



Speech by

BRUCE DAVIDSON

MEMBER FOR NOOSA

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TRADE MEASUREMENT AMENDMENT BILL

Mr DAVIDSON (Noosa—LP) (4.52 p.m.): In rising to speak on the Trade Measurement Amendment Bill, I firstly acknowledge that the amendments proposed appear reasonable. Since a broad national agreement was reached in 1990 on uniform trade measurement legislation, Queensland has traditionally led the way in first enacting the model law and, after that, in keeping it in accordance with uniform recommendations for reform. It is appropriate to mention that the Trade Measurement Advisory Committee, formed by the Ministerial Council on Consumer Affairs in 1995, has, as far as I have been able to ascertain, done a very good job. This Bill is a product of its recommendations. I also place on the public record that the trade measurement inspectorate in the Office of Fair Trading has always had a very good reputation. Compared with some other States, Queensland has given trade measurement issues the priority they deserve.

One of the problems that has often bedevilled the Office of Fair Trading is that it has been generally under funded and moved from pillar to post. In 1990, trade measurement and consumer affairs were transferred from the Industrial Relations Department to the Justice Department. In 1992 it was made into a separate department, but in just 12 months it was merged with Emergency Services. In 1996 the coalition put consumer affairs back with the Department of Justice, where there is commonality of interest, but again in 1996 it was transferred to its current home where, with all due respect to this Government, there is little administrative logic to its being housed with the Office of Women's Policy and with the Minister responsible for the Department of Aboriginal and Torres Strait Islander Policy.

The impact of these constant changes and disruptions on the Office of Fair Trading would be hard to estimate, except that surely to goodness sooner or later the importance of this office will begin to radically suffer if these constant illogical transfers continue. It makes a mockery of corporate strategic planning in an organisation like this when the fundamental changes inflicted on it by successive Governments are largely inconsistent with the very corporate and strategic plans it is developing. The first point I make to the Minister is that I would hope for the remainder of the term of this Government there is a reprieve from unsettling changes and that the Office of Fair Trading is given the opportunity to get on with the job. This is particularly important so far as the fair trading branch, which is responsible for trade measurement law enforcement, is concerned.

First, the role of trade measurement inspectors is critical to the efficient operation of a fair marketplace. It is often not appreciated just how important the work of these inspectors is. When I read in this year's annual report of the Department of Equity and Fair Trading that a new high flow LPG test unit was used by the inspectors to verify bulk LPG meters used in household and commercial deliveries, it brought home that the fair trading branch is involved in highly technical and critically important tasks.

Many people envisage trade measurement inspectors as simply checking whether scales in butcher shops or supermarkets are accurate. I might add that it is often overlooked that if, say, a large supermarket constantly but only marginally gets its measurements wrong, there is not only a risk of significant consumer detriment but also the probability of distortions in the marketplace to the disadvantage of commercial competitors. However, the task of trade measurement under the Act is much wider than that. It is not simply weights and measures, as traditionally understood. It involves checking petrol bowsers, scanning machines at retail outlets, LPG measurements and even whether

police speed cameras are accurate. Each and every one of these issues have come up in the past. So this task is critical to prevent consumer detriment and ensure fair competition and even general law enforcement.

The second reason it is important is that weights and measures is one of the few areas specified in the Commonwealth Constitution as a Federal matter which the Federal Government has not taken up. There have been moves over the past few years by both Labor and coalition Governments to take over this area, but fortunately it has not come to pass. I say "fortunately" because we have a decentralised State, with trade measurement inspectors situated up and down the coast. I am sure that any Federal takeover would result in significant cutbacks of essential services to regional Queensland. That is why it is important for whoever the Government in power in this State is to make sure that trade measurement issues are looked after and properly funded.

I note that the Scrutiny of Legislation Committee raised in Alert Digest No. 8 the issue of the Bill being part of a largely uniform legislative exercise. It noted that as it was part of national scheme legislation the scope of any amendment is limited by the fact that the sponsoring Minister will assert that, as it is predicated upon the agreement of various jurisdictions, no significant amendment would be possible. That may or may not be the case. Certainly there is nothing to stop this Parliament seeking to amend the legislation. I am sure that, if the amendments were sensible, the Minister would be able to convince her ministerial council colleagues of the desirability of agreeing to them. However, the bigger issue here is that, if there is to be any State legislation at all and any chance of the committee or any parliamentarians having input, then there must be national scheme legislation. It is not an optional extra.

While I understand why the committee takes its position on uniform legislation, I would reject any suggestion in this context that this approach is not proper, desirable and in the very best interests of Queensland. In fact, I think it is poor that Western Australia has obviously stuck its head in the sand since 1990 and has not participated and that Tasmania, while agreeing to participate, has not yet enacted legislation. It is this sort of political myopia at a State level that enables centralists in Canberra to suggest that the way to sort out these problems is taking responsibility away from the States and giving it to the Commonwealth.

Turning to the clauses, some of the amendments proposed are purely technical and others should have a beneficial impact on business. I support, for example, the proposal to allow owners of measuring instruments 28 days to rectify a problem. This amendment to section 8 provides—

"If the person complies with the notice, the person is taken not to have committed an offence against this section in relation to the circumstances in which the notice relates."

The Minister pointed out in her speech that this discretion would be exercised where the error favours consumers. She later wrote to the committee indicating that there would be instances where the discretion would be exercised even if it was to the detriment of the consumer and gave as an example a sole trader in a remote locality. The Minister pointed out that it would not be appropriate to codify in legislation the circumstances of the inspector's discretion, as this could result in greater detriment to consumers. The committee accepted the Minister's explanation, and I also think it is fair.

It is not good practice to tightly limit inspectorial discretion in legislation because, as this Bill highlights, it could result in unforeseen consequences. However, I would like to know whether there is a current prosecution policy for the trade measurement area. One way of ensuring that there is a consistent and fair approach is to have a publicly available, transparent, practical and fair policy. I ask the Minister, if there is an up-to-date policy, whether the circumstances of exercising the 28-day discretion will be included and, if so, whether copies of the policy are publicly available.

I think the proposal to allow batch testing of beer jugs and spirit measures should be supported by industry, and it is only sensible that the person doing the batch testing hold a servicing licence. Some other amendments facilitate the work of inspectors, including clause 16, which enables an inspector to record the details of any article that is examined or measured by, amongst other means, filming or photographing. No doubt this may be of assistance in certain circumstances. A further series of amendments that appears just and reasonable are those which provide that when a trade has any measuring instruments for prepacking one of those instruments must be provided for trade use.

One issue I would like some clarification on is clause 10. This clause amends section 23, which deals with incorrect measurement or price calculation. As amended by clause 10, this section will read—

"If an article is sold at a price determined by reference to measurement of the article, the party who operates the measuring instrument or decides the measurement is guilty of an offence if—

- (a) he or she directly or indirectly misleads any other person who is a party to a sale of the article as to the measurement of the article or the calculation of the price, to that party's detriment."

I would like to know the implications of these amendments. It would appear that they extend liability to persons who determine the measurement, as well as to those operating measuring instruments. Is this the provision described in the Explanatory Notes on page 2 as enabling employees to be prosecuted for non-compliance with licence conditions? Does this amendment to clause 10 mean that a person who only indirectly or unintentionally misleads a consumer can be prosecuted, even though they are simply an employee who determines the measure without realising that the measuring instrument is faulty? I look forward to the Minister indicating that this is not the case, because I think it would be unfair and inappropriate for an employee who is at little or no fault to be at risk of prosecution.

Before concluding, I will make some comments about the current status of trade measurement in Queensland as disclosed by the annual report of the Department of Equity and Fair Trading. On page 11 of what is a very thin departmental report is a table setting out the various services delivered by trade measurement inspectors and the measurement laboratory. First, I note that over the last year the laboratory verified 8,126 standards of measurement. If I am not mistaken, this is, in part at least, a fee for service operation.

Unfortunately, over the past year the amount of measurements verified has dropped from 8,676 to 8,126. The annual report indicates that this is due to reduced demand from external clients. This is despite the fact that two new measurement items were developed and manufactured to assist trade measurement officers in their work. I would like the Minister in her reply to indicate why her department has advised that there has been a drop in external demand. Is it because of delays in service provision? Is it because of external competition? Is it due to reduced staff or resources? I will be interested to hear the Minister's explanation, if she has one.

Of much greater concern is that, when one examines the various activity indicators for trade measurement, one sees in the first year of this Government a decline across-the-board. In my opinion, the key measure of a proactive trade measurement inspectorate is the number of instruments tested. During the last year of coalition Government 16,088 instruments were tested, but in the first year of the Beattie Government that figure declined to 13,479. Perhaps there is a good explanation why in the space of one year the Office of Fair Trading tested 2,500 fewer instruments—a decline of around 15%.

If that were the only indicator, I would accept excuses about seasonal variation or changing priorities, or even a move to self-checking or external checking. But the next item is the number of packages inspected. In 1997-98, 41,885 packages were inspected. Last year the number inspected had declined to 35,834. That is a drop of 6,000 or, again, around 15%. Then there is the item relating to visits to traders to check trading practices. Again we see a decline during this period—in this case from 6,518 to 5,563, and again in the range of 15%.

I think the true nature and extent of what appears to be a significant malaise in this area can be determined when we look at the number of complaints received and the number of complaints investigated. In the last year of coalition Government, this area received 290 complaints, and 290 complaints were investigated. In other words, each and every complaint received by the trade measurement area was looked into. No doubt there will always be a few complaints that are not justified, but this office at least looked at each and every consumer or trader complaint while the coalition was in office. What do we see under the first year of this Government, under the administration of this Minister? We see that 312 complaints were received but only 304 were investigated. Again, this represents a drop in the standards we have come to expect from the trade measurement area.

Finally, we see the figures for investigations completed. I note that these figures include both trade measurement and fair trading. When my colleague the member for Indooroopilly was the Minister with responsibility for this area, 410 investigations were completed. Yet under this Minister only 369 investigations have been completed. In other words, in one year alone there has been a 10% drop in the number of investigations finalised.

Certainly I am concerned about these figures and what they say about the fair trading branch. There is no doubt that inspectors in the fair trading branch do a very good job under very difficult circumstances. They work with the Queensland Police Service and the Building Services Authority. In the past they have cooperated with the Federal Police and Federal Customs. The range of criminal and fraudulent conduct they have to investigate is enormous. They need all the help and assistance possible. The department's annual report makes it clear that this is an area which is facing difficult times and is under pressure.

I would hope that in these circumstances the trade measurement work of the branch is not downgraded or reprioritised. In the past the trade measurement inspectorate had an extremely good reputation in the business community. I know that other administrations, both in Australia and overseas, look to this office for assistance and guidance. If my memory serves me correctly, a few years ago this area was approached by the Fiji Government for help.

In conclusion, I support the Bill and the ongoing efforts to maintain uniform and up-to-date trade measurement legislation. That Queensland has taken the lead in introducing legislation agreed to by

the Ministerial Council on Consumer Affairs is a positive development which deserves the support of this Parliament. It will send the appropriate signal to other Parliaments to follow suit. However, my positive views of the legislation are not matched by positive views of how trade measurement is being administered at the moment. The indicators published in the annual report are extremely worrying. I hope that the Minister and the Government take quick and appropriate action to prevent serious problems arising.
