

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 233**

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

*National Measurement Act 1960*

*National Trade Measurement Regulations 2009*

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

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

On 8 December 2008, Royal Assent was given to the National Measurement Amendment Bill 2008, which amends the Act to create the legislative framework for a national system of trade measurement.

Section 20 of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulations is to introduce new Regulations pursuant to the Act to bring into effect formal arrangements for the national system of trade measurement. The regulations include transitional provisions to ensure a seamless transition from the operation of State and Territory administrations to that of the Commonwealth. This approach gives effect to the Council of Australian Governments decision of April 2007 in a manner that reflects the Commonwealth legislative environment.

Details of the Regulations are set out in the Attachment.

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

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Details of the *National Trade Measurement Regulations 2009***

**OUTLINE**

The *National Trade Measurement Regulations 2009* (the Regulations) prescribe the particulars of the new national (Commonwealth) system of trade measurement regulation provided for in the 2008 amendments to the *National Measurement Act 1960* (the Act).

**Background**

The Commonwealth has constitutional responsibility for weights and measures (s 51(xv) of the Constitution). However, prior to 2008, the Commonwealth chose not to enact comprehensive legal metrology legislation. This responsibility remained with the states and territories.

In the early 1990s, the states and territories developed uniform trade measurement legislation (the UTML), comprising:

- a model Trade Measurement Act 1989;
- model regulations with respect to measuring instruments used for trade – the Trade Measurement (Measuring Instruments) Regulations 1990;
- model regulations with respect to weighbridges – the Trade Measurement (Weighbridges) Regulations 1990;
- model regulations with respect to prepacked articles (or "prepackages") – the Trade Measurement (Prepacked Articles) Regulations 1990; and
- model regulations with respect to certain miscellaneous matters – the Trade Measurement (Miscellaneous) Regulations 1990.

All states and territories enacted legislation based on the UTML. (Each State and Territory also made regulations dealing with certain administrative matters.) However, subsequent changes to the UTML were introduced at different times in different jurisdictions, leading to an inconsistent pattern of regulation.

Therefore, on 13 April 2007, the Council of Australian Governments (COAG) decided that a new national system of trade measurement regulation should be introduced. In 2008, the Act was substantially amended to give effect to this policy decision.

The Regulations are a further step in the transition to the new national system.

## **Replication of the UTML**

Aside from minor improvements made as a result of industry and consumer consultation and the recommendations of the Trade Measurement Advisory Committee, the Regulations replicate, or substantially correspond to, the UTML.

- Part 2 of the Regulations, which concerns measuring instruments and material measures used for trade, corresponds to the model Trade Measurement (Measuring Instruments) Regulations.
- Part 3 of the Regulations, which concerns weighbridges used for trade, corresponds to the model Trade Measurement (Weighbridges) Regulations.
- Part 4 of the Regulations, which concerns prepackages, corresponds to the model Trade Measurement (Prepacked Articles) Regulations. It also includes a number of new provisions concerning the new Average Quantity System (see below).
- Part 5 of the Regulations, which concerns certain miscellaneous matters, corresponds to the model Trade Measurement (Miscellaneous) Regulations.

## **The Average Quantity System (AQS)**

The key difference between the Regulations and the UTML relates to their "shortfall provisions" – the provisions designed to ensure that traded packaged goods do not contain a "shortfall" (i.e., a quantity of goods less than that stated on the package label).

There are several ways of determining whether a package contains a shortfall. Two of these are:

- The pre-existing UTML system. The pre-existing UTML system allows deficiencies of no more than 5 per cent in any package provided the contents of randomly selected packages of the same kind and stated quantity show no aggregate (i.e., average) deficiency.
- The Average Quantity System (AQS). The AQS is an internationally agreed method of determining the measurement of packaged goods with constant nominal content. It provides for the confirmation of goods sold by weight, measure or number by utilising sampling standards based on those developed by the International Organisation of Legal Metrology. It is intended to be used in large scale packaging plants where goods (e.g., breakfast cereals) are packed in the same quantity in large numbers.

After extensive industry and consumer consultation, it was decided that the new national system for trade measurement should allow for the use, on a voluntary basis, of the AQS. Pursuant to this policy decision, the 2008 amendments to the Act made provision for the use of both the pre-existing UTML system (see Division 4 of Part VI) and the AQS (see Division 3 of Part VI), with packers entitled to choose between the two systems for the purpose of determining if their prepacked goods are "correct measure".

Subdivision 1 of Division 4.7 of Part 4 of the Regulations prescribes the particulars of the AQS. Unlike the rest of Regulations, this subdivision has no counterpart in the UTML.

#### **FINANCIAL IMPACT STATEMENT**

As the Regulations replicate, or substantially correspond to, the UTML, there are no additional imposts on the community.

#### **REGULATION IMPACT STATEMENT**

As the Regulations are part of a machinery of government transfer of trade measurement regulation from the states and territories to the Commonwealth, the Office of Best Practice Regulation (OBPR) has provided an exemption from the need to carry out a regulatory impact analysis (see OBPR reference 10059).

## **PART 1 – PRELIMINARY**

1. Part 1 makes provision for certain preliminary matters.

### **Regulation 1.1 – Name of Regulations**

2. Regulation 1.1 sets out the name of the Regulations as the *National Trade Measurement Regulations 2009*.

### **Regulation 1.2 – Commencement**

3. Regulation 1.2 provides that the Regulations commence on the day after they are registered.

### **Regulation 1.3 – Application of Regulations - wine labelling**

4. Regulation 1.3 provides that the Regulations do not apply in certain circumstances relating to wine. It is intended that detailed provisions relating to wine container labelling will be inserted once the World Wine Trade Group Agreement on Requirements for Wine Labelling is ratified.

### **Regulation 1.4 – Interpretation**

5. Regulation 1.4 defines a number of terms used in the Regulations.

### **Regulation 1.5 – Certain articles must be sold by measurement – meat**

6. Subsections 18HC(1) and (2) of the Act make it an offence for a person to sell an article, the price of which is not determined by measurement, if the article is of a class that, by regulation, is required to be sold by measurement (e.g., mass, volume, linear measurement or superficial measurement). (The offence in subsection 18HC(1) is an offence requiring a fault element. The offence in subsection 18HC(2) is an offence of strict liability.)
7. Regulation 1.5 prescribes the meat of certain dead animals as a class of articles that must be sold by mass.

## **PART 2 – MEASURING INSTRUMENTS AND MATERIAL MEASURES USED FOR TRADE**

8. Part 2 concerns measuring instruments and material measures used for trade.
9. Division 2.1 of Part 2 creates a number of offences relating to the use of measuring instruments for trade.
10. Division 2.2 of Part 2 makes provision for the verification and re-verification of measuring instruments and material measures by inspectors, servicing licensees and employees of servicing licensees.
11. Division 2.3 of Part 2 makes provision for the batch testing of a specific class of measuring instrument – i.e., glass measures. Under the UTML, manufacturers or importers of glass measures could be authorised to batch test glass measures. Batch testing must now be done by inspectors, servicing licensees or employees of servicing licensees.
12. Division 2.4 of Part 2 prescribes the conditions with which servicing licensees (and employees of servicing licensees) are required to comply in order to hold a licence (a "servicing licence"). Many of these conditions of licence were not previously contained in the UTML.
13. With the exception of the changes made with respect to the batch testing of glass measures and the conditions of licence of servicing licences, Part 2 substantially corresponds to the model Trade Measurement (Measuring Instruments) Regulations.

### **Division 2.1 – Offences for use of a measuring instrument for trade**

14. Division 2.1 creates a number of offences relating to the use of measuring instruments for trade. The ultimate purpose of these offences is to deter the use of measuring instruments in ways that would produce inaccurate or misleading results, and thus, undermine the integrity of the new national system for trade measurement.
15. The offences set out in Division 2.1 substantially correspond to those contained in the UTML. However, they have been redrafted to ensure consistency with the principles set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* (issued by the Criminal Justice Division of the Attorney-General's Department). In particular:
  - The physical elements of each offence have been set out with greater specificity than in the UTML, thus ensuring the particular wrongdoing to be penalised is made clear for both industry and the general public.
  - No offence specifies a penalty greater than 20 penalty units (currently \$2200). This amount is well within the 50 penalty unit maximum for regulations

specified in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

16. The specific provisions of Division 2.1 are discussed below.

**Regulation 2.1 – Use of measuring instrument must not contravene any other provision**

17. Under regulation 2.1, a person commits an offence of strict liability if the person uses a measuring instrument for trade in a manner that contravenes a provision of the Regulations and no other penalty is specified.
18. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.2 – Measuring instrument used to measure mass not to be held or suspended from hand**

19. Under regulation 2.2, a person commits an offence of strict liability if:
- the person is using for trade a measuring instrument; and
  - the person purports to measure mass; and
  - the person holds or permits another person to hold the measuring instrument in a person's hand or suspends or permits another person to suspend the measuring instrument from a person's hand.
20. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.3 – Certain measuring instruments only to be used for specific use**

21. Under regulation 2.3, a person commits an offence of strict liability if the person:
- is using for trade a measuring instrument that is marked for a specific use; and
  - uses the measuring instrument in a manner that is not in accordance with the specific use for which the measuring instrument is marked.
22. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.4 – Certain measuring instruments only to be used with specified proportional masses**

23. Under regulation 2.4, a person commits an offence of strict liability if the person:

- is using for trade a measuring instrument that is marked for use with specified proportional masses; and
  - uses the measuring instrument with a proportional mass that is not specified.
24. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.5 – Measuring instrument fitted with tare bar not to be used in certain circumstances**

25. Under regulation 2.5, a person commits an offence of strict liability if the person:
- is using for trade a measuring instrument otherwise than for factory use or non-retail counter use; and
  - uses the measuring instrument fitted with a tare bar.
26. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.6 – Person must not use measuring instrument to determine mass greater than permitted**

27. Under regulation 2.6, a person commits an offence of strict liability if:
- the person is using for trade a measuring instrument; and
  - the approved pattern for the measuring instrument permits a maximum capacity for the measuring instrument; and
  - the person uses the measuring instrument to determine, in a single weighing, mass greater than the mass permitted by the approved pattern.
28. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.7 – Person must not use certain masses to determine mass of particular items**

29. Under regulation 2.7, a person commits an offence of strict liability if the person:
- is using for trade a measuring instrument; and
  - uses masses other than masses marked “A” in accordance with a certificate of approval of pattern issued under paragraph 19A(1)(c) of the Act; and
  - uses the measuring instrument to determine:



- the mass of any goods for therapeutic use within the meaning of the *Therapeutic Goods Act 1989*; or
  - the mass of precious metals.
30. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.8 – Metric carat masses only to be used to measure mass of precious stones**

31. Under regulation 2.8, a person commits an offence of strict liability if the person:
- is using for trade a measuring instrument; and
  - uses the measuring instrument to determine the mass of anything other than precious stones; and
  - uses a metric carat mass.
32. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.9 – Proportional mass to be readily identifiable with measuring instrument**

33. Under regulation 2.9, a person commits an offence of strict liability if the person:
- is in possession of more than 1 measuring instrument used for trade located on the same premises; and
  - any of the measuring instruments is used with proportional masses; and
  - each proportional mass is not readily identifiable with the measuring instrument on which it was tested.
34. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.10 – Certain masses only to be used by particular certificate holders**

35. Under regulation 2.10, a person commits an offence of strict liability if:
- the person uses a mass of 0.2 metric carat or less or 50mg or less; and
  - the person does not hold a certificate issued by the Secretary or the holder of a servicing licence that certifies that the mass complies with the meaning of verification provided in section 18GG of the Act.

36. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.11 – Use of measuring instrument fitted with load receptor**

37. Under regulation 2.11, a person who uses for trade a measuring instrument fitted with a removable load receptor commits an offence of strict liability if:
- the measuring instrument is 1 of 2 or more measuring instruments fitted with a removable load receptor that are located on the premises; and
  - the load receptor is not clearly marked in a manner that identifies the load receptor with the measuring instrument to which it is fitted.

38. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.12 – Measuring instrument fitted with load receptor**

39. Under regulation 2.12, a person who uses for trade a measuring instrument fitted with a load receptor commits an offence of strict liability if the load receptor:
- is removable; and
  - measures incorrectly in any position on its supports.

40. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.13 – Movement of load receptor must not foul measuring instrument**

41. Under regulation 2.13, a person who uses for trade a measuring instrument fitted with a load receptor commits an offence of strict liability if:
- the load receptor has any latitude of movement on its supports; and
  - the latitude of movement causes the load receptor to foul any part of the measuring instrument to which it is fitted.

42. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.14 – Measuring instrument fitted with certain load receptor**

43. Under regulation 2.14, a person who uses for trade, in the presence of a purchaser, a measuring instrument fitted with a load receptor commits an offence of strict liability if the load receptor is:
- in the form of a scoop; and

— mounted on the measuring instrument in a manner that means a purchaser is unable to see readily if there is any foreign matter in the load receptor.

44. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.15 – Person must not alter verification scale interval of marked measuring instrument**

45. Under regulation 2.15, a person who alters the verification scale interval of a measuring instrument that is used for trade commits an offence of strict liability if:

- the measuring instrument bears an inspector’s mark or a servicing licensee’s mark; and
- the person alters the verification scale interval of the measuring instrument after the inspector, the servicing licensee or an employee of the servicing licensee:
  - verified the measuring instrument; and
  - made the mark on the measuring instrument.

46. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.16 – Measuring instrument not to be used for trade if verification scale interval altered**

47. Under regulation 2.16, a person commits an offence of strict liability if:

- the person uses for trade a measuring instrument; and
- the measuring instrument bears an inspector’s mark or a servicing licensee’s mark; and
- the verification scale interval of the measuring instrument is altered after the inspector, servicing licensee or an employee of the servicing licensee:
  - verified the measuring instrument; and
  - made the mark on the measuring instrument.

48. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.17 – Measuring instrument of approved pattern designed for measuring liquid**

49. Under regulation 2.17, a person commits an offence of strict liability if the person:

- is using for trade a measuring instrument of an approved pattern designed for measuring a liquid; and
- purports to measure anything other than a liquid to which the approved pattern for the measuring instrument relates.

50. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.18 – Person in possession of certain measuring instrument must ensure measuring instrument is artificially illuminated**

51. Under regulation 2.18, a person commits an offence of strict liability if:

- the person is in possession of a measuring instrument; and
- the measuring instrument is used for trade to measure a liquid; and
- the measuring instrument is not, at least to the extent necessary for the purpose of permitting proper observation of its operation, artificially illuminated:
  - between sunset and sunrise; and
  - if artificial illumination is necessary for that purpose at any other time – at that time.

52. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.19 – Person who makes certain measuring instrument available must ensure measuring instrument is artificially illuminated**

53. Under regulation 2.19, a person commits an offence of strict liability if:

- the person makes a measuring instrument available for use for trade to measure a liquid; and
- the measuring instrument is not, at least to the extent necessary for the purpose of permitting proper observation of its operation, artificially illuminated:
  - between sunset and sunrise; and
  - if artificial illumination is necessary for that purpose at any other time – at that time.

54. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.20 – Flowmeter fitted with zero re-setting device must be reset before use for trade**

55. Under regulation 2.20, a person commits an offence of strict liability if:

- the person is in possession of a measuring instrument;
  - the measuring instrument is a flowmeter fitted with a zero re setting device; and
  - the flowmeter is used for trade to measure a liquid; and
  - before the person begins to make a measurement by using the flowmeter, the person does not reset the flowmeter to zero.
56. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.21 – Flowmeter fitted with zero re-setting device must be reset before being made available for use for trade**

57. Under regulation 2.21, a person commits an offence of strict liability if:
- the person makes a measuring instrument available for use for trade; and
  - the measuring instrument is a flowmeter fitted with a zero re setting device; and
  - the flowmeter is used for trade to measure a liquid; and
  - before another person begins to make a measurement by using the flowmeter, the person who made the flowmeter available for use for trade does not reset the flowmeter to zero.
58. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.22 – Fuel dispenser used for trade to measure a liquid or gaseous product**

59. Under regulation 2.22, a person commits an offence of strict liability if:
- the person is in possession of a fuel dispenser that is used for trade to measure a liquid or a gaseous product; and
  - any of the following indications is erased from both the fuel dispenser and the control console in the period between the delivery of the liquid or gaseous product and the completion of the sale:
    - volume;
    - price per litre; and
    - total price.
60. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.23 – Fuel dispenser made available for use for trade to measure liquid or gaseous product**

61. Under regulation 2.23, a person commits an offence of strict liability if:
- the person makes available a fuel dispenser that is used for trade to measure a liquid or a gaseous product; and
  - any of the following indications is erased from both the fuel dispenser and the control console in the period between the delivery of the liquid or gaseous product and the completion of the sale:
    - volume;
    - price per litre; and
    - total price.
62. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.24 – Certain measuring instruments not to be used for trade to measure diamonds or precious stones**

63. Under regulation 2.24, a person commits an offence of strict liability if:
- the person uses for trade a measuring instrument to measure diamonds or other precious stones; and
  - the measuring instrument has a verification scale interval of more than 10 mg; or
  - the measuring instrument has a combination of a capacity and a verification scale interval mentioned in either of the following subparagraphs:
    - a capacity of less than 5 000 CM and a verification scale interval of more than 0.01 CM;
    - a capacity of at least 5 000 CM and a verification scale interval of more than 0.05 CM.
64. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.25 – Certain measuring instruments not to be used for trade to measure precious metals**

65. Under regulation 2.25, a person commits an offence of strict liability if:
- the person uses for trade a measuring instrument for the purpose of measuring gold, silver or another precious metal; and
  - the measuring instrument has a verification scale interval that is greater than the verification scale interval specified for the instrument's capacity; and

— the measuring instrument has a combination of a specified capacity and verification scale interval.

66. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.26 – Batch tested glass measure must remain in custody of manufacturer or importer unless certain conditions apply**

67. Under regulation 2.26, a manufacturer or an importer of glass measures that are batch tested commits an offence of strict liability if:

— a marked glass measure is removed from the custody of the manufacturer or importer; and

— the measure is not part of a batch of glass measures that complies with regulation 2.39; and

— the inspector or servicing licensee has not given the manufacturer or importer written approval for the removal of the batch from the custody of the manufacturer or importer.

68. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 2.27 - Use of class 4 measuring instruments**

69. Under regulation 2.27 a person commits an offence of strict liability if the person uses for trade a class 4 measuring instrument otherwise than for certain specified purposes.

70. This offence substantially corresponds to the relevant provision of the UTML.

**Division 2.2 – Verification, reverification and in-service inspection**

**Regulation 2.28 – Verifying and marking measuring instruments**

71. Regulation 2.28 makes provision for the verification and other marking of measuring instruments other than glass measures. It therefore ensures that it is always possible to identify when, and by whom, a measuring instrument is verified.

72. Subregulation 2.28(1) requires an inspector who verifies a measuring instrument to mark the date of verification (i.e., the date on which the inspector's mark is made).

73. Subregulation 2.28(2) requires a servicing licensee who verifies a measuring instrument to mark the date of verification (i.e., the date on which the servicing licensee's mark is made).
74. Subregulation 2.28(3) requires an employee of a servicing licensee to take the following steps if he or she verifies a measuring instrument:
- to make the servicing licensee's verification mark on the instrument;
  - to mark the date of verification (i.e., the date on which the servicing licensee's mark is made); and
  - to make a mark that will enable his or her (i.e., the employee's) identification by the servicing licensee.
75. Regulation 2.28 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 2.29 – Verifying and marking material measure**

76. Regulation 2.29 requires a material measure that has a denomination of more than 0.2 metric carat or 50 mg to be verified and marked in the same way as measuring instruments (see regulation 2.28). It therefore ensures that it is always possible to identify when, and by whom, a material measure is verified.

#### **Regulation 2.30 – Certain measuring instruments not to be verified**

77. Regulation 2.30 prohibits the verification of certain measuring instruments. These instruments include instruments that are damaged (paragraph 2.30(a)), unclean (paragraph 2.30(b)) or poorly constructed (paragraphs 2.30(d)-(e)). They also include instruments that bear a mark (e.g., a trade mark or advertising) that could be mistaken for that of an inspector or a servicing licensee (paragraphs 2.30(f)-(g)).
78. Regulation 2.30 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 2.31 – Measuring instrument to be clean**

79. Regulation 2.31 empowers an inspector to direct a person in possession of a measuring instrument to clean the instrument. A direction may only be given for the purpose of facilitating the re-verification or in-service inspection of the instrument.
80. Regulation 2.31 substantially corresponds to the relevant provision of the UTML.



### **Regulation 2.32 – Testing of measuring instrument**

81. Regulation 2.32 makes provision for the testing of measuring instruments for the purpose of verification, reverification or in-service inspection. The purpose of this regulation is to ensure that measuring instruments are tested in circumstances that are same as, or as close as possible to, the circumstances in which they are, or will be, used.
82. Subregulation 2.32(1) requires the testing of measuring instruments to be carried out in accordance with regulation 2.32.
83. Subregulation 2.32(2) makes provision for the testing of fixed measuring instruments.
84. Subregulation 2.32(3) makes provision for the testing of movable measuring instruments that have a base.
85. Subregulation 2.32(5) makes provision for the testing of transportable measuring instruments the results of which are affected by gravity.
86. Regulation 2.32 substantially corresponds to the relevant provision of the UTML.

### **Regulation 2.33 – Testing and marking a measure of length**

87. Regulation 2.33 makes provision for the testing and marking of measures of length. The purpose of this regulation is to ensure that measures of length are tested and marked in circumstances that are same as, or as close as possible to, the circumstances in which they are, or will be, used.
88. Subregulation 2.33(1) requires the examination, testing and marking of measures of length to be carried out in accordance with regulation 2.33.
89. Subregulation 2.33(2) makes provision for the examination, testing and marking of measures of length visible on both sides.
90. Subregulation 2.33(3) makes provision for the examination, testing and marking of measures of length visible on only one side.
91. Regulation 2.33 substantially corresponds to the relevant provision of the UTML.

### **Regulation 2.34 – Exemption from reverification**

92. Regulation 2.34 exempts certain measuring instruments from reverification. These instruments include glass measures that have been marked in accordance with Division 2.3 and measures of length that have been verified.

93. Regulation 2.34 substantially corresponds to the relevant provision of the UTML.

**Regulation 2.35 – Inspector may direct controller to dismantle measuring instrument**

94. Regulation 2.35 makes provision with respect to the dismantlement of measuring instruments for the purpose of their verification, reverification or in-service inspection.
95. Subregulation 2.35(1) empowers an inspector to direct the controller of a measuring instrument to dismantle the measuring instrument if the inspector considers, on reasonable grounds, that the measuring instrument cannot be verified, re-verified or made subject to an in-service inspection without dismantlement.
96. A controller who receives a direction from an inspector to dismantle a measuring instrument must dismantle, cause to be dismantled or consent to the dismantlement, by the inspector, of the measuring instrument (subregulation 2.35(2)). The consequences of failure to comply with such a direction are set out in subregulations 2.35(5)-(6).
97. Regulation 2.35 substantially corresponds to the relevant provision of the UTML.

**Regulation 2.36 – Inspector may direct controller to provide and pay for certain items**

98. Regulation 2.36 ensures that primary responsibility for the costs and other burdens associated with the verification, reverification or in-service inspection of a measuring instrument rests with the controller of that instrument.
99. Subregulation 2.36(1) empowers an inspector to direct the controller of a measuring instrument to provide and pay for certain items required to verify or re-verify the instrument. These items include electricity (paragraph 2.36(1)(a)), labour (paragraph 2.36(1)(e) and materials (paragraph 2.36(1)(g)).
100. Subregulation 2.36(2) acts as a deterrent against non-compliance with an inspector's direction (subregulation 2.36(1)) by providing that a measuring instrument must not be used for trade until the controller of that instrument complies with the direction.
101. Subregulation 2.36(3) makes the controller of a measuring instrument liable for loss of, or damage to, a test mass, measure or piece of equipment in his or her possession.

102. Subregulation 2.36(4) empowers the Secretary to recover, as a debt due by the controller of a measuring instrument, any cost or expense incurred as a result of loss of, or damage to, a test mass, measure or piece of equipment in the controller's possession.
103. Regulation 2.36 substantially corresponds to the relevant provision of the UTML.

### **Division 2.3 – Batch testing and marking – glass measures**

104. Under the UTML, a manufacturer or an importer of glass measures could be authorised by the relevant State or Territory administering authority to batch test and mark his or her own glass measures. Division 2.3 alters this position. Batch testing and marking must now be done by either an inspector, a servicing licensee holding an approval under Division 2.3 or an employee of such a servicing licensee.
105. The specific provisions of Division 2.3 are discussed below.

### **Regulation 2.37 – Definitions for Division 2.3**

106. Regulation 2.37 defines a number of terms used in Division 2.3. These definitions substantially correspond to those contained in the UTML.

### **Regulation 2.38 – Secretary may approve batch testing and marking**

107. Subregulation 2.38(1) empowers the Secretary to grant a servicing licensee an approval to test and mark a batch of glass measures (or to test and validate a verification mark). Such an approval ceases to have effect if it is revoked by the Secretary (subregulation 2.38(2)) or if the servicing licensee fails to do certain things (e.g., to comply with a condition of approval) (subregulation 2.38(3)).

### **Regulation 2.39 – Batch testing requirements**

108. Regulation 2.39 makes provision for the batch testing of glass measures.
109. Subregulation 2.39(1) requires a manufacturer or an importer of glass measures to ensure that at least the appropriate test proportion of a batch of glass measures is tested by an inspector, a servicing licensee or an employee of a servicing licensee. The appropriate test proportion is specified in the relevant national test procedure (subregulation 2.39(6)).
110. Subregulation 2.39(2) requires an inspector who tests a batch of glass measures to provide to the manufacturer or importer of the batch a histogram that details the results of each test of the batch. The histogram must be provided within 14 days after performing the test (subregulation 2.39(5)).

111. Subregulation 2.39(3) requires a servicing licensee who tests a batch of glass measures to provide to the manufacturer or importer of the batch a histogram that details the results of each test of the batch. The Secretary must also be provided with a histogram. Any such histogram must be provided within 14 days after performing the test (subregulation 2.39(5)).
112. Subregulation 2.39(4) requires an employee of a servicing licensee who tests a batch of glass measures to provide to the servicing licensee a histogram that details the results of each test of the batch. The histogram must be provided within 14 days after performing the test (subregulation 2.39(5)).

#### **Regulation 2.40 – Servicing licensee to keep records**

113. Subregulation 2.40(1) requires a servicing licensee to whom an approval relating to glass measures is granted to keep a record of each glass measure specified in the approval for a period of 3 years after the batch of glass measures is tested. A servicing licensee is required to give any such record to an inspector within 14 days after an inspector exercises his or power to inspect (subregulation 2.40(2)). (Paragraph 18MG(1)(e) of the Act empowers an inspector to inspect "any book, record or document" on certain premises, including the premises of a servicing licensee.)

#### **Division 2.4 – Servicing licences and licensees**

114. Under the UTML, servicing licensees (and employees of servicing licensees) were required to comply with relatively few conditions in order to hold a servicing licence. Division 2.4 alters this position by creating a number of new conditions of licence. These conditions recognise the importance of servicing licensees (and their employees) in the new national system of trade measurement and help to ensure that they perform their functions honestly, accurately, consistently and with the appropriate level of government oversight.
115. The specific provisions of Division 2.4 are discussed below.

#### **Regulation 2.41 – Prescribed fee – application for servicing licence (Act para 18NA(3)(b))**

116. Paragraph 18NA(3)(b) of the Act requires a person who makes an application to the Secretary to be granted a servicing licence to pay the prescribed application fee.
117. In accordance with paragraph 18NA(3)(b) of the Act, regulation 2.41 prescribes application fees for various kinds of applicants.

### **Regulation 2.42 – Prescribed particulars (Act s 18NF)**

118. Section 18NF of the Act requires the Secretary to keep a register of particulars relating to servicing licences.
119. In accordance with s 18NF of the Act, regulation 2.42 prescribes the particulars relating to servicing licenses required to be kept by the Secretary, including the licence number (paragraph 2.42(a)), the licensee's name (paragraph 2.42(b)) and the class of licence (paragraph 2.42(f)).

### **Regulation 2.43 – Prescribed conditions (Act para 18NH(j))**

120. Section 18NH of the Act provides that a servicing licence is subject to certain conditions, including "such ... conditions as may be prescribed" (paragraph 18NH(j)). Subregulation 2.43(1) provides that, for the purposes of paragraph 18NH(j), each of the conditions in regulation 2.43 is prescribed as a condition of licence.
121. Subregulation 2.43(2) requires a servicing licensee to comply with the Regulations. Subregulation 2.43(2) corresponds to the relevant provision of the UTML.
122. Subregulation 2.43(3) requires an employee of a servicing licensee to comply with the Regulations. This is a new requirement.
123. Section 18QA of the Act sets out certain grounds for disciplinary action against a servicing licensee (and a public weighbridge licensee). These grounds include being found guilty of an offence involving fraud or dishonesty (paragraph 18QA(1)(b)) or being, for any other reason, not a fit and proper person to continue to hold a licence (paragraph 18QA(1)(i)). Subregulation 2.43(4) requires a servicing licensee to whom a ground of disciplinary action applies to notify the Secretary of that fact within 14 days after the servicing licensee first knows that the ground applies. This is a new requirement.
124. As noted above, section 18QA of the Act sets out certain grounds for disciplinary action against a servicing licensee (and a public weighbridge licensee). Subregulation 2.43(5) requires a servicing licensee whose circumstances change such that a disciplinary ground applies to him or her to notify the Secretary of that fact within 14 days after the change in circumstances. This is a new requirement.
125. Subregulations 2.43(6), (7), (8) and (9) ensure that the Secretary has up-to-date information about the employees of a servicing licensee.
  - Subregulation 2.43(6) requires an employee of a servicing licensee who verifies measuring instruments to notify the servicing licensee within 14 days after a

change of circumstances that is relevant to the employee's identification (e.g., his or her address) or eligibility to carry out his or her duties.

- Subregulation 2.43(7) requires a servicing licensee whose employee notifies the servicing licensee of a relevant change of circumstances (subregulation 2.43(6)) to notify the Secretary of the change of circumstances within 14 days after the servicing licensee is notified by the employee.
  - Subregulation 2.43(8) requires a servicing licensee to notify the Secretary within 14 days after the servicing licensee first knows of any change in the circumstances of an employee of the servicing licensee that is relevant to the employee's eligibility to carry out his or her duties. This is a new requirement.
  - Subregulation 2.43(9) requires a servicing licensee to notify the Secretary within 14 days after a relevant personnel change (e.g., ceasing to employ an employee or employing a new employee).
126. Subregulations 2.43(10), (11), (14) and (15) ensure the prompt notification of the controller of a measuring instrument of the verification or non-verification of that instrument.
- Subregulation 2.43(10) requires a servicing licensee who verifies a measuring instrument to notify the controller of the instrument within 14 days after verification. Notice must be in writing in an approved form. This is a new requirement.
  - Subregulation 2.43(11) requires a servicing licensee whose employee verifies a measuring instrument to notify the controller of the instrument within 14 days after verification. Notice must be in writing in an approved form. This is a new requirement.
  - Subregulation 2.43(14) requires a servicing licensee or an employee of a servicing licensee who does not verify a measuring instrument immediately after its examination or testing to notify the controller of the instrument.
  - Subregulation 2.43(15) sets out the manner in which notice is to be provided (i.e., immediately and in writing in an approved form). This is a new requirement.
127. Subregulations 2.43(12), (13), (16) and (25) ensure the prompt notification of the Secretary of certain information, including information concerning the verification or non-verification of a measuring instrument. The requirements set out in these subregulations are new requirements.
- Subregulation 2.43(12) requires a servicing licensee who does not verify a measuring instrument immediately after its examination or testing to notify the Secretary. A servicing licensee must also provide notice if his or her employee does not verify a measuring instrument.
  - Subregulation 2.43(13) sets out the manner in which notice is to be provided (i.e., immediately and in writing in an approved form). It also requires the

servicing licensee, or an employee of the servicing licensee, to obliterate any verification mark on the measuring instrument.

- Subregulation 2.43(16) requires a servicing licensee who verifies a measuring instrument to notify the Secretary of the instrument within 14 days after verification. A servicing licensee must also provide notice if his or her employee verifies a measuring instrument. Notice must be in writing in an approved form.
  - Subregulation 2.43(25) requires a servicing licensee who tests or verifies a measuring instrument included in a licence class prescribed in Schedule 2, to provide a test report to the Secretary. A servicing licensee must also provide a test report if his or her employee tests or verifies such a measuring instrument.
128. Paragraph 2.43(17)(a) requires a servicing licensee to retain a copy of certain notifications provided under regulation 2.43 for a period of 3 years after the notification is made. A servicing licensee is required to give any such copy to an inspector within 14 days after an inspector exercises his or power to inspect (paragraph 2.43(17)(b)). (Paragraph 18MG(1)(e) of the Act empowers an inspector to inspect "any book, record or document" on certain premises, including the premises of a servicing licensee.)
129. Subregulations 2.43(18), (19), (20), (21), (22), (23) and (24) ensure accuracy and consistency in the testing of measuring instruments.
- Subregulation 2.43(18) prohibits a servicing licensee, or an employee of a servicing licensee, from verifying a measuring instrument that has not been tested in accordance with the relevant national test procedure and any test procedure specified in the relevant National Measurement Institute Certificate of Approval.
  - Subregulation 2.43(19) requires a servicing licensee, or an employee of a servicing licensee, who verifies a measuring instrument, to ensure that the instrument is of an approved pattern.
  - Subregulation 2.43(20) requires a servicing licensee, or an employee of a servicing licensee, who verifies a measuring instrument, to ensure that the instrument operates within the relevant maximum permissible error.
  - Subregulation 2.43(21) requires a servicing licensee, or an employee of a servicing licensee, who verifies a measuring instrument, to use appropriate equipment.
  - Subregulation 2.43(22) requires a servicing licensee to maintain a quality management system in an approved form. If the Secretary makes a recommendation in relation to a servicing licensee's quality management system, the servicing licensee must act in accordance with it (subregulation 2.43(23)).
  - Subregulation 2.43(24) requires a servicing licensee, or an employee of a servicing licensee, to comply with a direction made by an inspector to perform a

test of a measuring instrument. (Section 18MJ of the Act empowers inspectors to give reasonable directions to persons in possession of a measuring instrument for the purpose of facilitating re-verification of the instrument.)

**Regulation 2.44 – Prescribed fee – application to amend condition of servicing licence (Act para 18NI(2)(b))**

130. Paragraph 18NI(2)(b) of the Act requires a servicing licensee who makes an application to the Secretary for an amendment of a condition of a servicing licence to pay the prescribed application fee.
131. In accordance with paragraph 18NI(2)(b) of the Act, regulation 2.44 prescribes an application fee of \$125.

**Regulation 2.45 – application to amend servicing licensee due to change of partnership (Act para 18NJ(3)(d))**

132. Paragraph 18NJ(3)(d) of the Act requires a servicing licensee that is a partnership which makes an application to the Secretary for an amendment of a servicing licence due to a change to the membership of the partnership to pay the prescribed application fee.
133. In accordance with paragraph 18NJ(3)(d) of the Act, regulation 2.45 prescribes an application fee of \$500.

**Regulation 2.46 – application for renewal of servicing licence (Act para 18NK(2)(b))**

134. Paragraph 18NK(2)(b) of the Act requires a servicing licensee who makes an application to the Secretary for a renewal of a servicing licence to pay the prescribed application fee.
135. In accordance with paragraph 18NK(2)(b) of the Act, regulation 2.46 prescribes application fees for various kinds of applicants.



## **PART 3 – WEIGHBRIDGES USED FOR TRADE**

- 136. Part 3 concerns weighbridges used for trade.
- 137. Division 3.1 of Part 3 makes general provision with respect to weighbridges used for trade.
- 138. Division 3.2 of Part 3 makes specific provision with respect to a specific class of weighbridge – i.e., public weighbridges. It also creates a number of offences by public weighbridge licensees and operators.
- 139. Part 3 substantially corresponds to the model Trade Measurement (Weighbridges) Regulations.

### **Division 3.1 – General**

#### **Regulation 3.1 – Application of Part 3**

- 140. Subregulation 3.1(1) provides that Part 3 applies to weighbridges, including public weighbridges, used for trade. Subregulation 3.1(1) substantially corresponds to the relevant provision of the UTML.
- 141. Subregulation 3.1(2) provides that Part 3 is in addition to, and does not limit, any other provision of the Regulations relating to measuring instruments generally. This is a new provision.

#### **Regulation 3.2 – Location of weighbridge**

- 142. Regulation 3.2 ensures that weighbridges must be situated in such a way that accuracy and safety are not compromised. So, for example, it requires the location of a weighbridge in a way that promotes vehicle manoeuvrability (paragraph 3.2(a)) and protects key measuring equipment (e.g., the indicating device and the visual summing device) from the elements (paragraphs 3.2(b) and (c)).
- 143. Regulation 3.2 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 3.3 – Visibility on weighbridge**

- 144. Regulation 3.3 ensures that the results of any weighing are easily visible to the persons who need to see them (e.g., the operator or, in the case of a road weighbridge, the driver).
- 145. Regulation 3.3 substantially corresponds to the relevant provision of the UTML.

### **Regulation 3.4 – Approach to weighbridge**

- 146. Regulation 3.4 ensures that an approach to a weighbridge is designed in a way that promotes safety and accuracy.
- 147. Regulation 3.4 substantially corresponds to the relevant provision of the UTML (with the exception that, unlike the UTML provision, regulation 3.4 includes a definition of "in the same plane").

### **Regulation 3.5 – Platform of weighbridge – composition**

- 148. Regulation 3.5 ensures that weighbridges are composed of appropriate materials. It requires them to be composed of concrete (paragraph 3.5(a)), steel (paragraph 3.5(b)) or a combination of both (paragraph 3.5(c)). The Secretary may also approve other materials (or combinations of materials) (paragraphs 3.5(d) and (e)).
- 149. Regulation 3.5 substantially corresponds to the relevant provision of the UTML.

### **Regulation 3.6 – Pit of weighbridge**

- 150. Regulation 3.6 makes provision for the design, construction and maintenance of weighbridges with pits.
- 151. Regulation 3.6 substantially corresponds to the relevant provision of the UTML.

### **Regulation 3.7 – Weighbridge without pit**

- 152. Regulation 3.7 makes provision for the design, construction and maintenance of weighbridges without pits.
- 153. Regulation 3.7 substantially corresponds to the relevant provision of the UTML.

### **Regulation 3.8 – Weighbridge with electrical or electronic devices**

- 154. Regulation 3.8 makes provision for the design, construction and maintenance of weighbridges with electrical or electronic devices.
- 155. Regulation 3.8 substantially corresponds to the relevant provision of the UTML.

### **Regulation 3.9 – Weighbridge with more than 1 platform**

- 156. Regulation 3.9 makes provision for the design, construction and maintenance of weighbridges with more than 1 platform.

157. Regulation 3.9 substantially corresponds to the relevant provision of the UTML.

### **Regulation 3.10 – Portable weighbridge**

158. Regulation 3.10 makes provision for the design, construction and maintenance of portable weighbridges.
159. Regulation 3.10 substantially corresponds to the relevant provision of the UTML.

### **Regulation 3.11 – Use of weighbridge to determine end-and-end measurement**

160. End-and-end measurement is generally recognised as an unreliable method of measurement. However, under the UTML, end-and-end measurement has been permitted in some states and territories. As a result of consultation with the states and territories and other relevant stakeholders, the Regulations permit weighbridge licensees to continue to use end-and-end measurement. However, its use is subject to strict conditions designed to ensure the greatest possible accuracy. These conditions are prescribed in regulation 3.11. Further conditions – which apply only to public weighbridge licensees – are prescribed in regulation 3.62.

### **Division 3.2 – Public weighbridges**

161. Division 3.2 of Part 3 makes specific provision with respect to a specific class of weighbridge – i.e., public weighbridges. It also creates a number of offences by public weighbridge licensees and operators.
162. The offences set out in Division 3.2 substantially correspond to those contained in the UTML. However, they have been redrafted to ensure consistency with the principles set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* (issued by the Criminal Justice Division of the Attorney-General's Department). In particular:
- The physical elements of each offence have been set out with greater specificity than in the UTML, thus ensuring the particular wrongdoing to be penalised is made clear for both industry and the general public.
  - No offence specifies a penalty greater than 20 penalty units (currently \$2200). This amount is well within the 50 penalty unit maximum for regulations specified in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

**Regulation 3.12 – Prescribed fee – application for public weighbridge licence (Act para 18PA(3)(b))**

163. Paragraph 18PA(3)(b) of the Act requires a person who makes an application to the Secretary for a public weighbridge licence to pay the prescribed application fee.
164. In accordance with paragraph 18PA(3)(b) of the Act, regulation 3.12 prescribes an application fee.

**Regulation 3.13 – Prescribed fee – application to amend condition of public weighbridge licence (Act para 18PI(2)(b))**

165. Paragraph 18PI(2)(b) of the Act requires a public weighbridge licensee who makes an application to the Secretary for an amendment of a condition of a public weighbridge licence to pay the prescribed application fee.
166. In accordance with paragraph 18PI(2)(b) of the Act, regulation 3.13 prescribes an application fee of \$125.

**Regulation 3.14 – Prescribed fee – application to amend public weighbridge licence due to change of partnership (Act para 18PJ(3)(d))**

167. Paragraph 18PJ(3)(d) of the Act requires a public weighbridge licensee that is a partnership which makes an application to the Secretary for an amendment of a public weighbridge licence due to a change to the membership of the partnership to pay the prescribed application fee.
168. In accordance with paragraph 18PJ(3)(d) of the Act, regulation 3.14 prescribes an application fee of \$500.

**Regulation 3.15 – Prescribed fee – application to contract out public weighbridge operation (Act para 18PK(3)(d))**

169. Paragraph 18PK(3)(d) of the Act requires a public weighbridge licensee who makes an application to the Secretary for an amendment of a public weighbridge licence due to a contracting out proposal to pay the prescribed application fee.
170. In accordance with paragraph 18PK(3)(d) of the Act, regulation 3.15 prescribes an application fee.

**Regulation 3.16 – Prescribed fee – application for renewal of public weighbridge licence (Act para 18PL(2)(b))**

171. Paragraph 18PL(2)(b) of the Act requires a public weighbridge licensee who makes an application to the Secretary for a renewal of a public weighbridge licence to pay the prescribed application fee.

172. In accordance with paragraph 18PL(2)(b) of the Act, regulation 3.16 prescribes an application fee.

**Regulation 3.17 – When use of weighbridge is taken not to be use of a public weighbridge**

173. Regulation 3.17 sets out the circumstances in which use of a weighbridge will not be taken to be use of a public weighbridge. These circumstances include when the weighbridge is being used to weigh stock on the hoof (paragraph 3.12(a)) or the tare mass of a vehicle for the purpose of its registration (paragraph 3.12(b)).
174. Regulation 3.17 substantially corresponds to the relevant part of the UTML.

**Regulation 3.18 – Secretary may require inspection report**

175. Under section 18PB of the Act, the Secretary must grant an application for a public weighbridge licence unless there are grounds for refusal. The grounds for refusal are set out in section 18PC of the Act. They include, for example, that the applicant is not competent to operate a public weighbridge (paragraph 18PC(d)) or that the applicant is not a fit and proper person to operate a public weighbridge (paragraph 18PC(1)(f)).
176. Regulation 3.18 empowers the Secretary – in exercising his or her powers under sections 18PB and 18PC of the Act – to require an inspector to inspect the relevant weighbridge and prepare a report addressing the matters set out in subparagraphs 3.18(b)(i)-(iv).
177. Regulation 3.18 substantially corresponds to the relevant provision of the UTML.

**Regulation 3.19 – Display requirements – sign at public weighbridge**

178. Regulation 3.19 requires public weighbridge licensees to display – in a convenient way – information useful to public weighbridge users (e.g., the registered number of the weighbridge).
179. Regulation 3.19 substantially corresponds to the relevant provision of the UTML.

**Regulation 3.20 – When licensee must withdraw public weighbridge from use and notify Secretary**

180. Regulation 3.20 ensures the accuracy of measurements determined at public weighbridges by requiring a public weighbridge licensee to withdraw a public weighbridge from use immediately after forming the view that its results would be incorrect. Regulation 3.20 also requires a public weighbridge licensee to inform the Secretary of any withdrawal.

181. Regulation 3.20 substantially corresponds to the relevant provision of the UTML.

**Regulation 3.21 – Public weighbridge licensee may refuse measurement request**

182. Regulation 3.21 ensures that public weighbridges are genuinely "public" by providing that public weighbridge licensees may refuse a request for measurement only in rare circumstances. These circumstances are:
- if the weighbridge does not have the capacity to determine the measurement;
  - if the licensee or operator knows, or believes, that the measurement would be incorrect; or
  - the person requesting the measurement refuses to pay the measurement fee.

183. Regulation 3.21 substantially corresponds to the relevant provision of the UTML.

**Regulation 3.22 – Platform of public weighbridge to be kept clean**

184. Under regulation 3.22, a public weighbridge licensee commits an offence of strict liability if each platform of a public weighbridge is not kept clean.
185. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.23 – Space between frame and platform must be kept free from obstructions**

186. Under regulation 3.23, a public weighbridge licensee commits an offence of strict liability if the space between the frame of a public weighbridge and the platform (or platforms) of the public weighbridge is not kept free from obstructions at all times.
187. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.24 – Weight recorded by public weighbridge without load to be kept accurately at zero**

188. Under regulation 3.24, a public weighbridge licensee commits an offence of strict liability if the weight recorded by a public weighbridge is not kept accurately at zero when there is no load on the platform (or platforms) of the public weighbridge.
189. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.25 – Public weighbridge licensee must ensure operator determines measurement with appropriate care**

190. Under regulation 3.25, a public weighbridge licensee commits an offence of strict liability if the public weighbridge licensee does not ensure that, for each measurement determined using a public weighbridge, the operator takes the appropriate degree of care to determine the measurement.
191. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.26 – Measurement tickets – requirements of public weighbridge licensee**

192. A public weighbridge licensee is required to ensure that a measurement ticket in an approved form is able to be issued for each measurement made at a public weighbridge (see regulation 3.41). Regulation 3.26 provides that a measurement ticket must be issued/generated in one of three ways:
- from a bound book of tickets;
  - from a pad of tickets; or
  - electronically.
193. Regulation 3.26 substantially corresponds to the relevant provision of the UTML.

**Regulation 3.27 – Measurement tickets – requirements of public weighbridge licensee**

194. Under paragraph 3.27(1)(a), a public weighbridge licensee commits an offence of strict liability if the public weighbridge licensee does not ensure that, for each measurement determined using a public weighbridge, the operator takes the appropriate degree of care to determine the measurement.
195. Under paragraph 3.27(1)(b), a public weighbridge licensee commits an offence of strict liability if the public weighbridge licensee does not ensure that, for each measurement determined using a public weighbridge, the operator completes an original measurement ticket that satisfies certain requirements (set out in subparagraphs 3.27(1)(b)(i)-(iv)).
196. Under paragraph 3.27(1)(c), a public weighbridge licensee commits an offence of strict liability if the public weighbridge licensee does not ensure that, for each measurement determined using a public weighbridge, the operator completes a copy measurement ticket that satisfies certain requirements (set out in subparagraphs 3.27(1)(c)(i)-(iv)).

197. Under paragraph 3.27(1)(d), a public weighbridge licensee commits an offence of strict liability if the public weighbridge licensee does not ensure that, for each measurement determined using a public weighbridge, the operator issues the copy measurement ticket to the person for whom the measurement was determined.
198. The offences created by regulation 3.27 substantially correspond to the relevant provisions of the UTML.

**Regulation 3.28 – Public weighbridge licensee must ensure certain measurement tickets produced to relevant person**

199. Under regulation 3.28, a public weighbridge licensee commits an offence of strict liability if, following a request from a "relevant person", the public weighbridge licensee does not produce an original measurement ticket (or printed version thereof) to the "relevant person" as soon as practicable. A "relevant person" is either an inspector or a person who has a genuine interest in examining the measurement ticket (subregulation 3.28(2)). This obligation only applies where the request is made during the 'preservation period' (as defined in regulation 1.4).
200. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.29 – Public weighbridge licensee must not remove or alter original measurement ticket**

201. Under regulation 3.29, a public weighbridge licensee commits an offence of strict liability if, during the preservation period, the public weighbridge licensee removes or alters an original measurement ticket from a book or pad of tickets.
202. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.30 – Public weighbridge licensee must not allow another person to remove or alter original measurement ticket**

203. Under regulation 3.30, a public weighbridge licensee commits an offence of strict liability if, during the preservation period, the public weighbridge licensee allows another person to remove or alter an original measurement ticket from a book or pad of tickets.
204. This offence substantially corresponds to the relevant provision of the UTML.



**Regulation 3.31 – Public weighbridge licensee must not remove or alter unissued copy measurement ticket**

205. Under regulation 3.31, a public weighbridge licensee commits an offence of strict liability if a measurement ticket is issued from a book or pad of tickets, and the public weighbridge licensee removes or alters an unissued copy measurement ticket from the book or pad of tickets during the preservation period.
206. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.32 – Public weighbridge licensee must not allow another person to remove or alter unissued copy measurement ticket**

207. Under regulation 3.32, a public weighbridge licensee commits an offence of strict liability if, during the preservation period, the public weighbridge licensee allows another person to remove or alter an unissued copy measurement ticket from a book or pad of tickets.
208. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.33 – Public weighbridge licensee must not delete or alter electronic record of particulars included in measurement ticket**

209. Under regulation 3.33, a public weighbridge licensee commits an offence of strict liability if, during the preservation period, the public weighbridge licensee deletes or alters any electronic record included in a measurement ticket generated electronically.
210. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.34 – Public weighbridge licensee must not allow another person to delete or alter electronic record of particulars included in measurement ticket**

211. Under regulation 3.34, a public weighbridge licensee commits an offence of strict liability if, during the preservation period, the public weighbridge licensee allows another person to delete or alter any electronic record included in a measurement ticket generated electronically.
212. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.35 – Public weighbridge licensee must not dispose of or alter printed version of original measurement ticket**

213. Under regulation 3.35, a public weighbridge licensee commits an offence of strict liability if, during the preservation period, the public weighbridge licensee disposes of, or alters, any printed version of an original measurement ticket generated electronically.
214. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.36 – Public weighbridge licensee must not allow another person to dispose of or alter printed version of original measurement ticket**

215. Under regulation 3.36, a public weighbridge licensee commits an offence of strict liability if, during the preservation period, the public weighbridge licensee allows another person to dispose of, or alter, any printed version of an original measurement ticket generated electronically.
216. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.37 – Public weighbridge licensee must provide certain information to Secretary**

217. Under regulation 3.37, a public weighbridge licensee commits an offence of strict liability if the public weighbridge licensee does not provide certain information to the Secretary within 14 days. This information includes:
- a change in the public weighbridge licensee's address for service of notices;
  - the full name and residential address of each person employed by the public weighbridge licensee; and
  - information about the period of employment of public weighbridge operators.
218. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.38 – Public weighbridge licensee must not knowingly permit or assist person to engage in fraudulent conduct**

219. Under regulation 3.38, a public weighbridge licensee commits an offence of strict liability if the public weighbridge licensee knowingly:
- permits a person to engage in fraudulent conduct in connection with the measurement of anything by using a public weighbridge; or
  - permits a person to engage in fraudulent conduct in connection with the measurement of anything by using a measurement ticket; or

- assists a person to engage in fraudulent conduct in connection with the measurement of anything by using a public weighbridge; or
- conspires with a person who engages in fraudulent conduct in connection with the measurement of anything by using a public weighbridge.

220. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.39 – Public weighbridge licensee must notify Secretary of fraudulent conduct related to measurement using weighbridge**

221. Under regulation 3.39, a public weighbridge licensee commits an offence of strict liability if the public weighbridge licensee:

- knows of any fraudulent conduct related to the measurement of anything using a public weighbridge; and
- does not notify the Secretary as soon as practicable after acquiring the knowledge.

222. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.40 – Public weighbridge licensee must not knowingly engage in certain conduct related to false representation**

223. Under regulation 3.40, a public weighbridge licensee commits an offence of strict liability if the public weighbridge licensee:

- makes a representation in relation to the measurement of anything using a public weighbridge that the licensee knows to be false; or
- conspires with another person to make a representation in relation to the measurement of anything using a public weighbridge that the licensee knows to be false.

224. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.41 – Public weighbridge licensee to ensure issue of measurement ticket in approved form**

225. Regulation 3.41 sets out a number of key duties of public weighbridge licensees in respect of the issue of measurement tickets.

226. Subregulation 3.41 requires a public weighbridge licensee to ensure that a measurement ticket in an approved form is able to be issued for each measurement made at a public weighbridge. Measurement tickets may be issued/generated in three forms – from a bound book of tickets, from a pad of

tickets or electronically (regulation 3.26). Subregulation 3.41(2) sets out the duties of a public weighbridge licensee in respect of tickets issued from a book or pad of tickets; subregulation 3.41(3) does so in respect of tickets generated electronically.

227. Regulation 3.41 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 3.42 – Inspector may direct operator to measure vehicle**

228. Regulation 3.42 empowers an inspector to direct an operator to make a measurement of a loaded or unloaded vehicle.
229. Regulation 3.42 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 3.43 – Measurement tickets – certain requirements to be met by operator**

230. Regulation 3.43 sets out a number of key duties of public weighbridge operators in respect of the issue of measurement tickets.
- Subregulation 3.43(1) requires an operator to complete a measurement ticket only for the purpose of compliance with the Regulations.
  - Subregulation 3.43(2) sets out an operator’s primary duty in respect of measurement tickets, namely:
    - to complete an original measurement ticket after every measurement; and
    - to issue a copy of the measurement ticket to the person for whom the measurement was made.
- Subregulation 3.43(2) is subject to the exceptions set out in subregulations 3.43(7)-(13).
- Subregulation 3.43(3) sets out the particulars required to be included on certain measurement tickets.
  - Subregulation 3.43(4) sets out an operator’s duties in the event that he or she makes a mistake while completing a measurement ticket.
  - Subregulation 3.43(5) prohibits an operator from issuing a measurement ticket containing superfluous information.
231. Regulation 3.43 substantially corresponds to the relevant provision of the UTML.

**Regulation 3.44 – Operator must issue copy of original measurement ticket to relevant person if certain conditions met**

232. Regulation 3.44 makes provision for the issue of a copy of a measurement ticket to a person who would not ordinarily be issued with a measurement ticket at a public weighbridge, but who nevertheless has an interest in goods weighed at such a weighbridge. These persons include the buyers and sellers of goods (subregulation 3.44(8)).
233. Regulation 3.44 substantially corresponds to the relevant provision of the UTML.

**Regulation 3.45 – Operator must not use public weighbridge for public weighing in certain circumstances**

234. Under regulation 3.45, a public weighbridge operator commits an offence of strict liability if the public weighbridge operator:
- knows that a measurement determined using the weighbridge would be incorrect; or
  - believes, on reasonable grounds, that a measurement determined using the weighbridge would be incorrect.
235. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.46 – Operator must not issue original measurement ticket**

236. Under regulation 3.46, a public weighbridge operator commits an offence of strict liability if the public weighbridge operator issues the original measurement ticket for a measurement to the person for whom the measurement was made.
237. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.47 – Operator must issue correct copy of original measurement ticket**

238. Under regulation 3.47, a public weighbridge licensee operator commits an offence of strict liability if the public weighbridge operator issues a copy measurement ticket that is not a correct copy of the original measurement ticket for a measurement to the person for whom the measurement was made.
239. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.48 – Operator must not remove or alter original measurement ticket**

240. Under regulation 3.48, a public weighbridge licensee operator commits an offence of strict liability if, during the preservation period, the public weighbridge operator removes or alters an original measurement ticket from a book or pad of tickets..
241. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.49 – Operator must not allow another person to remove or alter original measurement ticket**

242. Under regulation 3.49, a public weighbridge operator commits an offence of strict liability if, during the preservation period, the public weighbridge operator allows another person to remove or alter an original measurement ticket from a book or pad of tickets.
243. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.50 – Operator must not remove or alter unissued copy measurement ticket**

244. Under regulation 3.50, a public weighbridge operator commits an offence of strict liability if, during the preservation period, the public weighbridge operator removes or alters an unissued copy measurement ticket from a book or pad of tickets.
245. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.51 – Operator must not allow another person to remove or alter unissued copy measurement ticket**

246. Under regulation 3.51, a public weighbridge operator commits an offence of strict liability if, during the preservation period, the public weighbridge operator allows another person to remove or alter an unissued copy measurement ticket from a book or pad of tickets.
247. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.52 – Operator must not delete or alter electronic record of particulars included in measurement ticket**

248. Under regulation 3.52, a public weighbridge operator commits an offence of strict liability if, during the preservation period, the public weighbridge operator deletes or alters any electronic record included in a measurement ticket generated electronically.
249. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.53 – Operator must not allow another person to delete or alter electronic record of particulars included in measurement ticket**

250. Under regulation 3.53, a public weighbridge operator commits an offence of strict liability if, during the preservation period, the public weighbridge operator allows another person to delete or alter any electronic record included in a measurement ticket generated electronically.
251. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.54 – Operator must not dispose of or alter printed version of original measurement ticket**

252. Under regulation 3.54, a public weighbridge operator commits an offence of strict liability if, during the preservation period, the public weighbridge operator disposes of, or alters, any printed version of an original measurement ticket generated electronically.
253. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.55 – Operator must not allow another person to dispose of or alter printed version of original measurement ticket**

254. Under regulation 3.55, a public weighbridge operator commits an offence of strict liability if, during the preservation period, the public weighbridge operator allows another person to dispose of, or alter, any printed version of an original measurement ticket generated electronically.
255. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.56 – Operator must not knowingly permit or assist person to engage in fraudulent conduct**

256. Under regulation 3.56, a public weighbridge operator commits an offence of strict liability if the public weighbridge operator knowingly:
- permits a person to engage in fraudulent conduct in connection with the measurement of anything by using a public weighbridge; or
  - permits a person to engage in fraudulent conduct in connection with the measurement of anything by using a measurement ticket; or
  - assists a person to engage in fraudulent conduct in connection with the measurement of anything by using a public weighbridge; or
  - conspires with a person who engages in fraudulent conduct in connection with the measurement of anything by using a public weighbridge.
257. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.57 – Operator must notify Secretary of fraudulent conduct related to measurement using weighbridge**

258. Under regulation 3.57, an operator commits an offence of strict liability if the operator:
- knows of any fraudulent conduct related to the measurement of anything using a public weighbridge; and
  - does not notify the Secretary as soon as practicable after acquiring the knowledge.
259. This offence substantially corresponds to the relevant provision of the UTML.

**Regulation 3.58 – Operator must not knowingly engage in certain conduct related to false representation**

260. Under regulation 3.58, an operator commits an offence of strict liability if the operator:
- makes a representation in relation to the measurement of anything using a public weighbridge that the licensee knows to be false; or
  - conspires with another person to make a representation in relation to the measurement of anything using a public weighbridge that the licensee knows to be false.
261. This offence substantially corresponds to the relevant provision of the UTML.



### **Regulation 3.59 – Issuing copy of original measurement ticket**

262. Regulation 3.59 makes provision for the issue of a copy of a measurement ticket to a person who would not ordinarily be issued with a measurement ticket at a public weighbridge, but who nevertheless has an interest in goods weighed at such a weighbridge. These persons include the buyers and sellers of goods (subregulation 3.59(8)).
263. Regulation 3.59 substantially corresponds to the relevant provision of the UTML.

### **Regulation 3.60 – Prescribed particulars for register (Act s 18PF)**

264. Section 18PF of the Act requires the Secretary to keep a register of particulars relating to public weighbridge licences. Regulation 3.60 prescribes the particulars required to be kept. They include the licence number (paragraph 3.60(a)), any condition imposed on the licence (paragraph 3.60(d)) and the location of the weighbridge (paragraph 3.60(e)).
265. Regulation 3.60 substantially corresponds to the relevant provision of the UTML.

### **Regulation 3.61 – Prescribed re-verification period – public weighbridges (Act para 20(1)(o))**

266. Paragraph 20(1)(o) of the Act empowers the Governor-General to make regulations, not inconsistent with the Act, prescribing the re-verification period for a class of measuring instrument.
267. In accordance with paragraph 20(1)(o) of the Act, regulation 3.20 provides that the re-verification period for public weighbridges is 12 months.
268. This is a new provision.

### **Regulation 3.62 – Additional licence conditions – public weighbridges**

269. End-and-end measurement is generally recognised as an unreliable method of measurement. However, as a result of consultation with the states and territories and other relevant stakeholders, the Regulations permit weighbridge licensees to use it. However, such use is subject to strict conditions. Generally applicable conditions (i.e., conditions which apply to all weighbridges) are prescribed in regulation 3.11. Further conditions – which apply only to public weighbridge licensees – are prescribed in regulation 3.62.

**Regulation 3.63 – Transitional**

270. Regulation 3.63 provides that Part 3 applies in relation to an application for a public weighbridge licence made on or after the commencement of the Regulations.

**Regulation 3.64 – Transitional**

271. Regulation 3.64 provides that, until 1 July 2011, a public weighbridge operator may issue a measurement ticket in any format that has been approved in accordance with an earlier corresponding law.

## **PART 4 – PACKAGING**

272. Part 4 concerns packages/prepackages.
273. Division 4.1 of Part 4 defines a number of terms used in Part 4.
274. Division 4.2 of Part 4 makes provision with respect to the operation of Part 4. In particular, it exempts certain packages from the requirements of Part 4.
275. Division 4.3 of Part 4 sets out the first of the two core requirements with respect to packaging contained in the Regulations. It requires a package containing a prepackaged product to be marked with the name and address of the person who packed the product (or on whose behalf it was packed). It also sets out certain other rules/exemptions with respect to the marking of names and addresses.
276. Division 4.4 of Part 4 sets out the second of the two core requirements with respect to packaging contained in the Regulations. It requires a package containing a prepackaged product to be marked with a statement of the measurement of the product (a measurement marking). It also sets out a number of very specific rules with respect to measurement markings (including rules for particular products).
277. Division 4.5 of Part 4 makes provision with respect to certain prohibited expressions (e.g., "gross mass").
278. Division 4.6 of Part 4 makes provision with respect to prepackaged desiccated products.
279. Division 4.7 of Part 4 contains "shortfall provisions" – i.e., the provisions designed to ensure that traded packaged goods do not contain a "shortfall" (i.e., a quantity of goods less than that stated on the package label). Subdivision 1 of Division 4.7 prescribes the particulars of the AQS while Subdivision 2 of Division 4.7 prescribes the particulars of the (pre-existing) UTML system.
280. Division 4.8 of Part 4 makes provision with respect to certain miscellaneous matters.
281. With the exception of the provisions with respect to the new AQS, Part 4 substantially corresponds to the model Trade Measurement (Prepacked Articles) Regulations.

## **Division 4.1 – Definitions**

### **Regulation 4.1 – Definitions for Part 4 – general**

282. Regulation 4.1 defines a number of general terms used in Part 4.

### **Regulation 4.2 – Definitions for Part 4 – prepackages**

283. Regulation 4.2 defines a number of terms relating to prepackages mentioned in Part 4.

## **Division 4.2 – Operation of Part 4**

### **Regulation 4.3 – Requirements applicable to inner and outer packages**

284. Regulation 4.3 provides that a requirement in Part 4 about the marking of a prepackage applies to both the immediate package containing the product (i.e., the inner package) and any other package containing that package (i.e., the outer package). This ensures that the information contained in a marking will be available to consumers when, for whatever reason, an inner package becomes separated from its outer package.

285. Regulation 4.3 substantially corresponds to the relevant provision of the UTML.

### **Regulation 4.4 – Exemptions from marking requirements (name, address, measurement)**

286. Regulation 4.4 exempts certain goods from the operation of Divisions 4.3 and 4.4. (Division 4.3 requires the marking of packages with the name and address of the person who packed the packages (or on whose behalf they were packed). Division 4.4 requires the marking of packages with a statement of the measurement of the product.) These goods are set out in Schedule 4. They include certain textile goods, certain food goods, certain medicinal and toilet goods and certain hardware goods.

287. Regulation 4.4 substantially corresponds to the relevant provision of the UTML.

### **Regulation 4.5 – Exemptions for packages containing paper**

288. Regulation 4.5 exempts certain packages containing paper from regulations 4.7 and 4.9. (Regulation 4.7 requires the marking of packages with the name and address of the person who packed the packages (or on whose behalf they were packed). Regulation 4.9 requires the marking of packages with a statement of the measurement of the product.) Therefore, notwithstanding regulation 4.28, a package containing paper may be marked with the expression "gross mass" (or another expression that has a similar meaning) (subregulation 4.5(3)).

289. Regulation 4.5 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.6 – Exemptions for certain inner and outer packages**

290. Regulation 4.6 creates marking exemptions for certain inner and outer packages. It therefore restricts the effect of regulation 4.3.
291. Regulation 4.6 substantially corresponds to the relevant provision of the UTML.

#### **Division 4.3 – Marking of name and address**

##### **Regulation 4.7 – Marking of name and address on packages**

292. Regulation 4.7 sets out the first of two core requirements with respect to packaging contained in the Regulations. It requires a package containing a prepackaged product to be marked with the name and address of the person who packed the product (or on whose behalf it was packed). This marking must be readily visible and legible (paragraph 4.7(2)(a)) and appropriate to enable the person to be identified and located (paragraph 4.7(2)(b)).
293. Regulation 4.7 substantially corresponds to the relevant provision of the UTML.

##### **Regulation 4.8 – Exemption for packaged seed**

294. Regulation 4.8 exempts certain packaged seed from the operation of regulation 4.7. (Regulation 4.7 requires the marking of packages with the name and address of the person who packed the packages (or on whose behalf they were packed).)
295. Regulation 4.8 substantially corresponds to the relevant provision of the UTML.

#### **Division 4.4 – Marking of measurement**

##### **Subdivision 1 – General requirements for measurement marking**

##### **Regulation 4.9 – Requirement to mark measurement**

296. Regulation 4.9 sets out the second of two core requirements with respect to packaging contained in the Regulations. It requires a package containing a prepackaged product to be marked with a statement of the measurement of the product (a measurement marking). This statement must be clear, conspicuous and, in the context of sale, readily seen and easily read (subregulation 4.9(2)).

297. Regulation 4.9 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.10 – General position of measurement marking**

298. Regulation 4.10 requires a measurement marking on a product to be made on its principal display panel or, if there is more than 1 principal display panel, on at least 2 of the principal display panels. ("Principal display panel" is defined in regulation 4.1 to mean "the part of the package that is most likely to be displayed under normal and customary conditions".) It therefore helps to ensure that measurement information is readily available to, and comprehensible by, consumers.

299. Regulation 4.10 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.11 – Set-out and form of measurement marking**

300. Regulation 4.11 prescribes a number of rules relating to the set-out (e.g., location) and form (e.g., metric system, English language, etc) of a measurement marking. It therefore helps to ensure that measurement information is readily available to, and comprehensible by, consumers.

301. Regulation 4.11 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.12 – Size etc. of characters in measurement marking**

302. Regulation 4.12 prescribes a number of rules relating to the characters used in a measurement marking (e.g., the device used to generate them, their colour, and most importantly, their size). It therefore helps to ensure that measurement information is readily available to, and comprehensible by, consumers.

303. Regulation 4.12 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.13 – Unit etc. of measurement to be used**

304. Regulation 4.13 prescribes the kinds of measurement (e.g., number, linear measurement, superficial measurement, volume and mass) to be used when marking the measurement marking of a product. It therefore helps to ensure that measurement information is readily available to, and comprehensible by, consumers. The permissible units of measurement for each kind of measurement are set out in Schedule 6 (subregulation 4.13(3)).

305. Regulation 4.13 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.14 – Fractions and significant figures**

306. Regulation 4.14 prescribes rules with respect to measurement markings that include a fraction of a unit of measurement or that are whole multiples or sub-multiples (or a combination of both). It therefore helps to ensure that measurement information is readily available to, and comprehensible by, consumers.
307. Regulation 4.14 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.15 – Special provision – marking by approved printing device**

308. Regulation 4.15 prescribes special rules with respect to measurement markings made by an approved printing device. "Approved printing device" is defined in regulation 4.1 to mean "a printing device that conforms to a pattern in relation to which there is in force under the Act a certificate that approves the use of the device for trade".
309. Regulation 4.15 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.16 – Marking by reference to minimum measurement**

310. Regulation 4.16 prohibits a measurement marking on a prepackage from being made by reference to minimum measurement. However, prepackages containing certain products are exempted from this prohibition. These products are:
- prepacked dressed poultry (subparagraph 4.16(1)(a)(i); subregulation 4.16(2));
  - prepacked preserved sausage (subparagraph 4.16(1)(a)(i); subregulation 4.16(3)); and
  - prepackaged eggs (subparagraph 4.16(1)(a)(ii); subregulation 4.17).
311. Regulation 4.16 substantially corresponds to the relevant provision of the UTML.

### **Subdivision 2 – Special provision for measurement marking of certain products**

#### **Regulation 4.17 – Eggs**

312. Regulation 4.17 makes special provision with respect to the measurement marking of a prepackage containing eggs.
313. Regulation 4.17 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.18 – Products packed in sheets**

- 314. Regulation 4.18 makes special provision with respect to the measurement marking of prepacked aluminium foil, facial tissues, toilet paper and waxed paper.
- 315. Regulation 4.18 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.19 – Number of packages comprising 1 tonne**

- 316. Regulation 4.19 makes special provision with respect to the measurement marking of a product comprising a number of packages that together have a total mass of 1 tonne.
- 317. Regulation 4.19 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.20 – Bedsheets, tarpaulins etc.**

- 318. Regulation 4.20 makes special provision with respect to the measurement marking of bedsheets (whether fitted, semi-fitted or unfitted), other sheets of hemmed fabric material and tarpaulins.
- 319. Regulation 4.20 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.21 – Pairs of window curtains**

- 320. Regulation 4.21 makes special provision with respect to the measurement marking of pairs of window curtains.
- 321. Regulation 4.21 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.22 – Marking of width or thickness if it directly affects price**

- 322. Regulation 4.22 makes special provision with respect to the measurement marking of products, the thickness or width (or both) of which bears a direct relationship to the product's price.
- 323. Regulation 4.22 substantially corresponds to the relevant provision of the UTML.



### **Subdivision 3 – Special provision concerning measurement marking of outer packages**

#### **Regulation 4.23 – Package containing packages of products of the same kind and measurement**

- 324. Regulation 4.23 makes special provision with respect to the measurement marking of a package (i.e., the outer package) containing packages (i.e., the inner packages) of products of the same kind and measurement.
- 325. Regulation 4.23 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.24 – Inner and outer packages of single product**

- 326. Regulation 4.24 makes special provision with respect to the measurement marking of a prepackage that consists of a product contained in a package (i.e., the inner package) that is contained in another package (i.e., the outer package).
- 327. Regulation 4.24 substantially corresponds to the relevant provision of the UTML.

#### **Regulation 4.25 – Package containing products of different kinds or different measurements**

- 328. Regulation 4.25 makes special provision with respect to the measurement marking of a prepackage consisting of a package (i.e., the outer package) containing products (of which at least 1 is a prepackaged product) of different kinds or different measurements.
- 329. Regulation 4.25 substantially corresponds to the relevant provision of the UTML.

### **Subdivision 4 – Other markings concerning measurement**

#### **Regulation 4.26 – Unit price marking – retail sales of particular foods by mass**

- 330. Regulation 4.26 requires certain packaged food products – including mushrooms, cheese (or cheese products), dressed poultry, fish and meat (subregulation 4.26(1)) – to be marked with the measurement of the product, its total price and its price per kilogram (subregulation 4.26(2)). Products exposed or displayed in particular ways are exempted from this requirement (subregulation 4.26(3)).
- 331. Regulation 4.26 substantially corresponds to the relevant provision of the UTML.

## **Division 4.5 – Prohibited expressions**

### **Regulation 4.27 – Marking of "mass when packed"**

332. Under the UTML, prepackages of a large number of products (including bar soaps, cotton wool, flax, glauber salts, jute, manila, fresh mushrooms, over-baked animal biscuits, personal deodorant tablets, personal soap tablets, sisal, soap flakes, soap powder, tobacco, washing soda and whole hams) were able to be marked with the expression "mass when packed" (or with other words that have a similar meaning). However, consultation revealed that consumers and consumer groups opposed the continued use of this expression. Consumers considered that allowances for desiccation of many products should no longer be made. Modern packaging materials retain moisture for longer periods of time and mass marketing techniques result in shorter shelf retention times for these products. Industry groups however, favoured its retention.
333. Regulation 4.27 alters the UTML position. Mushrooms or soap (that are not hermetically sealed) and traditionally exposed for sale unpackaged will lose mass (through loss of moisture) very quickly. Therefore, these two products should continue to be marked with the expression "mass when packed". (Such prepackages must also be marked in the same way as, and as part of, the appropriate measurement marking.)

### **Regulation 4.28 – Restrictions on use of "gross mass"**

334. Subdivision 2-B of Division 2 of Part VI of the Act creates a number of offences relating to the use of "prohibited expressions".
335. In accordance with subdivision 2-B of Division 2 of Part VI of the Act, subregulation 4.28(2) prescribes "gross mass" and any expression that has a similar meaning as "prohibited expressions". This is to maintain consistency with the UTML and ensure that the measurement marking relates only to the product and not to the product together with its packaging.
336. Subregulation 4.28(2) provides that a package may only be marked with the expression "gross mass" (or any expression that has a similar meaning) if:
- the marking is permitted by a permit issued by the Secretary in accordance with section 18JX of the Act; or
  - the package is used only for the purpose of transportation (and the package is marked to that effect).

### **Regulation 4.29 – Prohibited expressions**

337. Subdivision 2-B of Division 2 of Part VI of the Act creates a number of offences relating to the use of "prohibited expressions".

338. Regulation 4.29 prescribes two categories of "prohibited expressions":
- The first is any expression, other than a marking that is required or permitted by the Act, that directly or indirectly relates to, or qualifies, a measurement marking (subregulation 4.29(1)).
  - The second is any expression that directly or indirectly relates or refers to the measurement of the product, any ingredient or component of the product or any source from which the product is derived, and which cannot be tested for its truth by testing the product.

#### **Division 4.6 – Desiccation**

##### **Regulation 4.30 – Definitions for Division 4.6**

339. Regulation 4.30 defines certain terms used in Division 4.6.

##### **Regulation 4.31 – Permissible deficiency – prepacked fresh mushrooms**

340. Under regulation 4.27, prepackages of mushrooms may be marked with the expression "mass when packed".
341. Regulation 4.31 prescribes the permissible actual deficiency (subregulations 4.31(2)-(3)) and the permissible average deficiency (subregulations 4.31(4)-(5)) of prepackages of mushrooms marked "mass when packed". These deficiencies correspond to those set out in the relevant provision of the UTML.

##### **Regulation 4.32 – Permissible deficiency – prepacked soap**

342. Under regulation 4.27, prepackages of soap may be marked with the expression "mass when packed".
343. Regulation 4.32 prescribes the permissible actual deficiency and the permissible average deficiency of prepackages of various kinds of soap marked "mass when packed". These deficiencies correspond to those set out in the relevant provision of the UTML.

#### **Division 4.7 – Shortfall**

##### **Subdivision 1 – Provisions applying for package lots of 100 or more – the average quantity system**

##### **Regulation 4.33 – Definitions for Subdivision 1**

344. Regulation 4.33 defines a number of terms used in Subdivision 1.

#### **Regulation 4.34 – AQS thresholds**

345. Paragraph 20(1)(q) of the Act empowers the Governor-General to make regulations, not inconsistent with the Act, prescribing AQS thresholds for the purposes of Subdivision 3-C of Division 3 of Part VI. (Subdivision 3-C of Division 3 of Part VI creates a number of offences ("shortfall offences") applicable when the existence of a shortfall is determined using AQS test procedures.)
346. In accordance with paragraph 20(1)(q) of the Act, regulation 4.34 prescribes AQS thresholds for inspection lots of particular sizes (e.g., inspection lots of between 100 and 500 prepackages, 501 and 3,200 prepackages and 3,201 prepackages and over).

#### **Regulation 4.35 – Sampling procedures**

347. Paragraph 20(1)(r) of the Act empowers the Governor-General to make regulations, not inconsistent with the Act, prescribing AQS sampling procedures for the purposes of Subdivision 3-C of Division 3 of Part VI. (Subdivision 3-C of Division 3 of Part VI creates a number of offences ("shortfall offences") applicable when the existence of a shortfall is determined using AQS test procedures.)
348. In accordance with paragraph 20(1)(r) of the Act, regulation 4.35 prescribes AQS sampling procedures.
349. The core rule is set out in subregulation 4.35(2). It provides that a sample must be selected from a lot of packages at random in accordance with generally accepted statistical sampling practice.
350. Subregulations 4.35(3)-(5) make special provision with respect to a lot of packages produced on a production line.

#### **Regulation 4.36 – Test procedures**

351. Paragraph 20(1)(s) of the Act empowers the Governor-General to make regulations, not inconsistent with the Act, prescribing AQS test procedures for the purposes of Subdivision 3-C of Division 3 of Part VI. (Subdivision 3-C of Division 3 of Part VI creates a number of offences ("shortfall offences") applicable when the existence of a shortfall is determined using AQS test procedures.)
352. In accordance with paragraph 20(1)(s) of the Act, regulation 4.36 prescribes AQS test procedures.

### **Regulation 4.37 – Weighted average quantity**

353. Regulation 4.37 prescribes the formula used to calculate the weighted average quantity of packages in a sample.

### **Regulation 4.38 – , (4) failure**

354. Paragraph 20(1)(t) of the Act empowers the Governor-General to make regulations, not inconsistent with the Act, prescribing the circumstances in which a group of packages is taken to have failed testing in accordance with AQS test procedures.
355. Subregulations 4.35(2), (3) and (5) prescribe the 4 circumstances in which a group of packages is taken to have failed testing in accordance with AQS test procedures.

### **Subdivision 2 – Packages not marked with an AQS Mark**

#### **Regulation 4.39 – Sampling procedures**

356. Paragraph 20(1)(u) of the Act empowers the Governor-General to make regulations, not inconsistent with the Act, prescribing national sampling procedures for the purposes of Subdivision 4-B of Division 4 of Part VI. (Subdivision 4-B of Division 4 of Part VI creates a series of offences ("shortfall offences") applicable when the existence of a shortfall is determined using the non-AQS nationally recognised system of sampling and testing groups of packages.)
357. In accordance with paragraph 20(1)(u) of the Act, regulation 4.39 prescribes a national sampling procedure for packages.

#### **Regulation 4.40 – National group test procedures**

358. Paragraph 20(1)(v) of the Act empowers the Governor-General to make regulations, not inconsistent with the Act, prescribing national group test procedures for the purposes of Subdivision 4-B of Division 4 of Part VI. (Subdivision 4-B of Division 4 of Part VI creates a series of offences ("shortfall offences") applicable when the existence of a shortfall is determined using the non-AQS nationally recognised system of sampling and testing groups of packages.)
359. In accordance with paragraph 20(1)(v) of the Act, regulation 4.40 prescribes a national group test procedure for prepackages.

#### **Regulation 4.41 – National single article test procedures**

360. Paragraph 20(1)(w) of the Act empowers the Governor-General to make regulations, not inconsistent with the Act, prescribing national single article

test procedures for the purposes of Subdivision 4-B of Division 4 of Part VI. (Subdivision 4-B of Division 4 of Part VI creates a series of offences ("shortfall offences") applicable when the existence of a shortfall is determined using the non-AQS nationally recognised system of sampling and testing groups of packages.)

361. In accordance with paragraph 20(1)(w) of the Act, regulation 4.41 prescribes a national single article test procedure for prepackages.

#### **Regulation 4.42 – National test thresholds**

362. Paragraph 20(1)(x) of the Act empowers the Governor-General to make regulations, not inconsistent with the Act, prescribing national test thresholds for the purposes of Subdivision 4-B of Division 4 of Part VI. (Subdivision 4-B of Division 4 of Part VI creates a series of offences ("shortfall offences") applicable when the existence of a shortfall is determined using the non-AQS nationally recognised system of sampling and testing groups of packages.)
363. In accordance with paragraph 20(1)(x) of the Act, regulation 4.42 prescribes national test thresholds for packages.

#### **Regulation 4.43 – Test failure circumstances – groups**

364. Paragraph 20(1)(y) of the Act empowers the Governor-General to make regulations, not inconsistent with the Act, prescribing the circumstances in which a group of packages is taken to have failed testing in accordance with national group test procedures.
365. In accordance with paragraph 20(1)(y) of the Act, regulation 4.43 prescribes circumstances in which a group of packages is taken to have failed testing in accordance with national group test procedures. These circumstances include that the deficiency of any one of the sampled packages is greater than 5% (subregulation 4.43(3)).

#### **Regulation 4.44 – Test failure circumstances – single article**

366. Paragraph 20(1)(z) of the Act empowers the Governor-General to make regulations, not inconsistent with the Act, prescribing the circumstances in which a package is taken to have failed testing in accordance with national single article test procedures.
367. In accordance with paragraph 20(1)(z) of the Act, regulation 4.44 prescribes circumstances in which a package is taken to have failed testing in accordance with national single article test procedures.

## **Division 4.8 – Miscellaneous**

### **Regulation 4.45 – Measuring mass of frozen fish**

368. Regulation 4.45 makes special provision with respect to the measurement of prepacked frozen fish that has surface ice on any part of the fish.

### **Regulation 4.46 – Application for permit to sell certain articles**

369. Section 18JX of the Act empowers the Secretary to issue, in writing, permits with respect to certain packed articles (e.g., an importation permit, a sale permit or a possession for sale permit). Regulation 4.46 prescribes the requirements of an application for any such permit.

## **PART 5 – MISCELLANEOUS**

- 370. Part 5 makes provision for certain miscellaneous matters.
- 371. Part 5 substantially corresponds to the model Trade Measurement (Miscellaneous) Regulations.

### **Regulation 5.1 – Beer, spirits etc must be sold by reference to volume**

- 372. Regulation 5.1 requires certain alcohols to be sold at a price determined by reference to volume.
- 373. Regulation 5.1 substantially corresponds to the relevant provision of the UTML.

### **Regulation 5.2 – Sale of article at price determined by reference to measurement**

- 374. Regulation 5.2 ensures that, if the price of a product is determined by reference to measurement, the measurement must be in a form that is comprehensible by consumers.
- 375. Subregulation 5.2(1) provides that, if a product is advertised, offered or exposed for sale at a price determined by reference to measurement (e.g., mass, volume, linear measurement or superficial measurement), the unit of measurement referred to in the price must be one of a number of prescribed units of measurement. Certain products (e.g., prepacked products, diamonds, domestic LPG cylinders etc) are exempt from this requirement (subregulation 5.2(4)).
- 376. Subregulation 5.2(2) makes it an offence to engage in conduct that contravenes subregulation 5.2(1), and subregulation 5.2(3) provides that this is an offence of strict liability.
- 377. Regulation 5.2 substantially corresponds to the relevant provision of the UTML. However, the offence provision has been redrafted to ensure consistency with the principles set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

### **Regulation 5.3 – Sale of fuel at price determined by reference to measurement by volume**

- 378. Subregulation 5.3(1) provides that, if fuel is advertised, offered or exposed for sale at a price determined by reference to the volume of the fuel, the volume referred to in the price must be the volume of the fuel, as measured by the amount in litres that the fuel occupies, or would occupy, at the temperature of 15 degrees Celsius. (Fuel is defined in subregulation 5.3(2).)



379. Subregulation 5.3(3) makes it an offence to engage in conduct that contravenes subregulation 5.3(1), and subregulation 5.3(4) provides that this is an offence of strict liability.
380. Regulation 5.3 substantially corresponds to the relevant provision of the UTML. However, the offence provision has been redrafted to ensure consistency with the principles set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

**Regulation 5.4 – Regulation 5.3 does not apply to certain sales of fuel**

381. Subregulation 5.4(1) exempts the retail sale of fuel from the operation of regulation 5.3.
382. Subregulations 5.4(2)-(4) exempt certain wholesale sales of fuel from the operation of regulation 5.3.
383. Regulation 5.4 substantially corresponds to the relevant provision of the UTML.

**Regulation 5.5 – Fees for general applications**

384. Paragraph 20(1)(k) of the Act empowers the Governor-General to make regulations, not inconsistent with the Act, prescribing a fee for applications.
385. In accordance with paragraph 20(1)(k) of the Act, regulation 5.5 prescribes fees for various kinds of applications.

## **SCHEDULE 1 – MAXIMUM PERMISSIBLE ERRORS**

386. Regulation 1.4 defines "maximum permissible error", in relation to a material measure or measuring instrument, as:
- if a National Measurement Institute Certificate of Approval for the material measure or measuring instrument is issued on or after 1 July 2007 – the maximum limit of error mentioned in the certificate; or
  - otherwise – the maximum limit of error for a measuring instrument of that kind prescribed in Schedule 1 (and to which any additional requirement set out in the relevant National Instrument Test Procedure relates).
387. In accordance with the definition of "maximum permissible error", Schedule 1 prescribes maximum limits of error for various kinds of material measures and measuring instruments at verification and in-service inspection.

## **SCHEDULE 2 – CLASSES AND SUBCLASSES OF SERVICING LICENCES**

388. Subregulation 2.43(25) requires a servicing licensee, or an employee of servicing licensee, who tests or verifies a measuring instrument included in a licence class prescribed in Schedule 2, to provide, if the Secretary so directs, a test report to the Secretary.
389. In accordance with subregulation 2.43(25), Schedule 2 prescribes classes (and subclasses) of servicing licences.

## **SCHEDULE 3 – THE AQS MARK**

390. Regulation 4.2 defines "AQS mark" as a letter "e", at least 3 mm high, in the form set out in Schedule 3.
391. In accordance with the definition of "AQS mark", Schedule 3 sets out the form of the AQS mark (including its relative dimensions as a proportion of its width).

## **SCHEDULE 4 – EXEMPTIONS FROM MARKING**

392. Subregulation 4.4(1) exempts certain goods from the operation of Divisions 4.3 and 4.4. (Division 4.3 requires the marking of packages with the name and address of the person who packed the packages (or on whose behalf they were packed). Division 4.4 requires the marking of packages with a statement of the measurement of the product.) These goods are set out in Schedule 4. They include certain textile goods, certain food goods, certain medicinal and toilet goods and certain hardware goods.

#### **SCHEDULE 5 – EXPRESSION OF MEASUREMENT MARKING**

393. Regulation 4.13 prescribes the kinds of measurement (e.g., number, linear measurement, superficial measurement, volume and mass) to be used when marking the measurement marking of a product. Subregulation 4.13(2) provides that the measurement marking of a product of a kind described in an item of Schedule 5 must be expressed by reference to the kind of measurement specified in the item.
394. In accordance with subregulation 4.13(2), Schedule 5 describes kinds of products and the kinds of measurement permissible in relation to them.

#### **SCHEDULE 6 – PERMISSIBLE UNITS OF MEASUREMENT**

395. Regulation 4.13 prescribes the kinds of measurement (e.g., number, linear measurement, superficial measurement, volume and mass) to be used when marking the measurement marking of a product. Subregulation 4.13(3) provides that a measurement marking must be expressed in terms of a unit of measurement set out Schedule 6.
396. In accordance with subregulation 4.13(3), Schedule 6 sets out permissible units of measurement for each kind of measurement.