

REPUBLIC OF SOUTH AFRICA

LEGAL METROLOGY BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 36799 of 28 August 2013)
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

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BILL

To provide for the administration and maintenance of legal metrology technical regulations in order to promote fair trade and to protect public health and safety and the environment; and to provide for matters connected therewith.

PREAMBLE

Whereas it is desirable to—

- promote fair trade and to protect public health and safety and the environment;
- provide for the implementation of a regulatory and compliance system for legal metrology by the National Regulator for Compulsory Specifications and for the administration and maintenance of legal metrology technical regulations; and
- provide for market surveillance by the National Regulator for Compulsory Specifications in order to ensure compliance with legal metrology technical regulations,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

1. In this Act, unless the context indicates otherwise—
 - “**Chief Executive Officer**” means the Chief Executive Officer appointed in terms of section 6 of the National Regulator for Compulsory Specifications Act;
 - “**correct**”, in relation to any measuring instrument, means compliance with any prescribed accuracy requirements; 15
 - “**distinctive mark**” means the mark that is placed on a product or measuring instrument to indicate that such product or measuring instrument complies with the requirements of the relevant voluntary scheme introduced in terms of section 37;
 - “**importer**” means an importer defined in section 1(1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964); 20
 - “**initial verification**” means verification of a new measuring instrument that has not been previously verified;
 - “**item**” means an individual article or unit;
 - “**legal metrology technical regulation**” means a document which lays down product and measuring instrument characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory; 25
 - “**manufacture**” includes produce, assemble, alter, modify, adapt, convert, process or treat; 30
 - “**market surveillance inspector**” means a market surveillance inspector appointed in terms of section 6;
 - “**measuring instrument**”—
 - (a) means any appliance, equipment, instrument or apparatus or any combination thereof by means of which a measurement of physical quantity, expressed in any measurement unit or a mathematical function of measurement unit, may be made; and 35
 - (b) includes any appliance, equipment, instrument or apparatus or any combination thereof by means of which a grading or counting in connection with the measurement of any physical quantity or a counting by means of gravitation may be effected; 40
 - “**measurement unit**” means any unit published in terms of section 2 of the Measurement Units and Measurement Standards Act, 2006 (Act No. 18 of 2006), and includes the units, the appropriate symbols and the rules of the International System of Units; 45
 - “**Minister**” means the Minister of Trade and Industry;
 - “**National Regulator**” means the National Regulator for Compulsory Specifications of South Africa established by section 3(1) of the National Regulator for Compulsory Specifications Act;
 - “**National Regulator for Compulsory Specifications Act**” means the National Regulator for Compulsory Specifications Act, 2008 (Act No. 5 of 2008); 50
 - “**person responsible for repairs**” means any person registered in terms of section 10 to repair a measuring instrument;
 - “**physical quantity**”, in relation to measuring, means any concept capable of being measured and of which the magnitude can be expressed in terms of a measurement unit; 55

- “premises”** means any land or any building or other structure, and includes any train, boat, ship, aircraft or any other vehicle;
- “prescribe”** means prescribe by regulation;
- “prescribed purpose”** means such purpose as may be prescribed in relation to—
- (a) the use, possession, manufacture or import of any measuring instrument;
 - (b) the manner and result of measurement in the fields of trade, health, safety and environment and any other measurement of a legal nature; and
 - (c) the expression of the quantity of any product;
- “regulation”** means any regulation made in terms of section 38, and includes a legal metrology technical regulation;
- “repair”**, in relation to any measuring instrument, means any work carried out on, or any adjustment made to, such measuring instrument in order to service, restore or maintain it in a certifiable condition, but does not include work carried out on, or adjustment made to, a measuring instrument if such work or adjustment does not in any way change the metrological characteristics or the accuracy of such measuring instrument;
- “repair body”** means a body designated as repair body in terms of section 9;
- “SABS”** means the South African Bureau of Standards referred to in section 3 of the Standards Act, 2008 (Act No. 8 of 2008);
- “SANS”** means a South African National Standard approved by the SABS in accordance with the Standards Act, 2008 (Act No. 8 of 2008);
- “sell”** includes to offer, advertise, keep, expose, transmit, convey, deliver, manufacture for sale or prepare for sale, or to exchange or to dispose of for any consideration whatsoever, or to transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid;
- “subsequent verification”**, in relation to any measuring instrument, means verification following the initial verification, and includes—
- (a) verification done after repair that affects the current verification status; and
 - (b) verification at the request of the user;
- “this Act”** includes any regulation;
- “trade”** includes—
- (a) the making, effecting or concluding of any contract, bargain, sale, purchase or transaction, sale of land, or any payment in connection therewith;
 - (b) any payment for services rendered;
 - (c) the collection of tolls, rates, taxes, fines or other fees; and
 - (d) any measurement of a legal nature in connection with which any measuring instrument is used;
- “type approval”** means a decision that a type of measuring instrument complies with the relevant requirements of this Act and is suitable for use for a prescribed purpose in such a way that it is expected to provide reliable measurement results over a defined period of time;
- “unauthorised measurement unit”** means a measurement unit other than a measurement unit permitted by this Act;
- “unverified”**, in relation to a measuring instrument that has to be verified or subsequently verified under this Act, means not so verified or not so subsequently verified;
- “verification body”** means a body—
- (a) accredited in terms of section 22 of the Accreditation for Conformity Assessment, Calibration and Good Laboratory Practice Act, 2006 (Act No. 19 of 2006), to verify measuring instruments and designated in terms of section 7 of this Act to verify measuring instruments; or
 - (b) designated in terms of section 7 of this Act to verify measuring instruments without accreditation contemplated in paragraph (a) where no accreditation scheme is available;
- “verification mark”** means a mark that—
- (a) is as far as is possible indelible;
 - (b) indicates that a measuring instrument has been verified; and
 - (c) has been authorised in terms of section 37;
- “verification officer”** means a person appointed as verification officer in terms of section 8;
- “verify”**, in relation to a measuring instrument, means the procedure of examination and issuing of a verification certificate and, if required, marking with a verification mark, that ascertains and confirms that the measuring instrument

complies with a legal metrology technical regulation, and includes initial verification and subsequent verification.

CHAPTER I

APPLICATION, OBJECTS AND ADMINISTRATION OF ACT

Application and objects of Act 5

2. (1) This Act applies to measurable products and services, measurements in trade, health, safety and the environment and any measuring instrument used for a prescribed purpose.

(2) The objects of this Act are to—

- (a) expand the scope of trade metrology to legal metrology; 10
- (b) strengthen the enforcement of legal metrology;
- (c) develop the appropriate legislative framework;
- (d) to protect consumers against short measure;
- (e) establish a level playing field for industry; and
- (f) support local industry competitiveness. 15

Administration of Act

3. Subject to the control of the Minister, this Act is administered by the National Regulator.

Functions of National Regulator

4. (1) The National Regulator must— 20

- (a) make recommendations to the Minister with regard to legal metrology technical regulations;
- (b) administer and maintain legal metrology technical regulations;
- (c) carry out market surveillance through inspections in order to monitor compliance with legal metrology technical regulations; 25
- (d) enforce compliance with legal metrology technical regulations;
- (e) ensure access to and maintain the equipment required for market surveillance inspection, verification and type approval examination purposes;
- (f) approve and verify measuring instruments;
- (g) control the repair of measuring instruments; 30
- (h) inform the South African commerce, industry and the public about legal metrology technical regulations;
- (i) establish and maintain the necessary expertise at an internationally acceptable level;
- (j) participate and represent South Africa at international and regional levels; 35
- (k) co-ordinate, interact and manage the international, regional and bilateral interactions with other institutes responsible for legal metrology;
- (l) issue certificates that permit instruments or products to be sold or services to be supplied; and
- (m) provide for compliance schemes and control the use of distinctive marks and verification marks. 40

(2) The National Regulator may—

- (a) establish such specialist consultative committees as may be prescribed, to provide input into the process, to interpret and implement legal metrology technical regulations; 45
- (b) obtain membership of, participate in and develop relationships with regional and international bodies having objects similar to the those of the National Regulator;
- (c) participate in the International Organisation for Legal Metrology, established by the “Convention establishing an International Organisation of Legal Metrology” done at Paris on 12 October 1955, and any other institute responsible for legal metrology; 50
- (d) enter into agreements with service providers to inspect, examine, test or analyse samples or verify measuring instruments on behalf of the National Regulator; 55

- (e) obtain the cooperation of other organs of state, and enter into agreements with them; and
- (f) provide calibration services for measurement standards.

Delegation of functions

5. (1) The Minister may, subject to such conditions as he or she may impose, delegate or assign to the Chief Executive Officer any power or duty conferred or imposed on him or her by this Act. 5

(2) The Chief Executive Officer may, subject to such conditions as he or she may impose, delegate or assign any power or duty—

- (a) conferred or imposed on him or her in terms of this Act; or 10
- (b) delegated or assigned to him or her by the Minister in terms of subsection (1), to any market surveillance inspector or verification officer.

Appointment of market surveillance inspectors

6. (1) The Chief Executive Officer may appoint any person with the prescribed qualifications as market surveillance inspector, in general or for a specific purpose. 15

(2) The Chief Executive Officer may appoint an employee of the National Regulator or any organ of state as market surveillance inspector.

(3) The Chief Executive Officer must furnish a market surveillance inspector appointed in terms of this section with a certificate signed by the Chief Executive Officer stating that he or she has been appointed as a market surveillance inspector, in general or for a specific purpose, as the case may be. 20

Designation of verification bodies

7. The Chief Executive Officer may, in the prescribed manner, designate a verification body that meets the prescribed criteria to verify measuring instruments in accordance with this Act. 25

Appointment of verification officers

8. (1) The Chief Executive Officer may, in the prescribed manner, appoint any person with the prescribed competencies as a verification officer to verify measuring instruments of any particular kind in accordance with this Act.

(2) The Chief Executive Officer may appoint an employee of the National Regulator or any designated verification body as a verification officer. 30

(3) The Chief Executive Officer must furnish a verification officer with a certificate stating that the verification officer may undertake verifications in terms of the Act.

Designation of repair bodies

9. The Chief Executive Officer may, in the prescribed manner, designate a repair body that meets the prescribed criteria to repair measuring instruments of any particular kind in accordance with this Act. 35

Registration of person responsible for repairs

10. (1) The Chief Executive Officer may, in the prescribed manner, register any person with the prescribed competencies as a person responsible for repairs of any particular kind in accordance with this Act. 40

(2) The Chief Executive Officer must furnish a person responsible for repairs with a certificate stating that such person may undertake repairs in terms of this Act.

Registration of importers, manufacturers and persons who offer for sale any prescribed measuring instrument, product or service 45

11. Any importer, manufacturer or person who offers for sale any prescribed measuring instrument, product or service must register with the Chief Executive Officer in the prescribed manner and is subject to any relevant legal metrology technical regulation.

Advisory Forum

- 12.** (1) The Minister must establish an Advisory Forum with a balance of interests consisting of representatives of organisations who have an interest in the matters contemplated in this Act.
- (2) The Advisory Forum must advise the Minister on— 5
- (a) matters in respect of which the National Regulator could play a role, including matters pertaining to packaging of products, the design of instruments, accuracy of measurements, type approval, verification and inspection; and
 - (b) any other matter on which the Minister requests advice relating to legal metrology. 10
- (3) The National Regulator must establish terms of reference and rules for the Advisory Forum which must be documented and publicly available.

Funds of National Regulator in respect of legal metrology

- 13.** (1) For the purposes of this Act, the funds of the National Regulator consist of— 15
- (a) money appropriated by Parliament for that purpose;
 - (b) fees charged in terms of section 17(3)(b);
 - (c) income derived from its services; and
 - (d) money received from any other source.
- (2) The Minister, at the recommendation from the National Regulator and with the approval of the Minister of Finance, must set the amounts to be charged for the rendering of services contemplated in subsection (1)(c) by notice in the *Gazette*. 20
- (3) Amounts set in terms of subsection (2) may provide for payments in respect of the delay of the proceedings as a result of an omission by the person who contracts the services of the National Regulator.

Fees charged by designated bodies 25

- 14.** (1) A verification body may charge such fees as may be agreed upon between that verification body and the person submitting the measuring instrument for verification contemplated in section 24.
- (2) A repair body may charge such fees as may be agreed upon between that repair body and the person submitting a measuring instrument for repair. 30

CHAPTER II

LEGAL METROLOGY TECHNICAL REGULATIONS

Legal metrology technical regulations

- 15.** (1) The Minister may, in respect of any measuring instrument or any product or service which may affect fair trade, industrialisation, public health and safety or the environment, or in respect of any other prescribed purpose, on the recommendation of the National Regulator and by notice in the *Gazette*— 35
- (a) declare a SANS or a provision of a SANS to be a legal metrology technical regulation—
 - (i) by referring to the title and the number of that standard only, without indicating the year or edition number, and if that SANS is amended, the amended SANS must be regarded as having been incorporated; or
 - (ii) by referring to the title, number and year or edition number of that SANS;
 - (b) declare an amended SANS or an amended provision of a SANS to be a legal metrology technical regulation if the original declaration was made in terms of paragraph (a)(ii);
 - (c) declare or amend a legal metrology technical regulation if a SANS or a provision of a SANS is not available in terms of paragraphs (a) and (b); or
 - (d) withdraw a legal metrology technical regulation. 50
- (2) The Minister may not publish a notice under subsection (1)(a), (b) or (c), unless a preliminary notice has been published in the *Gazette*—
- (a) setting out full particulars of the proposed legal metrology technical regulation or amendment; and

- (b) in which interested persons are invited to comment on the proposed legal metrology technical regulation in writing by not less than two months after the date of the publication of the preliminary notice.
- (3) A notice under subsection (1)(a), (b) or (c)—
 - (a) must contain full particulars of the legal metrology technical regulation or amendment thereto; 5
 - (b) comes into operation on a date fixed in the notice, which date may not be less than two months after the date of publication of the notice; and
 - (c) may fix different dates on which different provisions of a legal metrology technical regulation come into operation. 10
- (4) The Minister may alter a date referred to in subsection (3)(b) or (c) by notice in the *Gazette*.
- (5) The Minister may prescribe the consultation process which must precede the declaration or amendment of a legal metrology technical regulation contemplated in subsection (1). 15

Proposals to introduce or amend legal metrology technical regulations

- 16.** (1) A proposal to introduce or amend a legal metrology technical regulation must be submitted to the Chief Executive Officer in writing and be motivated by the person proposing that declaration or amendment.
- (2) The National Regulator must, if the proposal referred to in subsection (1) is feasible— 20
- (a) request SABS to draft a SANS that may be applied in respect of the proposal contemplated in subsection (1); and
 - (b) agree on a time limit with SABS, by which time such SANS must be duly published by SABS. 25
- (3) (a) If a proposal referred to in subsection (1) is feasible and a SANS is published by SABS in terms of subsection (2)(b) or it is not possible to include the contemplated requirements in a SANS, the National Regulator must proceed with the prescribed consultation process.
- (b) In the case of a new legal metrology technical regulation the consultation process must include a regulatory risk and impact assessment. 30

Effect of declaration as legal metrology technical regulation

- 17.** (1) No person may import, manufacture, sell or supply a measuring instrument or product, or render a service, to which a legal metrology technical regulation applies, except in accordance with that legal metrology technical regulation. 35
- (2) No person may import, sell or supply a measuring instrument or product, or render a service, to which a legal metrology technical regulation applies, unless—
- (a) the measuring instrument, product or service complies with, or has been manufactured in accordance with, the legal metrology technical regulation; or
 - (b) if applicable, the distinctive mark referred to in section 37(1) has been applied to the measuring instrument, product or service in the prescribed manner and the measuring instrument, product or service has been marked in accordance with any requirements in terms of section 37(2). 40
- (3) Any person who imports, sells or supplies a measuring instrument, product or service to which a legal metrology technical regulation applies, must— 45
- (a) keep and make available to a surveillance inspector such records as may be prescribed; and
 - (b) pay such fees to the National Regulator as may be prescribed.

Measuring instrument, product or service not conforming to legal metrology technical regulation 50

- 18.** (1) If the National Regulator finds that a measuring instrument, product or service does not conform to the legal metrology technical regulation concerned, the National Regulator must direct in writing that such measuring instrument, product or service must be brought into compliance with any relevant technical regulation, failing which the measuring instrument, product or service must be confiscated, destroyed or returned to the country of origin. 55

(2) Any cost incurred by the National Regulator for the confiscation, destruction or otherwise dealing with the measuring instrument, product or service contemplated in subsection (1) may be recovered from the person using such measuring instrument or product, or rendering such service.

(3) The National Regulator must inform the Minister in writing of any final action taken in terms of this section within 21 days of such action being taken. 5

CHAPTER III

MEASUREMENT STANDARDS

Measurement standards used by market surveillance inspectors, verification officers and persons responsible for repairs 10

19. The National Regulator or any appointed service provider, designated verification body or repair body must provide such measurement standards as may be prescribed for use by their own personnel for the purposes of the performance of his or her functions under this Act.

CHAPTER IV 15

MARKET SURVEILLANCE INSPECTIONS

Powers of market surveillance inspectors

20. (1) In order to monitor and enforce compliance with the provisions of this Act, and subject to the conditions of his or her appointment and the production of an inspection authority issued by the Chief Executive Officer, a market surveillance inspector may, at any reasonable time and without prior notice, enter any premises, other than a private dwelling, or stop any vehicle in or upon which— 20

- (a) a measuring instrument, product or service in respect of which there is a legal metrology technical regulation, is—
 - (i) manufactured or sold; 25
 - (ii) stored, kept for sale or used in the course of any business; or
 - (iii) stored for any purpose in connection with the import or the export of any measuring instrument, product or service;
- (b) any manufacture, sale, use or storage is reasonably suspected; or
- (c) any records with regard to the import, manufacture, sale or use of any measuring instrument, product or service referred to in paragraph (a) or (b) are kept. 30

- (2) A market surveillance inspector referred to in subsection (1) may—
 - (a) inspect any measuring instrument, product or other related matter which may in terms of this Act be inspected, or order that for the purposes of inspection such measuring instrument, product or other related matter including documentation pertaining to the inspection, be placed at his or her disposal; 35
 - (b) seize and retain subject to subsection (8) or suspend the use or provision of any measuring instrument, product or service which does not conform to or has not been manufactured or provided in accordance with a legal metrology technical regulation that applies to it or any record, document or certificate pertaining to such measuring instrument, product or service; 40
 - (c) order a person offering any measuring instrument or product for sale or offering a service, to stop such offering if not in accordance with a legal metrology technical regulation that applies to it; 45
 - (d) order the person in whose possession or on whose premises or vehicle such non-compliant measuring instrument, product or service was found, or the agent or employee of such person, to withdraw the whole, or any part, of such product or service from sale or to withdraw such measuring instrument from further use or sale or to take such other steps as that market surveillance inspector may deem necessary; and 50
 - (e) open products or instruments to which a regulation applies, in order to inspect, examine, test or analyse them.

(3) A market surveillance inspector referred to in subsection (1) may enter a private dwelling at which no business is conducted or any place other than a place referred to in subsection (1) only—

- (a) with the consent of the owner or occupier; or
- (b) if authorised to do so by a warrant issued in terms of subsection (4). 5

(4) A warrant contemplated in subsection (3) may be issued by a judge or a magistrate if it appears from written information given by the market surveillance inspector on oath or affirmation that there are reasonable grounds for believing that a contravention of this Act has been or is being committed within the area of jurisdiction of that judge or magistrate. 10

(5) The warrant contemplated in subsection (3) must specify the parameters within which the market surveillance inspector may perform an entry, search or seizure.

(6) A market surveillance inspector entering any premises or vehicle referred to in subsections (1) and (3) may be accompanied by an interpreter.

(7) A market surveillance inspector who enters and inspects any premises or vehicle under this section must conduct the entry and inspection with strict regard for decency and order, and with regard to each person's right to dignity, freedom, security and privacy. 15

(8) A market surveillance inspector who removes anything from a premises or a vehicle being searched must— 20

- (a) issue a receipt for it to the owner or person in control of the premises or vehicle; and
- (b) return it as soon as practicable after it has served the purpose for which it was removed.

(9) Any person, or any agent or employee of such person, in charge of a measuring instrument, product or service that is being inspected by any market surveillance inspector referred to in subsection (1) must at the request of any such market surveillance inspector, render such assistance as may be necessary for the purposes of the inspection by the market surveillance inspector. 25

(10) A market surveillance inspector must reject, by defacing in the prescribed manner, the verification mark on any measuring instrument which— 30

- (a) he or she finds to be false, defective or inaccurate; or
- (b) does not comply with any—
 - (i) requirement of this Act;
 - (ii) limitation or condition regarding verification in terms of section 17(2)(a); or 35
 - (iii) prescribed requirement or other requirement contemplated in section 22(2)(b) or (c).

(11) (a) Any measuring instrument contemplated in subsection (10) must be regarded as unverified. 40

(b) Any market surveillance inspector who defaces a verification mark on any measuring instrument contemplated in subsection (10) must at the same time issue to the person in charge of the measuring instrument a certificate stating the reason for the defacement.

Market surveillance inspection offences 45

21. A person is guilty of an offence if that person—

- (a) hinders or obstructs any market surveillance inspector in the exercise of his or her powers under section 20;
- (b) fails on demand to produce or place at the disposal of any market surveillance inspector any measuring instrument, product or other related evidence, including documentation contemplated in section 20(2)(a); 50
- (c) fails to uphold an order given by any market surveillance inspector in terms of section 20(2)(c) or (d);
- (d) refuses to permit any market surveillance inspector to open any products or instrument in terms of section 20(2)(e); 55
- (e) fails to render any assistance to any market surveillance inspector if so requested by the market surveillance inspector in terms of section 20(9); or
- (f) falsely holds himself or herself out to be a market surveillance inspector.

CHAPTER V

TYPE APPROVAL AND VERIFICATION OF MEASURING INSTRUMENTS

Type approval of measuring instruments

22. (1) Every type of measuring instrument used for a prescribed purpose is subject to type approval, unless excluded by regulation. 5

(2) (a) A type of measuring instrument contemplated in subsection (1) that is not excluded must be submitted for type approval in accordance with the prescribed requirements.

(b) If the type of measuring instrument contemplated in paragraph (a) complies with the prescribed requirements or requirements set in subsection (c), the Chief Executive Officer must issue a type approval certificate. 10

(c) The Chief Executive Officer may, in consultation with the submitter, set requirements and conditions pertaining to the use thereof, for measuring instruments where these are not prescribed, until such time as a legal metrology technical regulation is published in terms of section 15. 15

(d) The National Regulator may, subject to such conditions, limitations or requirements and for a specified period, permit in writing the use, or supply for use, for a prescribed purpose of a specimen of a model of a measuring instrument referred to in subsection (2)(a) and for a specified number of such specimens, before the Chief Executive Officer has approved thereof in terms of subsection (2)(b). 20

(e) The measuring instrument contemplated in paragraph (d) is, during the period of the written permission, excluded from the provisions of section 24.

(3) The Chief Executive Officer may withdraw or amend any certificate issued in terms of subsection (2)(b) if the measuring instrument no longer complies with the requirements. 25

(4) The period of validity of a certificate issued in terms of subsection (2)(b) is as prescribed.

Type approval offences

23. (1) A person is guilty of an offence if he or she, without the written permission of the Chief Executive Officer in terms of section 22(2)(d)— 30

- (a) sells or makes available for use any new type of a measuring instrument contemplated in section 22(2)(a) before the issue of a certificate in respect of that new type of measuring instrument in terms of section 22(2)(b);
- (b) alters any type or modified type of a measuring instrument in respect of which a certificate was issued in terms of section 22(2)(b) with regard to any portion of the material of which or the mode in which or the principle according to which the measuring instrument was made or its intended use, and represents to any person that the type so altered is the type in respect of which a certificate in terms of section 22(2)(b) was issued. 35

(2) A person is guilty of an offence if he or she represents to any other person that a measuring instrument may be used— 40

- (a) for a particular purpose whilst it may not be so used in terms of section 22; or
- (b) in a particular manner whilst it may not be so used in terms of section 22.

Verification of measuring instruments

24. (1) All measuring instruments, including those used by the State for a prescribed purpose, are subject to initial verification and subsequent verification in accordance with the relevant legal metrology technical regulations, unless the measuring instrument is exempted by regulation from initial verification or subsequent verification. 45

(2) Measuring instruments must be submitted for verification at the prescribed time and in the prescribed manner. 50

Powers of verification officers

25. (1) For the purposes of this Act, a verification officer may verify any measuring instrument for which he or she is appointed in terms of this Act.

(2) The Minister may prescribe requirements to restrict verification officers from repairing prescribed measuring instruments.

(3) (a) If a verification officer in the exercise of his or her powers contemplated in subsection (1) finds that the measuring instrument in question does not comply with the requirements of this Act, the verification officer must reject such measuring instrument by defacing the verification mark in the prescribed manner. 5

(b) A measuring instrument of which the verification mark has been defaced in terms of paragraph (a) must be regarded as unverified.

(c) A verification officer who defaces any verification mark on any measuring instrument in terms of paragraph (a) must, immediately after he or she has defaced the verification mark, issue to the person in charge of the measuring instrument in question a certificate stating the reason for the defacement and a copy of that certificate must be submitted to the National Regulator. 10

(4) If a verification officer in the exercise of his or her powers contemplated in subsection (1) finds that the measuring instrument in question complies with the requirements of this Act, he or she must— 15

(a) if a verification mark is prescribed, apply such verification mark in the prescribed manner to the measuring instrument; and

(b) at the same time issue a verification certificate to the person in charge of the measuring instrument. 20

Offences in connection with verification of instruments

26. (1) A verification officer is guilty of an offence if he or she—

(a) consents to the continued use of a measuring instrument that was rejected in terms of section 25(3)(a);

(b) issues a document to the effect that a measuring instrument has been verified under this Act if that measuring instrument has not been verified; 25

(c) uses a verification mark for any purpose other than the intended purpose;

(d) fails to reject a measuring instrument which is found not to comply with the requirements of this Act;

(e) repairs and verifies a measuring instrument which he or she is not permitted to repair and verify in terms of section 25(2) or repairs an instrument for which he or she is not registered to repair in terms of section 10. 30

(f) unless a measuring instrument has been submitted or made available to him or her by the owner or user thereof for verification—

(i) falsely creates the impression with any owner or user that a measuring instrument is subject to verification by the verification officer; or 35

(ii) compels any owner or user to have a measuring instrument verified by the verification officer.

(2) A person is guilty of an offence if he or she—

(a) forges or counterfeits any stamp or die used for the verification of any measuring instrument; 40

(b) willfully falsifies or tampers with a measuring instrument used for any prescribed purpose;

(c) otherwise than in the capacity of a market surveillance inspector, a verification officer or a person responsible for repairs acting in terms of any regulation and save as provided for in section 27, obliterates or removes from any measuring instrument any verification mark or any part thereof; 45

(d) otherwise than in the capacity of a verification officer, places upon any measuring instrument any mark purporting to indicate that such measuring instrument has been verified; or 50

(e) sells, or disposes of, for use for any prescribed purpose, any measuring instrument that has been tampered with or that has been falsified or on which the verification mark has been defaced in terms of section 25(3)(a). 50

(3) Any verification body that is not designated in terms of section 7 and that verifies a measuring instrument is guilty of an offence. 55

CHAPTER VI

REPAIR OF MEASURING INSTRUMENTS

Functions of persons responsible for repairs

27. (1) A person responsible for repairs of any instrument used for a prescribed purpose must be— 5
- (a) employed by a designated repair body; and
 - (b) registered in terms of section 10.
- (2) The Minister may prescribe requirements to restrict a person responsible for repairs from verifying a measuring instrument after he or she has repaired it.
- (3) Subject to any prescribed instructions relating to the defacing, obliteration or breaking of any verification mark, a person responsible for repairs— 10
- (a) may not repair any measuring instrument used for any prescribed purpose unless he or she has first permanently obliterated any verification mark, including a mark defaced in terms of section 25(3)(a), on that measuring instrument; and 15
 - (b) who has repaired any measuring instrument used for any prescribed purpose must, before further use of that measuring instrument, furnish a guarantee signed by him or her to the user or the owner of that measuring instrument that the measuring instrument is correct and verifiable under this Act, unless that measuring instrument is verified immediately after the repair. 20
- (4) A guarantee issued in terms of subsection (3)(b) is valid for a prescribed period.
- (5) A copy of the guarantee contemplated in subsection (3)(b) must be forwarded to the National Regulator in the prescribed manner.
- (6) (a) No person may use for any prescribed purpose any measuring instrument that has been repaired, unless that measuring instrument has been verified or a guarantee in writing has in terms of subsection (3)(b) been issued in respect of that measuring instrument. 25
- (b) If a person relies on a guarantee contemplated in paragraph (a), that person must ensure that the measuring instrument is verified before the expiry of the guarantee.
- (7) Work carried out on, or an adjustment made to, a measuring instrument that does not constitute a repair, does not invalidate any current verification in respect of that measuring instrument as long as the person who worked on or adjusted the measuring instrument applies protective seals where these have been broken and issues a prescribed certificate stating— 30
- (a) the nature of the work done or the adjustment made; 35
 - (b) the serial number and date of issue of the current valid verification certificate pertaining to that instrument; and
 - (c) that the work done or the adjustment made did not affect the metrological integrity of the measuring instrument or invalidate the current verification.

Offences in respect of repair of measuring instruments 40

28. (1) A person is guilty of an offence if that person—
- (a) repairs a measuring instrument used for a prescribed purpose whilst not registered in terms of section 10;
 - (b) after repair verifies the measuring instrument which he or she may not verify in terms of section 27(2); 45
 - (c) contravenes or fails to comply with section 27(3)(a) or (b);
 - (d) uses a measuring instrument for any prescribed purpose that has been repaired without having it immediately thereafter verified, unless that measuring instrument is covered by a guarantee contemplated in section 27(3)(b); or
 - (e) uses a measuring instrument for a prescribed purpose after the guarantee contemplated in section 27(3)(b) has expired, unless that measuring instrument has been verified before the expiry of that guarantee. 50
- (2) A repair body is guilty of an offence if that repair body repairs a measuring instrument used for a prescribed purpose whilst it is not designated in terms of section 9 as a repair body. 55

CHAPTER VII

MANNER OF USE, POSSESSION OF OR SALE OF MEASURING INSTRUMENTS AND PRODUCTS

Restriction on and prohibition of manufacture, import, use or possession of certain measuring instruments 5

29. Notwithstanding anything to the contrary in this Act or any other law, the Minister may, by notice in the *Gazette*, restrict or prohibit the manufacture, import, use or possession of any measuring instrument or container to such extent and under such conditions as may be necessary in order to achieve the object of effecting the application of measurement units of the International System of Units and any other prescribed measurement unit in the Republic. 10

Sale, supply and use of unverified measuring instruments

30. (1) (a) No person may sell, or supply for use, any unverified measuring instrument for any prescribed purpose if such measuring instrument must be verified in terms of the Act, unless he or she has obtained prior permission in writing for such sale or supply from the Chief Executive Officer. 15

(b) The Chief Executive Officer may issue such permission only if—

- (i) he or she is satisfied that the seller or supplier cannot, without undue delay or inconvenience, cause such instrument to be verified before its sale or supply; and
- (ii) the seller or supplier furnishes the Chief Executive Officer with a guarantee in a prescribed format and under such conditions as may be prescribed to the effect that the instrument is correct and verifiable under this Act. 20

(c) The Chief Executive Officer must specify in the permission a date on which the permission expires.

(2) No person may use an unverified measuring instrument unless he or she has obtained the permission of the Chief Executive Officer. 25

(3) Notwithstanding subsection (2), a person who has acquired an unverified measuring instrument from a person contemplated in subsection (1)(a) and covered by permission contemplated in subsection (1)(b), may use such measuring instrument but he or she must cause the measuring instrument to be verified before the date on which the permission expires. 30

Offences in respect of manufacture or selling of false, defective or inaccurate measuring instruments

31. (1) A person who manufactures, sells or causes to be sold any false, defective or inaccurate measuring instrument, is guilty of an offence. 35

(2) A person who manufactures, sells, or causes to be sold, any measuring instrument for any prescribed purpose that does not comply with the requirements of a notice issued under section 29 or with the requirements of any applicable legal metrology technical regulation, is guilty of an offence.

(3) A person is guilty of an offence if that person— 40

- (a) furnishes a guarantee in terms of section 30(1)(b)(ii) in respect of any measuring instrument which is not correct and verifiable under this Act;
- (b) contravenes or fails to comply with section 30(2); or
- (c) uses a measuring instrument contemplated in section 30(3) after the date on which the permission expires without having caused the measuring instrument to be verified. 45

Measuring instruments to be wholly exposed

32. (1) Any person who, in the presence of the purchaser of any product and in connection with the measuring of the quantity of such product, uses any measuring instrument, must keep such measuring instrument wholly exposed to the view of such purchaser. 50

(2) Any person who uses any measuring instrument in the presence of a person in respect of whom the first mentioned person provides a service must keep such

measuring instrument wholly exposed to the view of the person in respect of whom the first mentioned person provides a service.

(3) Any person who uses any measuring instrument other than in the presence of a person in respect of whom the first mentioned person provides a service, must grant free access to such measuring instrument and its indications to any person affected by or to whom the measurement applies. 5

(4) Any person who, in the retail trade, sells any product prepacked by him or her must, at the request of the purchaser of such product who wishes to measure the quantity of the product purchased, make available to that purchaser a verified measuring instrument suitable for measuring the quantity of the product in question. 10

Prohibition of false statement as to quantity

33. (1) Subject to subsection (2), any person who directly or indirectly makes any false, incorrect or untrue declaration or statement or willfully misleads any person as to the quantity, expressed by number or in terms of any measurement unit, of any item in connection with its purchase, sale, counting or measurement or in the computation of any charges for services rendered or for any other measurement of a legal nature on the basis of number or measurement, is guilty of an offence. 15

(2) If the difference between the actual and any represented quantity, expressed by number or in terms of any measurement unit, in respect of which any declaration or statement contemplated in subsection (1) is made and such difference is permissible in terms of this Act, that declaration or statement must not be regarded as false, incorrect or untrue merely because of the existence of that difference. 20

(3) Any person who sells anything or causes anything to be sold, the quantity of which is expressed by number or in terms of a measurement unit, of which the actual quantity is short of that demanded of, or represented by, the seller, is guilty of an offence, unless the shortage is prescribed in a legal metrology technical regulation. 25

Measurement for prescribed purpose to be effected in terms of certain measurement units and by means of verified measuring instruments

34. (1) Any contract, bargain, sale, purchase or transaction made or effected in the Republic in respect of any land situated therein or in respect of any interest in land so situated or in respect of any product, service rendered or measurement for any other prescribed purpose, the quantity of which is expressed in terms of any measurement unit, must be made or effected in accordance with a prescribed measurement unit for such purpose. 30

(2) Any tolls, rates, taxes, fines or other fees charged or collected according to measurement of a physical quantity, must be charged or collected in accordance with such measurement units as may be prescribed. 35

(3) No measurement for a prescribed purpose may be made or effected in the Republic by means of any measuring instrument not permitted by this Act or which is false, defective or inaccurate or which, in the case of a measuring instrument which is required under this Act to be verified, is unverified. 40

(4) Subject to subsection (5), no person may import into the Republic any goods, including prepacked products, the quantity of which is expressed thereon or on any document relating thereto in terms of any unauthorised measurement unit, unless the equivalent of the quantity so expressed is also expressed in terms of a measurement unit prescribed for such purpose. 45

(5) Subsection (4) does not apply to any products which the Chief Executive Officer has exempted in writing or in respect of which the importer satisfies the Chief Executive Officer and the competent customs officer that such products are being imported for manufacturing purposes and not for sale. 50

(6) Any person who expresses the quantity of any product for sale in a manner or in terms of a measurement unit not prescribed for such purpose or in terms of any unauthorised measurement unit, is guilty of an offence.

Advertisement of measurable products and services

35. (1) No person may advertise any measurable product or service to which this Act applies unless the measurement referred to in the advertisement is expressed in a manner or in terms of such measurement unit as may be prescribed for that product or service or 55

unless he or she has obtained prior permission in writing from the Chief Executive Officer for other units to be used.

(2) For the purposes of this section, “advertisement”, in relation to any measurable product or service to which this Act apply, means any commercial communication or action brought to the attention of any member of the public.

(3) A person that contravenes or fails to comply with subsection (1), is guilty of an offence.

Manner of selling products

36. (1) No person may—

(a) sell any product by mass unless by net mass; 10

(b) sell any fluid unless, with due allowance for any prescribed limit of error, the actual liquid contents by volume at a prescribed temperature are indicated in the prescribed manner on the packaging or on any invoice, delivery note or other writing issued in connection with the sale of such fluid;

(c) sell any product the quantity of which is determined at the time of sale thereof unless such quantity is made known to the purchaser in such manner as may be prescribed; 15

(d) sell by mass any prepacked product unless the net mass of such product, with due allowance for such limits of error as may be prescribed, is indicated in the prescribed manner on the package or product or on any invoice, delivery note or other writing issued in connection with the sale of such product; or 20

(e) sell or deliver to a purchaser any product sold by such person by mass and otherwise than in prepacked form, unless the net mass of such product is indicated in the prescribed manner on such product or on any invoice, delivery note or other writing delivered with such product. 25

(2) (a) The prescribed permissible deviations contemplated in subsection (1)(d) must be in respect of any product—

(i) that is subject to variation in mass owing to its properties or to climatic influences; or

(ii) for which mass is only used for the purposes of designating grade or class. 30

(b) Notwithstanding paragraph (a), any product contemplated in—

(i) paragraph (a)(i) must comply with such conditions regarding quantity as may be prescribed; and

(ii) paragraph (a)(ii) must comply with such requirements as may be prescribed.

(3) Subsection (1)(b) and (d) does not apply to products taken from bulk and measured at the time of sale in the presence of the purchaser or his or her agent and sold by volume or net mass determined at such measuring. 35

CHAPTER VIII

COMPLIANCE SCHEMES AND USE OF MARKS

Compliance schemes and use of distinctive marks and verification marks 40

37. (1) The Minister may, on the recommendation of the National Regulator, introduce or abolish a compliance scheme in order to promote the effectual carrying out of the objects of this Act and, if deemed necessary, an associated distinctive mark to supplement the regulation of quantity of goods in prepackaged form or any other matter pertaining to this Act. 45

(2) The Minister must publish the requirements for a scheme contemplated in subsection (1) and any distinctive mark associated therewith by notice in the *Gazette*.

(3) The Chief Executive Officer must authorise the design of verification marks and protective seals for use by verification officers in the prescribed manner, and maintain a register of those verification marks and protective seals. 50

(4) The Chief Executive Officer must authorise and maintain a register of protective seal designs used by persons responsible for repairs and employed by a repair body.

(5) A distinctive mark that has been established in terms of subsection (1), a verification mark and protective seals authorised in terms of subsection (3) and a protective seal authorised in terms of subsection (4), must be regarded as a mark the use of which is prohibited in terms of section 15(1) of the Merchandise Marks Act, 1941 (Act No. 17 of 1941), except by the National Regulator or persons or bodies authorised by the National Regulator to use such mark. 55

CHAPTER IX

GENERAL AND MISCELLANEOUS

Regulations

38. (1) The Minister may make regulations regarding—
- (a) any matter that may or must be prescribed in terms of this Act; 5
 - (b) conditions for the supply, custody, care and verification of all classes of measurement standards and measuring instruments referred to in this Act;
 - (c) the classes or kinds of measuring instruments that must be type approved or verified in terms of this Act;
 - (d) the purposes for which a measuring instrument type approved or verified in terms of this Act may be used; 10
 - (e) the conditions with which any attachment, device or ancillary equipment connected with any type of measuring instrument type approved in terms of this Act must comply;
 - (f) the manner in which the type approval examination of any type of measuring instrument or part thereof submitted for type approval in terms of section 22, must be carried out; 15
 - (g) the material, design and construction of measuring instruments or specified types, classes or kinds of measuring instruments, and the approval of such material, design and construction; 20
 - (h) the imposition of conditions or limitations on the use of any type of measuring instrument;
 - (i) the prohibition of the certification, recertification or use for any prescribed purpose of measuring instruments or specified types, classes or kinds of measuring instruments which are liable to— 25
 - (i) become inaccurate; or
 - (ii) result in or facilitate fraud or deception, or which are not made in accordance with the relevant specifications or are found to be unsuitable for such prescribed purpose;
 - (j) the conditions under which fluids or solids may be sold by quantity, size or dimensions, and the conditions relating to temperature under which fluids must be sold; 30
 - (k) the permissible limits of error or difference which may exist between the actual and represented quantity, size or dimensions of items, sold by number or in accordance with any measurement unit; 35
 - (l) the control of the sale or import for sale, in accordance with any measurement unit, of any product used by the public, and the requirement that such product may only be sold in specified containers or by means of verified or subsequently verified measuring instruments or in accordance with any measurement unit or by number and must be prepacked according to a particular scale of quantities, sizes or dimensions; 40
 - (m) the creation of a list of products which—
 - (i) by reason of their being subject to variation in mass owing to their properties or to climatic influences;
 - (ii) by reason of the use of mass to designate grade or class only; or 45
 - (iii) for any other reason, are exempted from the provisions of this Act relating to the sale of goods by net mass;
 - (n) the size of the letters or any other method of indicating the quantity of the contents of containers at the time of packing; 50
 - (o) the permissible equivalent in which a measurement unit may be expressed in terms of another measurement unit of the same physical quantity;
 - (p) the equivalents giving the permissible quantity of items expressed in terms of the measurement unit of one physical quantity as the quantity expressed in terms of the measurement unit of another physical quantity; 55
 - (q) tables giving the permissible quantity per container used in trade in respect of fruit, vegetables, agricultural produce and any dry products;
 - (r) the forms to be used in connection with this Act;

- (s) the permissible denominations of mass pieces and measures and the manner in which such denominations must be shown on the mass pieces or measures in question;
- (t) the continued use of any measuring instrument after rejection thereof by any market surveillance inspector; 5
- (u) any invoice, delivery note or other documentation referred to in section 36;
- (v) specifications for, and conditions, limitations and requirements in connection with, the use or degree of accuracy of particular vessels; and
- (w) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act. 10

(2) The regulations may authorise the Chief Executive Officer to grant exemption in writing from any provision thereof on such conditions and for such period as he or she may deem fit.

(3) Any regulation prescribing fees must be made with the concurrence of the Minister of Finance. 15

(4) The Minister must, not less than three months before any regulation is made under subsection (1)—

- (a) publish the regulation in the *Gazette* together with a notice declaring his or her intention to make such regulation; 20
- (b) invite interested persons to comment thereon or to make representations with regard thereto; and
- (c) duly consider any comment received.

Penalties

39. A person convicted of an offence under this Act is liable to a fine or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment. 25

Disclosure of certain information

40. (1) The Chief Executive Officer may, if it is necessary in the public interest and to protect the public and the environment, reveal in any manner—

- (a) any information that it is necessary to reveal in order to prevent the public from being misled concerning any aspect regulated by this Act; and 30
- (b) the name of a person who does not comply with any provision of this Act.

(2) The disclosure referred to in subsection (1) may relate also to the trade name and trade mark of a product.

Confidentiality of certain information

35

41. No person who is or was concerned with the performance of any function in terms of this Act, may disclose any information which he or she obtained in the performance of that function, except—

- (a) to the Minister;
- (b) to any person who of necessity requires it for the performance of a function in terms of this Act; 40
- (c) if he or she of necessity has to supply it in the performance of any of his or her functions in terms of this Act;
- (d) if such information is required in terms of any law or as evidence in any court of law; or 45
- (e) to any competent authority which requires the information for the institution, or an investigation with a view to the institution, of any criminal prosecution.

Repeal and amendment of laws and transitional provisions

42. (1) Subject to subsection (2), the laws mentioned in the first column of Schedule 1 are hereby repealed to the extent set out in the third column of that Schedule. 50

(2) Any proclamation, regulation, notice, approval, permission, return, certificate or document issued, made, promulgated, given or granted and any other action taken under any provision of a law repealed by subsection (1), must be regarded as having been issued, made, promulgated, given, granted or taken under the corresponding provision of this Act. 55

(3) Subject to subsection (4), the law mentioned in the first column of Schedule 2 is hereby amended to the extent set out in the third column of that Schedule.

(4) (a) The Board of the National Regulator ceases to exist on the date on which this section takes effect.

(b) The person who occupied the post of Chief Executive Officer of the National Regulator on the date contemplated in paragraph (a), must be regarded as having been appointed as Chief Executive Officer in terms of section 6 for a term to be determined by the Minister. 5

(c) Any committee established in terms of National Regulator for Compulsory Specifications Act and in existence immediately before the date contemplated in paragraph (a), must be regarded as having been established in terms of this Act for a term to be determined by the Minister. 10

Short title and commencement

43. This Act is called the Legal Metrology Act, 2013, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 15

SCHEDULE 1**LAWS REPEALED***(Section 42(1))*

Short title of law	Number and year of law	Extent of repeal
Trade Metrology Act, 1973	Act No. 77 of 1973	The whole
Trade Metrology Amendment Act, 1975	Act No. 34 of 1975	The whole
Trade Metrology Amendment Act, 1984	Act No. 14 of 1984	The whole
Trade Metrology Amendment Act, 1990	Act No. 15 of 1990	The whole
Trade Metrology Amendment Act, 1993	Act No. 17 of 1993	The whole
Trade Metrology Amendment Act, 1994	Act No. 42 of 1994	The whole
Trade Metrology Amendment Act, 1996	Act No. 58 of 1996	The whole

SCHEDULE 2

LAW AMENDED

(Section 42(3))

Short title of law	No and year of law	Extent of amendment
National Regulator for Compulsory Specifications Act, 2008	Act No. 5 of 2008	<p>1. The substitution for sections 6,7 and 8 of the following sections:</p> <p>“Appointment of Chief Executive Officer of National Regulator</p> <p>6. (1) The Minister must appoint a person with suitable qualifications and experience as Chief Executive Officer for a term of five years.</p> <p>(2) The Minister may re-appoint a person as Chief Executive Officer at the expiry of his or her term.</p> <p>(3) The Chief Executive Officer is responsible for the general administration of the National Regulator and for carrying out any functions assigned to it in terms of this Act, and must—</p> <p>(a) perform the functions that are conferred on the Chief Executive Officer by or in terms of this Act;</p> <p>(b) manage and direct the activities of the National Regulator; and</p> <p>(c) supervise the National Regulator’s staff.</p> <p>(4) The Minister must, in consultation with the Minister of Finance, determine the Chief Executive Officer’s remuneration, allowances, benefits and other terms and conditions of employment.</p> <p>(5) The Chief Executive Officer may, on three month’s written notice addressed to the Minister, resign as Chief Executive Officer.</p> <p>(6) The Minister may remove the Chief Executive Officer from office for—</p> <p>(a) serious misconduct;</p> <p>(b) permanent incapacity;</p> <p>(c) engaging in any activity that may undermine the integrity or standing of the National Regulator; or</p> <p>(d) any other legitimate ground that justifies the removal of the Chief Executive Officer.</p> <p>Appointment of Deputy Chief Executive Officer of National Regulator</p> <p>7. (1) The Chief Executive Officer, with the concurrence of the Minister, must appoint a person with suitable qualifications and experience as Deputy Chief Executive Officer for a term of five years.</p>

Short title of law	No and year of law	Extent of amendment
		<p>(2) The Minister may re-appoint a person as <u>Deputy Chief Executive Officer at the expiry of his or her term.</u></p> <p>(3) The Minister must, in consultation with the Minister of Finance, determine the Deputy Chief Executive Officer's remuneration, allowances, benefits and other terms and conditions of employment.</p> <p>(4) The Deputy Chief Executive Officer may, on three month's written notice addressed to the Minister, resign as Deputy Chief Executive Officer.</p> <p>(5) The Minister may remove the Deputy Chief Executive Officer from office for—</p> <p>(a) <u>serious misconduct;</u></p> <p>(b) <u>permanent incapacity;</u></p> <p>(c) <u>engaging in any activity that may undermine the integrity or standing of the National Regulator; or</u></p> <p>(d) <u>any other legitimate ground that justifies the removal of the Chief Executive Officer.</u></p> <p>(6) The Deputy Chief Executive Officer must perform the functions of the Chief Executive Officer whenever—</p> <p>(a) <u>the Chief Executive Officer is unable for any reason to perform those functions; or</u></p> <p>(b) <u>the office of Chief Executive Officer is vacant.</u></p> <p>Appointment of staff of National Regulator</p> <p>8. The Chief Executive Officer may—</p> <p>(a) <u>appoint staff, or contract with any other persons, to assist the National Regulator in carrying out its functions; and</u></p> <p>(b) <u>in consultation with the Minister and the Minister of Finance, determine the remuneration, allowances, benefits, and other terms and conditions of appointment of each member of the staff."</u></p> <p>2. The repeal of sections 9 and 10.</p> <p>3. The substitution for section 11 of the following section:</p> <p>"Committees</p> <p>11. (1) The Minister may appoint one or more specialist committees to advise the National Regulator on the management of its resources or the performance of its functions.</p> <p>(2) The Minister may assign specific powers to the members of a specialist committee for the purposes of performing any function contemplated in subsection (1).</p>

Short title of law	No and year of law	Extent of amendment
		<p>(3) A specialist committee may—</p> <p><u>(a) be established for an indefinite term or for a period determined by the Minister when the committee is established; and</u></p> <p><u>(b) determine its own procedures.</u></p> <p>(4) A specialist committee established under this section must—</p> <p><u>(a) perform its functions impartially and without fear, favour or prejudice; and</u></p> <p><u>(b) consist of—</u></p> <p><u>(i) not more than eight persons who are independent from the National Regulator and who are appointed by the Minister to serve for a period of not more than five years determined by the Minister when the person is appointed; and</u></p> <p><u>(ii) not more than two senior employees of the National Regulator designated by the Chief Executive Officer.</u></p> <p>(5) Any committee established in terms of subsection (1) must be chaired by a member of the committee.</p> <p>(6) To be appointed or designated as a member of a specialist committee in terms of this section, a person must—</p> <p><u>(a) be a fit and proper person;</u></p> <p><u>(b) have appropriate expertise or experience; and</u></p> <p><u>(c) have the ability to perform effectively as a member of the committee.</u></p> <p>(7) The members of a specialist committee must not—</p> <p><u>(a) act in any way that is inconsistent with subsection 4(a) or expose themselves to any situation in which the risk of a conflict may arise between their responsibilities and any personal financial interest; or</u></p> <p><u>(b) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.</u></p> <p>(8) A member ceases to be a member of a specialist committee if the—</p> <p><u>(a) member resigns from the committee;</u></p> <p><u>(b) Minister terminates the person's membership because the member no longer complies with subsection (6) or has contravened subsection (7); or</u></p> <p><u>(c) member's term has expired.</u></p> <p>(9) A member of a specialist committee who has personal or financial interest in any matter on which the committee gives advice must disclose that interest and withdraw from the proceedings of the specialist committee when that matter is discussed.</p> <p>(9) The National Regulator must remunerate a member contemplated in subsection (4)(b)(i) and compensate the member for expenses, as determined by the Minister, in consultation with the Minister of Finance.</p>

Short title of law	No and year of law	Extent of amendment
		<p>(10) A member who is employed by an <u>organ of state is not entitled to remuneration or any allowance, but must be reimbursed for out-of-pocket expenses by the National Regulator.</u>”.</p> <p>4. The substitution for section 12 of the following section:</p> <p>Advisory Forum</p> <p>12. (1) The [Board] Minister must establish an Advisory Forum with a balance of interests consisting of representatives of organisations who have an interest in the matters contemplated in this Act.</p> <p>(2) The Advisory Forum must advise the [Board] Minister on—</p> <p>(a) matters in respect of which the National Regulator could play a role; and</p> <p>(b) any other matter on which the [Board] Minister requests advice.</p> <p>(3) The [Board] Minister must establish a constitution and, if necessary, rules for the Advisory Forum.”.</p> <p>5. The amendment of section 13 by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p>“The Minister may, on the recommendation of the [Board] National Regulator, in respect of any commodity, product or service which may affect public safety, health or the environment, by notice in the <i>Gazette</i>—”.</p> <p>6. The amendment of section 15—</p> <p>(a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:</p> <p>“If the National Regulator finds that a commodity or product referred to in subsection (1) does not conform to the compulsory specification concerned, the [Board] National Regulator may—”;</p> <p>(b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:</p> <p>“(c) direct in writing that the consignment or batch of the article concerned be confiscated, destroyed or dealt with in such other manner as the [Board] National Regulator may consider fit.”; and</p> <p>(c) by the substitution for subsection (4) of the following subsection:</p> <p>“(4) The [Board] National Regulator must inform the Minister in writing on action taken in terms of subsection (3) within 21 days.”.</p> <p>7. The repeal of sections 21, 22 and 23.</p>

Short title of law	No and year of law	Extent of amendment
		<p>8. The substitution for section 25 of the following section:</p> <p>“Delegation and assignment</p> <p>25. (1) The Chief Executive Officer may <u>delegate any power conferred on him or her, or any duty assigned to him or her, under this Act to any other person with appropriate knowledge and experience who is under the control of the Chief Executive Officer.</u></p> <p>(2) A delegation or assignment under subsection (1) must be in writing and—</p> <p>(a) <u>may be subject to any conditions or restrictions determined by the Chief Executive Officer;</u></p> <p>(b) <u>does not prevent the exercise of the relevant power by the Chief Executive Officer; and</u></p> <p>(c) <u>may be withdrawn or amended by the Chief Executive Officer.”.</u></p>

MEMORANDUM ON THE OBJECTS OF THE LEGAL METROLOGY BILL, 2013

1. BACKGROUND

- 1.1 Legal Metrology concerns measurements that directly affect consumers and ensures the quality and credibility of measurements that are used directly in regulation and in areas of trade. It deals with risks of misuse of measuring instruments, of tampering and of accidental influences on a measuring instrument and deals with the traceability of measurements, thus providing an appropriate level of credibility of measurement results in the regulatory domain. In a broader sense, legal metrology covers the protection of society in areas of health, safety and the environment, thus concerning the interaction between regulation and measurements.
- 1.2 The current Trade Metrology Act, 1993 (Act No. 77 of 1973), is outdated and does not provide for the regulation of legal metrology measurements.
- 1.3 The Legal Metrology Bill (the Bill), seeks to expand the scope of trade metrology to legal metrology and strengthen the enforcement thereof within an appropriate legislative framework. It furthermore seeks to protect consumers against short measure, level the playing field for industry and support the competitiveness of local industry.
- 1.4 The Bill also addresses corporate governance issues contained in Schedule 2 to the Bill. It is proposed that the National Regulator for Compulsory Specifications (NRCS) will administer the Act. The NRCS is currently being overseen by a Board. The Bill seeks to change the governance structure by requiring the Chief Executive Officer to report directly to the Minister of Trade and Industry and doing away with the Board.
- 1.5 The Bill seeks to address issues raised by various stakeholders who participated during a series of consultative workshops on the Legal Metrology policy position paper. These issues informed the drafting of the Bill by the Department of Trade and Industry (the Department). The Bill was revised after it was published for public comment.

2. OBJECTS OF BILL

The Bill aims to—

- 2.1 promote fair trade, industrialisation and to protect public health and safety and the environment;
- 2.2 provide for the implementation of a regulatory and compliance system for legal metrology by the NRCS and for the administration and maintenance of legal metrology technical regulations; and
- 2.3 provide for market surveillance by the NRCS in order to ensure compliance with legal metrology technical regulations.

3. CHAPTER-BY-CHAPTER ANALYSIS

- 3.1 Chapter 1 sets out the Application and Administration of the Act.
- 3.2 Chapter 2 provides for Legal Metrology Technical Regulations. It empowers the Minister to make Legal Metrology Technical Regulations and prescribes the process to be followed. It also sets out the sanctions of NRCS in case of non-conformance to the legal metrology technical regulations.
- 3.3 Chapter 3 deals with measuring standards used by market surveillance inspectors, verification officers and persons responsible for repairs.

- 3.4 Chapter 4 contains the powers of market surveillance inspectors, such as the power to enter certain premises in the execution of their duties. It includes offences in case of non-conformance.
- 3.5 Chapter 5 deals with type approval and the verification of measuring instruments and includes offences in case of non-conformance.
- 3.6 Chapter 6 contains the functions of persons responsible for repairs and includes offences in case of non-conformance.
- 3.7 Chapter 7 provides for the manner of use, possession of or sale of measuring instruments and products, including the restriction on and prohibition of manufacture, import, use or possession of certain measuring instruments.
- 3.8 Chapter 8 contains compliance schemes and provides for the use of distinctive marks and verification marks.
- 3.9 Chapter 9 contains general provisions, such as the power of the Minister to make regulations. It also provides for the repeal and amendment of certain laws and transitional arrangements.

4. DEPARTMENTS OR BODIES CONSULTED

This Bill was drafted by a Task Team consisting of officials of the Office of the Chief State Law Adviser, the Department and the NRCS. The Department and the NRCS have consulted extensively during the development of the Bill. The Bill was also discussed by the Nedlac Legal Metrology Bill Task Team.

5. FINANCIAL IMPLICATIONS FOR STATE

The budget allocation is part of the allocation the Department has made for the NRCS in terms of the mandate by virtue of the current Trade Metrology Act, 1973.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution since it falls with functional areas listed in Schedule 4 to the Consitution, namely “Consumer protection” and “Trade”.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.