



Australian Capital Territory

Trade Measurement (Measuring Instruments) Regulation 1991

SL1991-27

made under the

Trade Measurement Act 1991

Republication No 4

Effective: 17 December 2009 – 1 July 2010

Republication date: 17 December 2009

Last amendment made by A2009-49

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Trade Measurement (Measuring Instruments) Regulation 1991*, made under the *Trade Measurement Act 1991* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 17 December 2009. It also includes any amendment, repeal or expiry affecting the republished law to 17 December 2009.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



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Australian Capital Territory

Trade Measurement (Measuring Instruments) Regulation 1991

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Part 1 Preliminary

1 Name of regulation

This regulation is the *Trade Measurement (Measuring Instruments) Regulation 1991*.

2 Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere in this regulation.

For example, the signpost definition ‘*approval*, for part 3 (Batch testing and marking)—see section 12.’ means that the term ‘approval’ is defined in that section for part 3.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

2A Notes

A note included in this regulation is explanatory and is not part of this regulation.

Note See the Legislation Act s 127 (1), (4) and (5) for the legal status of notes.

Part 2

Verification, reverification and certification

3 Marking of measuring instrument

- (1) When an inspector's mark or licensee's mark is made on a measuring instrument, the person who makes the mark must also mark, in the approved way, the date when the mark is made, unless the instrument is a glass measure.
- (2) When an employee of a licensee certifies a measuring instrument, the employee must in addition to making the licensee's mark on the measuring instrument also make the other mark in conjunction with the licensee's mark that will enable the licensee to identify the employee who made the mark.

4 Certain measuring instruments not to be verified or certified

A measuring instrument must not be verified or certified if—

- (a) it bears a manufacturer's mark or trade mark that could be mistaken for an inspector's mark or a licensee's mark; or
- (b) it is of rough or crude construction, is not well made or is constructed of inferior material; or
- (c) it is not reasonably clean or has wet paint on it; or
- (d) it is so damaged as to be unsuitable for use for trade.

5 Measuring instrument to be clean

For the purpose of facilitating reverification of a measuring instrument, an inspector may direct the person in possession of the instrument to clean the instrument.

6 Testing of measuring instrument

The testing of a measuring instrument for the purpose of verification, reverification or certification must—

- (a) if the measuring instrument is fixed—be carried out with the measuring instrument in its fixed position; or
- (b) if the measuring instrument is movable and has a base—be carried out with the measuring instrument on a level plane or, if this is not practicable, on a plane that is as nearly level as possible; or
- (c) if the measuring instrument is transportable and the results obtained by its use are affected by gravity—be carried out so as to compensate for the conditions applicable in the region where it is used or to be used.

7 Testing and marking of measure of length

If a measure of length is to be verified or certified, it must be examined, tested and marked—

- (a) on both sides if it is calibrated on both sides and is not permanently fixed so that only 1 side is visible; or
- (b) on the visible side if it is permanently fixed so that only 1 side is visible.

8 Exemption from reverification and from marking

- (1) If a glass measure mentioned in part 3 has been marked in accordance with section 14, reverification of it is not required.
- (2) If a measure of length has been verified, reverification of it is not required.

9 Restrictions on use for trade of certain small masses

- (1) A mass of 0.2 metric carat or less, or of 50mg or less, is exempt from the Act, section 7.

- (2) A person who uses such a mass for trade commits an offence unless the person is the holder of a certificate issued by the administering authority or the holder of a licence to the effect that the mass concerned complies with the requirements for verification specified in the Act, section 13.

Maximum penalty: 20 penalty units.

10 Dismantling of measuring instrument for testing

- (1) If an inspector considers it to be necessary to examine or test a component part of a measuring instrument for the purpose of verifying or re verifying the instrument and that cannot be done without dismantling the instrument, the inspector may require the owner of the measuring instrument to comply with subsection (2).
- (2) The owner of a measuring instrument complies with this section if the owner—
- (a) dismantles the measuring instrument or causes it to be dismantled; or
 - (b) consents to the measuring instrument being dismantled by the inspector and absolves the inspector from liability for any damage caused in the course of its dismantling or reassembly.
- (3) If the owner fails to comply with subsection (2) when required to do so by an inspector, the measuring instrument must not be used for trade while the failure continues.

11 Owner to provide and pay for labour etc

- (1) An inspector may direct the owner of a measuring instrument to provide and pay for—
- (a) any labour, materials, equipment, liquid or gas; or
 - (b) the expeditious transportation to and from the site of the measuring instrument of any test masses, measures or equipment;

required by the inspector for the purpose of verifying or reverifying the measuring instrument.

- (2) If the owner fails to comply with the direction, the measuring instrument must not be used for trade while the failure continues.
- (3) The owner of a measuring instrument while in possession of any test masses, measures or equipment mentioned in subsection (1) is liable for any loss of, or damage to, them and any costs and expenses incurred by the administering authority because of the loss or damage is recoverable by the administering authority as a debt owing by the owner of the measuring instrument.

Part 3 Batch testing and marking

12 Definitions for pt 3

In this part:

approval means an approval given under section 13.

glass, in relation to a container or drinking vessel, includes any other material permitted by the approval for its pattern issued under the *National Measurement Regulations 1999* (Cwlth).

glass measure means—

- (a) a container made completely or mainly of glass in which it is intended that lubricating oil will be sold by volume of the quantity (otherwise than as a prepacked article); or
- (b) a measure made of glass or another rigid or semirigid substance intended for use for the sale of beer, ale, stout or spirits by quantity other than as a prepacked article.

testing facilities means labour and equipment necessary for testing glass measures in accordance with section 16.

13 Approval for batch testing of glass measures

- (1) The administering authority may give a manufacturer or importer of glass measures written approval for the glass measures to be tested and marked under this part.
- (2) An approval ceases to have effect if it is revoked by the administering authority or if the manufacturer or importer fails—
 - (a) to comply with any requirements of the administering authority notified in the approval; or
 - (b) to take reasonable precautions to prevent the commission of an offence against section 15; or

- (c) to provide and pay for testing facilities as required by the administering authority; or
- (d) to make the testing facilities available, without charge, for use by an inspector or licensee to carry out tests in accordance with section 16; or
- (e) to comply with section 17 relating to the keeping and examination of records.

14 Approval authorises making of marks

While an approval is in force, the manufacturer or importer is authorised to mark a glass measure with a mark consisting of—

- (a) the inspector's mark specified in the approval or the licensee's mark of the manufacturer or importer; and
- (b) the characters specified in the approval as those that are to form part of the approved mark, marked in the size and way, and in the position on the measure, required by the approval.

15 Restrictions on removal of marked glass measure

If a glass measure is removed from the custody of the manufacturer or importer after being marked in accordance with an approval, the manufacturer or importer commits an offence unless—

- (a) the measure is 1 of a batch that complies with section 16; and
- (b) an inspector or a licensee has given written approval for the removal of the batch from the custody of the manufacturer or importer.

Maximum penalty: 20 penalty units.

16 Batch testing requirements

- (1) A batch of glass measures complies with this section only if—
 - (a) at least the appropriate test proportion of the batch is tested by an inspector or licensee; and
 - (b) in each such test less than 2% of the measures tested fail to comply with the requirements of the Act, section 13 for verification or certification.
- (2) The appropriate test proportion of a batch of glass measures is the proportion determined by the administering authority from time to time.
- (3) A batch of glass measures fails to comply with this section if the batch is not accompanied by a histogram detailing the results of tests made on the batch by or on behalf of the manufacturer or importer concerned.

17 Records to be kept and made available

A manufacturer or importer given an approval must—

- (a) keep the records relating to glass measures that are specified in the approval; and
- (b) make the records available for examination if required to do so by an inspector.

Part 4 Licences and licensees

18 Condition of licence

It is a condition of a licence that the licensee—

- (a) must do everything that this regulation require be done by the licensee; and
- (b) must not do anything that this regulation require the licensee to refrain from doing.

19 Licensee to keep certain records or give certain notices

- (1) The administering authority may direct a licensee to do any of the following:
 - (a) make specified records relating to the certification of measuring instruments;
 - (b) keep those records for at least 2 years after making them;
 - (c) produce the kept records on demand made by an inspector;
 - (d) give the administering authority not later than 14 days after certifying a measuring instrument a written notice in an approved form;
 - (e) keep a copy of such a notice for at least 2 years after service of the notice;
 - (f) produce the kept copies on demand made by an inspector.
- (2) The licensee must comply with a direction given under subsection (1).

20 Notification by licensee of changed particulars

A licensee must notify the licensing authority in writing of—

- (a) any change in the address for the service of notices on the licensee; and
- (b) the full name and home address of each person who begins or ceases to be employed by the licensee to certify measuring instruments;

and must do so not later than 14 days after the event.

21 Register of servicing licences

For the Act, section 47, the prescribed particulars to be kept in a register by the licensing authority in relation to each servicing licence are as follows:

- (a) the number of the licence and the date of its issue;
- (b) the name of the licensee and the address where notices may be served personally on the licensee;
- (c) particulars of any conditions to which the licence is subject imposed under the Act, section 48;
- (d) any other particulars the licensing authority considers desirable.

Part 5 Miscellaneous

22 Restrictions on use of measuring instrument for trade

- (1) A person commits an offence if—
- (a) in using for trade a measuring instrument of an approved pattern designed for measuring a liquid, the person purports to measure anything other than a liquid to which the approved pattern relates; or
 - (b) in using for trade a measuring instrument held in, or suspended from, the hand, the person purports to measure mass; or
 - (c) in using for trade a measuring instrument marked for a specific use, the person does so otherwise than in accordance with the marking; or
 - (d) in using for trade a measuring instrument marked for use with specified proportional masses, the person uses other proportional masses; or
 - (e) except for factory use or non-retail counter use, the person uses for trade a measuring instrument with a tare bar; or
 - (f) the person uses a measuring instrument for trade to decide mass greater than the mass permitted by the approved pattern for the instrument; or
 - (g) in using a measuring instrument for trade to decide the mass of any goods for therapeutic use within the meaning of the *Therapeutic Goods Act 1989* (Cwlth), or the mass of precious metals, the person uses masses other than masses marked 'A' (in accordance with a certificate of approval of pattern under the National Measurement Act); or

- (h) in using a measuring instrument for trade to decide the mass of anything other than precious stones, the person uses metric carat masses.

Maximum penalty: 20 penalty units.

- (2) A person who, on the same premises, is in possession of more than 1 measuring instrument that is used for trade and is marked for use with proportional masses commits an offence unless the proportional masses are readily identifiable with the measuring instrument on which they were tested.

Maximum penalty: 20 penalty units.

- (3) A person who uses for trade a measuring instrument fitted with a load receptor commits an offence if—
- (a) it is 1 of 2 or more such measuring instruments on the premises and its load receptor is not clearly marked to identify it with the measuring instrument on which it is used; or
 - (b) the load receptor is removable and measures incorrectly in any position on its supports; or
 - (c) any latitude of movement of the load receptor on its supports causes it to foul any part of the measuring instrument; or
 - (d) the load receptor is in the form of a scoop mounted so that a purchaser cannot readily see whether there is any foreign matter in the load receptor.

Maximum penalty: 20 penalty units.

23 Subdivision of scale spacing

If the scale spacing on a measuring instrument that bears an inspector's mark or a licensee's mark is altered by being subdivided after the inspector's mark or licensee's mark was marked on the instrument—

- (a) the person who subdivided the scale spacing commits an offence; and
- (b) a person who uses the measuring instrument for trade commits an offence.

Maximum penalty: 20 penalty units.

24 Measurement of liquid

If a measuring instrument is used for trade to measure a liquid, the person in possession of the measuring instrument or who makes it available for use for trade commits an offence unless—

- (a) the measuring instrument is, at least to the extent necessary for the purpose of permitting proper observation of its operation, artificially illuminated between sunset and sunrise and at any other time when illumination is necessary for that purpose; and
- (b) for a flowmeter fitted with a zero resetting device—the flowmeter is reset to zero before the start of a measurement to be made by its use; and
- (c) for a sale of liquid measured by a driveway flowmeter—the existing readings of volume, price per litre and price are not erased until the sale has been completed.

Maximum penalty: 20 penalty units.

25 Measurement of precious stones

A person who, for the purpose of measuring diamonds or other precious stones, uses for trade a measuring instrument that—

- (a) has a verification scale interval greater than 10mg; or
- (b) has a capacity of less than 5 000CM and a verification scale interval greater than 0.01CM; or
- (c) has a capacity of 5 000CM or more and a verification scale interval greater than 0.05CM;

commits an offence.

Maximum penalty: 20 penalty units.

26 Measurement of precious metals

A person who, for the purpose of measuring gold, silver or other precious metals, uses for trade a measuring instrument that has a capacity specified in table 26, column 2 and a verification scale interval greater than that specified in column 3 opposite the capacity commits an offence.

Table 26

column 1 item	column 2 capacity	column 3 verification scale interval
1	less than 1kg	10mg
2	1kg or more but less than 10kg	100mg
3	10kg or more	1g

Maximum penalty: 20 penalty units.

27 Offence of using instrument for trade when prohibited

A person who uses a measuring instrument for trade in contravention of a provision of this regulation commits an offence

punishable on conviction, if no other penalty is prescribed, by a fine not exceeding \$2 000.

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this regulation.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- corporation
- home address
- individual
- penalty unit (see s 133)
- person.

Note 3 Terms used in this regulation have the same meaning that they have in the *Trade Measurement Act 1991* (see Legislation Act, s 148). For example, the following terms are defined in the *Trade Measurement Act 1991*, dict:

- administering authority
- approved pattern
- inspector
- licence
- verify (see s 11).

approval, for part 3 (Batch testing and marking)—see section 12.

approved means approved by the administering authority.

glass, in relation to a container or drinking vessel, for part 3 (Batch testing and marking)—see section 12.

glass measure, for part 3 (Batch testing and marking)—see section 12.

licence means a servicing licence.

owner, in relation to a measuring instrument, means the person who uses, or proposes to use, the measuring instrument for trade or who proposes to make it available for use for trade.

testing facilities, for part 3 (Batch testing and marking)—see section 12.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

This regulation was originally the *Trade Measurement (Measuring Instruments) Regulations*. It was renamed by Act 2001 No 70 (see amdt 2.4) and under the *Legislation Act 2001*.

Before 12 September 2001, regulations commenced on their notification day unless otherwise stated (see *Subordinate Laws Act 1989* s 6).

Trade Measurement (Measuring Instruments) Regulation 1991 No 27

notified 1 November 1991 (Gaz 1991 No S125)

commenced 1 November 1991

as amended by

Legislation (Consequential Amendments) Act 2001 No 44 pt 386

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 386 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Justice and Community Safety Legislation Amendment Act 2001 No 70 sch 2

notified LR 14 September 2001

commenced 14 September 2001 (s 2 (5))

Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.102

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))

sch 3 pt 3.102 commenced 12 April 2007 (s 2 (1))

Statute Law Amendment Act 2009 (No 2) A2009-49 sch 3 pt 3.77

notified LR 26 November 2009

s 1, s 2 commenced 26 November 2009 (LA s 75 (1))

sch 3 pt 3.77 commenced 17 December 2009 (s 2)

4 Amendment history

Name of regulation

s 1 sub Act 2001 No 70 amdt 2.4
am R2 LA

Dictionary

s 2 hdg sub Act 2001 No 70 amdt 2.5
s 2 am 2001 No 70 amdt 2.6
defs reloc to dict A2007-3 amdt 3.510
sub A2007-3 amdt 3.511
def **the Act** om Act 2001 No 44 amdt 1.4059

Notes

s 2A ins A2007-3 amdt 3.511

Certain measuring instruments not to be verified or certified

s 4 am Act 2001 No 70 amdt 2.7

Restrictions on use for trade of certain small masses

s 9 am Act 2001 No 70 amdt 2.8, amdt 2.17

Owner to provide and pay for labour etc

s 11 am Act 2001 No 70 amdt 2.9

Definitions for pt 3

s 12 hdg sub Act 2001 No 70 amdt 2.10
s 12 def **glass measure** am Act 2001 No 70 amdt 2.11

Restrictions on removal of marked glass measure

s 15 am Act 2001 No 70 amdt 2.12, amdt 2.17

Notification by licensee of changed particulars

s 20 am A2009-49 amdt 3.196

Restrictions on use of measuring instrument for trade

s 22 am Act 2001 No 70 amdt 2.13, amdt 2.17

Subdivision of scale spacing

s 23 am Act 2001 No 70 amdt 2.14, amdt 2.17

Measurement of liquid

s 24 am Act 2001 No 70 amdt 2.14, amdt 2.17

Measurement of precious stones

s 25 am Act 2001 No 70 amdt 2.15–2.17

Measurement of precious metals

s 26 am Act 2001 No 70 amdt 2.16, amdt 2.17

Dictionary

dict ins A2007-3 amdt 3.512
am A2009-49 amdt 3.197
def **approval** ins A2007-3 amdt 3.512
def **approved** reloc from s 2 A2007-3 amdt 3.510
def **glass** ins A2007-3 amdt 3.512
def **glass measure** ins A2007-3 amdt 3.512
def **licence** reloc from s 2 A2007-3 amdt 3.510

Endnotes

5 Earlier replications

def **owner** reloc from s 2 A2007-3 amdt 3.510
def **testing facilities** ins A2007-3 amdt 3.512

5 Earlier replications

Some earlier replications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised replication has been published in electronic pdf format on the ACT legislation register. A selection of authorised replications have also been published in printed format. These replications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised replication are identical.

Replication No and date	Effective	Last amendment made by	Replication for
R1 16 Aug 2002	16 Aug 2002– 2 Nov 2004	A2001-70	amendments by A2001-44 and A2001-70
R2 3 Nov 2004	3 Nov 2004– 11 Apr 2007	A2001-70	editorial amendments under Legislation Act
R3 12 Apr 2007	12 Apr 2007– 16 Dec 2009	A2007-3	amendments by A2007-3

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