
 - (b) the person ceases to be an authorised officer; and
 - (c) the person does not, immediately after so ceasing, return the identity card to the Commission.

Penalty: 1 penalty unit.

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

- (3) An authorised officer must carry the identity card at all times when exercising powers or performing functions as an authorised officer.

Subdivision B—Powers of authorised officers

18ZO Powers available to authorised officers for monitoring compliance

- (1) For the purpose of finding out whether this Part or the regulations made under this Part have been complied with, an authorised officer may:
 - (a) enter any business premises at any reasonable time of the day; and
 - (b) exercise the powers set out in section 18ZQ.
- (2) An authorised officer is not authorised to enter premises under subsection (1) unless:
 - (a) the occupier of the premises has consented to the entry and the officer has shown his or her identity card if required by the occupier; or
 - (b) the entry is made under a warrant issued under section 18ZZD.

- (3) If the authorised officer is on premises with the consent of the occupier, the authorised officer must leave the premises if the occupier asks the authorised officer to do so.

18ZP Offence powers

- (1) This section applies if an authorised officer has reasonable grounds for suspecting that there may be evidential material on any business premises.
- (2) The authorised officer may:
- (a) enter the premises:
 - (i) with the consent of the occupier after producing his or her identity card for the inspection of the occupier; or
 - (ii) under a warrant issued under section 18ZZE; and
 - (b) exercise the powers set out in section 18ZQ in relation to looking for the evidential material; and
 - (c) seize the evidential material, if the authorised officer finds it on the premises.
- (3) If the evidential material referred to in subsection (1) is or includes information in a written or electronic form, an authorised officer may operate equipment on the premises to see whether:
- (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is on the premises; and
 - (ii) can be used with or is associated with the equipment;contains the information.
- (4) If the authorised officer, after operating equipment at the premises, finds that the equipment, or that a disk, tape or other storage device at the premises contains the information, 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, 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 disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and whose use for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the information to the storage device and remove the storage device from the premises.
- (5) An authorised officer 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 by the occupier of the equipment could constitute an offence.
- (6) If:
 - (a) in the course of searching for a particular thing, an authorised officer finds another thing that the authorised officer believes on reasonable grounds to be evidential material; and
 - (b) the authorised officer 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 Part or the regulations;the authorised officer may seize that other thing.
- (7) If the authorised officer is on premises with the consent of the occupier, the authorised officer must leave the premises if the occupier asks the authorised officer to do so.

18ZQ General powers of authorised officers under this Part

The powers that an authorised officer may exercise in relation to premises under section 18ZO and 18ZP 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 take samples of utility meters;
- (d) to inspect any book, record or document on the premises;
- (e) to take extracts from or make copies of any such book, record or document;
- (f) to take onto the premises such equipment and materials as the authorised officer requires for the purpose of exercising powers in relation to the premises.

18ZR Authorised officer may request persons to answer questions

- (1) If the authorised officer was only authorised to enter business premises because the occupier of the premises consented to the entry—the authorised officer may ask the occupier to:
 - (a) answer any questions put by the authorised officer; and
 - (b) produce any book, record or document requested by the authorised officer.
- (2) If the authorised officer was authorised to enter the premises by a warrant under section 18ZZD or 18ZZE—the authorised officer has power to require any person in or on the premises to:
 - (a) answer any questions put by the authorised officer; and
 - (b) produce any book, record or document requested by the authorised officer.
- (3) A person is guilty of an offence if the person refuses or fails to comply with a requirement under subsection (2).

Penalty: 200 penalty units.

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

- (4) 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 (4), see subsection 13.3(3) of the *Criminal Code*.

- (5) A person is guilty of an offence if the person:
- (a) gives information to an authorised officer, either orally or in writing; and
 - (b) gives the information knowing that it is false or misleading in a material particular.

Penalty: 12 months imprisonment.

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

Subdivision C—Obligations of authorised officers

18ZS Authorised officer must produce identity card on request

An authorised officer is not entitled to exercise any powers under this Part in relation to premises if:

- (a) the occupier of the premises requires the authorised officer to produce his or her identity card for inspection by the occupier; and
- (b) the authorised officer fails to comply with the requirement.

18ZT Details of warrant to be given to occupier etc.

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

Note: Warrants are issued under sections 18ZZD and 18ZZE.

18ZU Consent

- (1) Before obtaining the consent of a person for the purposes of paragraph 18ZO(2)(a) and subparagraph 18ZP(2)(a)(i), the

authorised officer must inform the person that he or she may refuse consent.

- (2) An entry of an authorised officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

18ZV Announcement before entry

An authorised officer must, before entering premises under a warrant:

- (a) announce 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.

18ZW Compensation for damage to electronic equipment

- (1) The owner of equipment is entitled to compensation of a reasonable amount payable by the Commission for damage to the equipment if:
 - (a) the damage was caused to equipment as a result of it being operated as mentioned in section 18ZP; and
 - (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment.
 - (2) The Commission must pay the owner such reasonable compensation as the owner and the Commission agree on. If the Commission and the owner fail to agree, the owner may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
 - (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.
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18ZX Copies of seized things to be provided

- (1) Subject to subsection (2), if an authorised officer seizes, under a warrant in relation to premises:
 - (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 authorised officer must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.
- (2) Subsection (1) does not apply if:
 - (a) the thing that has been seized was seized under paragraph 18ZP(4)(b) or (c); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

18ZY Receipts for things seized under warrant

- (1) If a thing is seized under this Part, the authorised officer 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.

18ZZ Retention of seized things

- (1) Subject to any contrary order of a court, if an authorised officer seizes a thing under this Part, an authorised officer 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 60 days after its seizure ends;whichever first occurs, unless the thing is forfeited or forfeitable to the Commonwealth.

- (2) At the end of the 60 days specified in subsection (1), an authorised officer 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 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
 - (b) the authorised officer may retain the thing because of an order under section 18ZZA; or
 - (c) an authorised officer 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.
- (3) The thing may be returned under subsection (2) either unconditionally or on such terms and conditions as the Commission sees fit.

18ZZA Magistrate may permit a thing to be retained

- (1) An authorised officer 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 60 days 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 an authorised officer to continue to retain the thing:
- (a) for the purposes of an investigation as to whether an offence against this Part has been committed; or
 - (b) to enable evidence of an offence against this Part to be secured for the purposes of a prosecution;
- the magistrate may order that an authorised officer may retain the thing for a period (not being a period exceeding 3 years) specified in the order.
- (3) Before making the application, the authorised officer 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 authorised officer believes to have such an interest of the proposed application.

Subdivision D—Occupier’s rights and responsibilities

18ZZB Occupier entitled to be present during search

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

18ZZC Occupier to provide authorised officer with all facilities and assistance

The occupier, or another person who apparently represents the occupier, of business premises to which a monitoring warrant or an offence warrant relates must provide the executing officer in relation to the warrant and any person assisting that officer with all reasonable facilities and assistance for the effective exercise of their powers.

Subdivision E—Warrants

18ZZD Monitoring warrants

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to business premises.
 - (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that one or more authorised officers should
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have access to the premises for the purposes of finding out whether this Part or the regulations under this Part have been complied with.

- (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) authorise one or more authorised officers (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in section 18ZQ 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.

18ZZE Offence related warrants

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to business premises.
 - (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in or on the premises evidential material.
 - (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:
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- (a) name one or more authorised officers; and
- (b) authorise the persons so named, with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in sections 18ZP and 18ZQ; 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.

18ZZF Offence related warrants by telephone

- (1) If, in an urgent case, an authorised officer considers it necessary to do so, the person may apply to a magistrate by telephone for a warrant under section 18ZZE in relation to business premises.
- (2) Before applying for the warrant, the person must prepare an information of the kind mentioned in subsection 18ZZE(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 person may apply for the warrant before the information is sworn.
- (4) 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 18ZZE if the application had been made under that section.
- (5) If the magistrate completes and signs the warrant:
 - (a) the magistrate must:

- (i) tell the authorised officer what the terms of the warrant are; and
 - (ii) tell the authorised officer the day on which and the time at which the warrant was signed; and
 - (iii) tell the authorised officer the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
 - (iv) record on the warrant the reasons for granting the warrant; and
 - (b) the authorised officer 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.
- (6) The authorised officer 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 person; and
 - (b) the information referred to in subsection (2), which must have been duly sworn.
- (7) 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 18ZZE.
- (8) 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.
- (9) 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
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- (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.
- (10) A reference in this Part to a warrant under section 18ZZE includes a reference to a warrant signed by a magistrate under this section.

13 At the end of section 20

Add:

- ; and (f) providing for the exemption from the operation of Part VA of classes of gas, electricity and water meters; and
 - (g) providing for sampling plans for utility meter verification and the verification marking of utility meters used for trade; 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 verifying authorities and the provision of labour, facilities and equipment for those purposes; and
 - (j) providing for the verification of utility meters used for trade; and
 - (k) providing for a unit of measurement for the sale of a quantity of gas, electricity or water; and
 - (l) providing for the Commission to charge a fee for activities undertaken by the Commission in respect of the verification of utility meters used for trade; and
 - (m) providing for the time for payment of a fee.
- (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 must be reasonably related to the expenses incurred or to be incurred by the Commission in relation to the matters to which the fee relates and must not be such as to amount to taxation.

14 Application.

Gas, electricity and water meters in use for trade on the commencement of this Schedule are taken to be verified under Part VA and the *National Measurement Act 1960* as in force on and after that commencement applies to them accordingly.

Schedule 2—Miscellaneous amendments of the National Measurement Act 1960

1 Subsection 12(4)

Omit “7(3)”, substitute “7A(2)”.

2 Subsection 12(4)

Omit “then, notwithstanding subsection 7(2) and subsection (1) of this section,”.

3 Subsection 12A(3)

Omit “7(3)”, substitute “7A(2)”.

4 Subsection 12A(3)

Omit “then, notwithstanding subsection 7(2) and subsection (1) of this section,”.

5 Subsection 12A(4)

Omit “Notwithstanding subsection 7(2) and subsection (1) of this section, a contract,”, substitute “A contract”.

6 Section 13

Omit “subsection 7(2)”, substitute “section 7”.

7 Subsection 13A(1)

Omit “Subsections 7(2) and”, substitute “Section 7 and subsection”.

*[Minister’s second reading speech made in—
House of Representatives on 3 December 1998
Senate on 15 February 1999]*

(210/98)
