

## **Notices of Non-Compliance (Weights and Measures Act 1987, Part 4, s23)**

Power to reject non-complying weighing or measuring equipment and stop traders using such equipment is limited to Inspectors of Weights and Measures.

Notices of Non-Compliance were introduced so Accredited Persons (AP's) could advise traders as to the status of non-complying weighing or measuring equipment. They warn the trader that; possession or using for trade equipment that does not comply with the Weights and Measures Act or regulations may lead to prosecution.

Where AP's decline to stamp with the mark of verification, or to issue a certificate of accuracy in respect of any weighing or measuring equipment on the grounds that the equipment does not comply with the requirements of the Weights and Measures Act or regulations, the Accredited Person **must –**

- a) Forthwith give to the person in charge of the weighing or measuring equipment a notice of non-compliance; and
- b) As soon as practicable send to their local MAPSS office a copy of the notice.

Where it is not possible or practicable to give a notice of non-compliance in accordance with (a), then the notice should be attached to the weighing or measuring equipment in question.

### **Why it is Important for AP's to Issue Notices of Non-Compliances**

#### **Example**

*An AP is testing a 2 tonne platform scale and it fails the eccentricity and linearity tests due to a faulty load-cell (500kg - 60kg against the consumer), however the AP cannot repair as he does not have a replacement load-cell. The AP needs to return to workshop to get a replacement load-cell (Round trip one hour). The AP tells trader what has happened and verbally advises him that he should not use the platform scale, however the AP fails to issue trader with notice of non-compliance. The trader continues to use the platform in the meantime selling product to customers. The AP returns two hours later; replaces load-cell, tests the platform, verifies and issues a certificate of accuracy.*

*A few days later MAPSS receives a complaint from a customer who bought product from the trader and believed he had been given short measure. MAPSS investigates and finds that the consumer had been sold 180kg of product which was 45kg short. MAPSS visits the trader to conduct an investigation, they inform the trader of the alleged offence and gives the time that the purchase took place. The trader is liable for either a \$500 infringement offence notice or prosecution (max penalty \$5000). In the traders defence they explain that the service company AP had verified and certified platform only 2 days ago. After further investigation the MAPSS officer finds that the platform had been tested but found to have a faulty load-cell and that the AP did not issue the trader with a notice of non-compliance, when he left to get a replacement load-cell. However the AP said he verbally told the trader not to use platform. Trader denies that the AP told him not to use the platform.*

The potential outcome;

- 1/ The trader is liable for either \$500 Infringement Offence Notice or prosecution through the courts (maximum penalty \$5000).
- 2/ The AP (Individual) or the AP (Company) may either have their accreditation suspended or revoked.

The whole idea of notices of non-compliance is;

- 1/ To inform the trader that; possession or using for trade equipment that does not comply with the Weights and Measures Act or regulations may lead to prosecution.
- 2/ To protect the AP, where the trader denies that he was advised not to use the equipment by the AP

Where an AP is invited by a trader to perform work on any weighing or measuring equipment and as a result of that work the metrological characteristics have been altered, seals have been broken or verification marks have been removed and the AP is unable to verify that equipment; then the accredited person must issue a notice of non-compliance. This requirement applies even if this means having to leave the traders premises and return later with replacement parts etc...

#### **General (Non-Compliant Equipment, where not invited to test)**

Where an AP is in the situation of not being invited by the trader to test a particular piece of weighing or measuring equipment and they believe the equipment is being used for trade and it does not comply with the requirements of the legislation, then the AP should notify their local MAPSS office so we can investigate further.

The Weights and Measures Act and regulations are silent on this particular issue and whilst there is no legal obligation to do so, we believe in the spirit of the scheme as an AP you can not choose when you wear your "AP hat". The scheme relies on; "trade being conducted on a fair and accurate basis" and for the system to work efficiently we believe that where instances of non-compliance are witnessed, then AP's should notify us.