This Public Bill originated in the Legislative Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

I. P. K. VIDLER, Clerk of the Legislative Assembly.

Legislative Assembly Chamber, Sydney, 3 April, 1968.

## New South Wales



ANNO SEPTIMO DECIMO

# ELIZABETHÆ II REGINÆ

Act No. , 1968.

An Act to control and regulate the packing of certain articles and the sale of certain articles, whether in packages or not; for this and other purposes to amend the Weights and Measures Act, 1915, as subsequently amended; and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Weights and Short title, citation and commence32737 10—A (2)

- (2) The Weights and Measures Act, 1915, as subsequently amended, is in this Act referred to as the Principal Act.
- (3) The Principal Act, as amended by this Act, may 5 be cited as the Weights and Measures Act, 1915–1968.
  - (4) The several provisions of this Act shall commence upon such day or days as may be appointed by the Governor in respect thereof and notified by proclamation published in the Gazette.

### 10 2. The Principal Act is amended—

Amendment of Act No. 10, 1915.

(Part I— Preliminary.)

(a) by omitting from subsection two of section one the Sec. 1.
matter relating to Part III and by inserting in lieu (Short thereof the following matter:—

PART III.—SALE AND PACKAGING OF ARTICLES
—ss. 22–29r.

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- (b) by inserting next after section five the following new New sec. section:—
- 5A. This Act shall be read and construed subject Constructo the limits of the legislative powers of the State tion of Act.

  20 and so as not to exceed those powers, to the intent that, where any enactment thereof, but for this provision, would be construed as being in excess of those powers, it shall nevertheless be a valid enactment to the extent to which it is not in excess of those powers.
  - (c) (i) by inserting in section six next before the Sec. 6. definition of "Coal" the following new (Definitions.)

"Approved brand" means a brand approved by the superintendent pursuant to section 29P of this Act.

"Brand"

Weights and Me	asures (Amendment).
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"Brand" includes any mark, device, name, word, letter, numeral or symbol, or any combination thereof. (ii) by omitting from the definition of "Coal" in

- the same section the words ", coke, and charcoal" and by inserting in lieu thereof the words "and coke";
- (iii) by inserting in the same section next before the definition of "Measuring instrument" the following new definition:—

"Mark" includes authorise, direct, cause, permit or suffer to be marked.

(iv) by omitting from the same section the definition of "Package" and by inserting in lieu thereof the following definitions:-

> "Pack" includes authorise, direct, cause, permit or suffer to be packed.

> "Package" includes anything by means of which any article is packed for sale, or any articles are packed for sale as a single item, and in particular and without prejudice to the generality of the foregoing, includes a wrapper and a confining band.

- (v) by omitting from the definition of "Purchaser" in the same section the words "person purchasing" and by inserting in lieu thereof the words "a person who purchases an article";
- (vi) by inserting in the same section next after the definition of "Schedule" the following new definition :-

"Sell" includes-

- (a) offer or expose for sale;
- (b) keep or have in possession for sale;
- (c) barter or exchange;

(d)

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## Weights and Measures (Amendment).

- (d) deal in or agree to sell:
- (e) send, forward or deliver for sale or on sale; and
- (f) authorise, direct, cause, permit or suffer any of those acts or things,

and "sale" and "sold" have corresponding interpretations.

(vii) by omitting from the same section the definition of "Weighman" and by inserting in lieu thereof the following definition:—

"Weighman" means a person carrying out or assisting in carrying out weighings by means of a public weighing instrument or issuing weight tickets in respect of weighings carried out by means of such an instrument.

(d) by omitting from section eleven the words ", outside Sec. 11. the metropolitan police district,". (Superin

(Superintendent or inspector not to derive profit from making, adjusting, or selling weights or measures.)

20 3. (1) The Principal Act is further amended by omitting Further Part III and by inserting in lieu thereof the following Part:— of Act No.

amendment of Act No. 10, 1915. Subst. Part

#### PART III.

SALE AND PACKAGING OF ARTICLES.

22. (1) For the purposes of this Part—

Interpreta-

25 (a) an article shall be deemed to be pre-packed if it is packed in advance ready for sale; and

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#### Weights and Measures (Amendment).

- (b) any article of any description, being an article contained in a package, that is found on premises where articles of that description are so packed, or are kept or stored for sale after being so packed, shall be deemed to be pre-packed within the meaning of this Part unless the contrary is proved, and it shall not be sufficient proof to the contrary to show that the package has not been marked in accordance with or has been marked in contravention of the provisions of this or any other Part of this Act or any other Act or the regulations made under this or any other Act with respect to the marking of packages containing articles of that description.
- (2) Except as otherwise prescribed, a reference in 15 this Part or the regulations to the weight or measure or the true weight or measure of an article shall be construed as a reference to the weight or measure of the article excluding the weight or measure of the package in which the article is contained.
- 20 (3) A reference in this Part to the weight or measure or the true weight or measure of an article shall, in the case of an article of a kind that is ordinarily packed or sold by number, be construed as a reference to a quantity of that article counted by number.
- 25 (4) Where by or under this Part, any particulars or words are, or any statement or expression is, required, permitted or forbidden to be marked on a package containing an article, the particulars, words, statement or expression shall be deemed to be marked on the package if marked on a 30 label attached to the package or to the article.
- (5) A reference in this Part, however expressed, to the marking of a package with a statement of the weight or measure of the article contained in the package shall be construed as including a reference to the marking with such 35 a statement of a label attached to the package or the article.

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#### Weights and Measures (Amendment).

- (6) A reference in this Part, however expressed, to-
- (a) a package containing an article, or a package in which an article is contained, shall be construed, where appropriate, as including a reference to a package to which an article is attached or around which an article is wound or wrapped; and
- (b) an article contained in a package, shall be construed, where appropriate, as including a reference to an article that is attached to, wound around, or wrapped around, a package.
- (7) For the purposes of this Part, an article shall be deemed not to be weighed or measured in the presence of a purchaser unless the weighing instrument or the measure or measuring instrument by which the article is weighed or 15 measured is so constructed, placed in such a position, and so used as to enable the purchaser to have a clear and unobstructed view of and to see easily—
  - (a) the weight or measure, or indication of the weight or measure of the article; and
- 20 (b) the operation of the weighing or measuring of the article.
  - 23. (1) The provisions of this Part, sections twenty-four Exemptions, and twenty-seven excepted, do not apply to or in relation to coal or firewood.
- 25 (2) The provisions of this Part prohibiting a person from selling an article that is not packed or marked in accordance with the provisions of this Part do not apply where the article sold is packed and weighed or measured in the presence of the purchaser.
- 30 24. An article sold by weight or measure shall be sold Sales to be only by reference to a Commonwealth legal unit of measure—by Commonwealth nent the use of which in respect of that article is permitted legal units.

25. In any contract for the sale by the bushel of any Weight articles mentioned in Schedule E, the bushel shall be deter- of bushel. mined by weighing, the weight equivalent to a bushel of any such articles being that stated in the said Schedule.

26. A person shall not, except as prescribed or as other-Sales to be wise provided by or under any other Act—

by net weight or measure.

- (a) sell an article by weight or measure otherwise than by net weight or measure; or
- (b) mark a package containing any article with 10 the words "gross weight" or words to the like effect or sell an article in a package so marked.
- 27. (1) Where an article sold by weight or measure is Invoice or delivered to the purchaser at a place other than the premises delivery note to be of the seller, the seller shall deliver to the purchaser with supplied in 15 the article an invoice or delivery note showing as the weight certain or measure of the article a weight or measure that is not more than its true weight or measure.

- (2) Subsection one of this section does not apply
- (a) any article exempted from provisions of that 20 subsection by the regulations;
  - (b) bread;

- (c) any article weighed or measured at the premises of the purchaser;
- 25 (d) any pre-packed article of a description to which section 29D of this Act applies; or
  - (e) any liquors, within the meaning of the Liquor Act, 1912, as subsequently amended, sold by measure in quantities of less than two fluid ounces or more than two gallons.

28. Where any person sells by retail an article by weight or Provision measure, he shall have at the place where the sale is made a for weighsuitable weighing instrument for weighing the article or, as measuring. the case may require, a suitable measure or measuring instru-5 ment for measuring the article and shall at the request of the purchaser weigh or measure the article in the presence of the purchaser.

#### 29. (1) Any person who—

False declaration

- (a) by means of words, description or other indication, as to direct or indirect, makes any false declaration or measures, 10 statement or misleads any person as to the true weight, measure or gauge of any article sold by him; or
- (b) sells an article, not being a pre-packed article, by 15 weight, measure or gauge short of or smaller than the quantity or gauge ordered or purchased without informing the person ordering or purchasing the article of the true weight, measure or gauge of the article.

20 shall be guilty of an offence against this Act.

- (2) Where an article is purchased by weight or measure, the weight or measure thereof is determined by the purchaser at or before the time of the sale and the purchaser, by means of words, description or other indication, direct 25 or indirect, makes to the seller or to his agent a false declaration or statement or misleads the seller or his agent as to the true weight or measure of the article, the purchaser shall be guilty of an offence against this Act.
- 29A. Where any person sells any article by weight or Sale at 30 measure at a stated price per unit of weight or measure and stated price per unit the price charged for the article exceeds the price correctly of weight computed from the true weight or measure of the article and or measure. the stated price per unit of weight or measure, that person shall be guilty of an offence against this Act.

29B. (1) A person shall not, except as prescribed, on or Name, etc., after the appointed day, pack an article as a pre-packed of packer article, unless the package in which the article is contained marked on is marked-

- 5 (a) where the person packing the article—
  - (i) is an individual and he packs the article otherwise than as an employee of another person or as a member of a firm trading under a registered business name—with his name:
  - (ii) is an individual and he packs the article as an employee of another person-with the name of that other person;
  - (iii) is a corporation—with the name of that corporation; or
  - (iv) is a member of a firm trading under a registered business name—with that business name.
  - and with the address of the place where the article was packed or, instead of that name and address, with an approved brand approved for use by that person or, where that person is an employee of another person, by that other person; and
- (b) where the article is packed for or on behalf of 25 another person by a person who is not an employee of that other person, and that other person—
  - (i) is an individual—with the name and address of that individual;
  - (ii) is a corporation—with the name of that corporation and if it has a registered office in New South Wales, the address of that office or if it has no such office in New South Wales, the address of its sole or principal place of business; or

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- (iii) is a firm trading under a registered business name—with that business name and the address of its sole or principal place of business.
- 5 or, instead of that name and address, with an approved brand approved for use by that other

and, where the regulations prescribe the manner of marking any such name or address or approved brand on the package, 10 the package is so marked in that manner.

- (2) A person shall not, on or after the appointed day, sell a pre-packed article unless the package containing the article is marked as mentioned in subsection one of this section.
- 15 (3) Nothing in subsection two of this section prohibits the sale, pursuant to a permit under section 29F of this Act, of an article to which the permit relates.
- (4) In this section, "registered business name", in relation to a firm, means the business name of that firm regis-20 tered under the law in force in the place where that firm has its sole or principal place of business.
- 29c. (1) A person shall not, on or after the appointed Certain day, pack, as a pre-packed article, an article of any descrip-articles to be packed tion to which this section applies except in a weight or and sold 25 measure of such denomination as may be prescribed in relation only in certain deto articles of that description.

nominations.

- (2) A person shall not, on or after the appointed day, sell a pre-packed article of any description to which this section applies unless the article is packed as mentioned in 30 subsection one of this section.
  - (3) Nothing in subsection two of this section prohibits the sale, pursuant to a permit under section 29F of this Act, of an article to which the permit relates.

- (4) Notwithstanding the provisions contained in this or any other Act or in any regulation relating to the denominations of weight or measure in which an article of any description to which this section applies may be packed for 5 sale, a person may, on and after the date of the commencement of this section and before the appointed day under subsection one of this section in relation to any such article, pack for sale or, on or after that date of commencement and before the appointed day under subsection two of this section 10 in relation to any such article, sell, any such article in a weight or measure of a denomination prescribed for the purposes of this section in relation to articles of that description.
  - (5) This section applies to articles of such description as may be prescribed.
- 29D. (1) A person shall not, on or after the appointed Packages, day, pack, as a pre-packed article, an article of any description be marked to which this section applies unless a statement of the pur-with ported weight or measure of the article is marked, as of the prescribed, on the package containing the article.

quantity of the articles contained

- (2) For the purposes of subsection one of this therein. 20 section any statement of weight or measure marked on a package containing an article shall be deemed to be a statement of the purported weight or measure of the article unless the context in which the statement is made indicates the 25 contrary.
- (3) A person shall not, on or after the appointed day, sell a pre-packed article of any description to which this section applies unless the package in which the article is contained is marked as mentioned in subsection one of this 30 section.
  - (4) Nothing in subsection three of this section prohibits the sale, pursuant to a permit under the provisions of section 29F of this Act, of an article to which the permit relates.

- (5) Notwithstanding the provisions contained in this or any other Act relating to the marking of a package containing an article with particulars of the weight or measure of the article, a person may, on and after the date of the 5 commencement of this section and before the appointed day under subsection one of this section in relation to any such article, pack for sale, or, on or after that date of commencement and before the appointed day under subsection three of this section in relation to any such article, sell, any such 10 article if the package in which the article is contained is marked in accordance with subsection one of this section.
  - (6) This section applies to all articles other than articles of such descriptions as may be prescribed.
- 29E. (1) In subsections one and two of section 29c of this "Appointed 15 Act, the appointed day in relation to articles of any particular day, for purposes of description means such day as the Minister may, by order sections published in the Gazette, declare, for the purposes of those <sup>29B</sup><sub>29c</sub> (1), (2) or either of those subsections, to be the appointed day in and 29p (1), relation to articles of that description.

- 20 (2) An order made by the Minister under subsection one of this section may declare different days as the appointed days in relation to articles of different descriptions, but any day so declared shall be a day not earlier than one year after the date of commencement of the subsection for the purposes 25 of which the day is appointed and not earlier than the day on which the order is published in the Gazette.
- (3) In subsections one and two of section 29B, and in subsections one and three of section 29D, of this Act, the appointed day means such day as the Minister may, by order 30 published in the Gazette, declare, for the purposes of those or any of those subsections, to be the appointed day, that day or any of those days being not earlier than one year after the date of the commencement of the subsection for the purposes of which the day is appointed and not earlier than the day on 35 which the order is published in the Gazette.

29F. (1) Where any pre-packed articles were not packed, Permits for or the packages in which the articles are contained are not sale of articles marked, in the manner prescribed by or under this Act and that do not the Minister is satisfied that-

comply with the pre-

- (a) the articles were, when packed, intended to be scribed requirements. exported from Australia and he considers that it is just or reasonable that the sale in New South Wales of the articles should be permitted;
- (b) the articles were packed outside Australia and were 10 brought into New South Wales in such circumstances as, in the opinion of the Minister, render it just and reasonable that the sale in New South Wales of the articles should be permitted; or
- (c) the articles were packed within Australia and he considers that, having regard to the date when the 15 articles were so packed or to any other relevant circumstances, it is just and reasonable that the sale in New South Wales of the articles should be permitted,
- 20 the Minister may, on an application in writing made to him by any person, grant to that person a permit in writing authorising the sale in New South Wales of the articles.
  - (2) A permit under this section may be granted upon and subject to-
- (a) such conditions as are specified in the permit with 25 respect to-
  - (i) the number of individual articles the sale of which is authorised by the permit;
  - (ii) the form and manner in which the weight or measure of the articles contained in each package shall be indicated;
  - (iii) the weight or measure of the articles contained in each package; and

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- (iv) the furnishing by the holder of the permit of returns relating to the sale of the articles; and
- (b) such other conditions as the Minister thinks fit and specifies in the permit.

#### (3) A person—

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- (a) being the holder of a permit under this section, shall not sell a pre-packed article the sale of which is authorised by a permit under this section otherwise than in accordance with the conditions specified in the permit;
- (b) shall not falsely represent that a permit has been granted under this section in relation to any particular article;
- (c) shall not, where a permit issued to him under this 15 section has ceased to be in force, whether by reason of its cancellation or the effluxion of time, sell any article to which the permit related; or
- (d) shall not, where he has been authorised by a permit under this section to sell a specified number 20 of articles of any description, sell any greater number of those articles.
- (4) Unless sooner cancelled pursuant to subsection five of this section a permit under this section shall be in 25 force for such period as is specified in the permit, but may be renewed from time to time by the Minister for such further period or periods as the Minister may think fit.
- (5) The Minister may, at any time, by notice in writing to the holder of a permit under this section, cancel 30 the permit if the Minister is satisfied that it is desirable in the public interest so to do.
  - (6) Where a permit under this section is cancelled pursuant to subsection five of this section the holder thereof shall forthwith deliver up the permit to the superintendent.

29G. (1) Subject to this section, where the true weight short or measure of a pre-packed article is found by an inspector weight or measure of to be less than the weight or measure of the article marked pre-packed on the package containing the article, the person who packed articles. 5 the article shall be guilty of an offence against this Act.

- (2) Subject to this section, a person who-
- (a) sells a pre-packed article the true weight or measure of which is found by an inspector to be less than the weight or measure of the article marked on the package containing the article; or
- (b) delivers or sends to a purchaser an invoice or delivery note relating to a pre-packed article sold to the purchaser which states as the weight or measure of the article a weight or measure that is found by an inspector to be greater than the true weight or measure of the article so sold,

shall be guilty of an offence against this Act.

- (3) Subsection one of this section and paragraph (a) of subsection two of this section shall have effect in relation 20 to any pre-packed article whether or not the package containing the article is required, by or under this Act, to be marked with a statement of the weight or measure of the article.
- (4) Where a package is marked with two or more statements of weight or measure, each of those statements 25 shall, for the purposes of this section, be deemed to be a statement of the weight or measure of the article contained in the package unless the context in which the statement is made indicates the contrary, and the true weight or measure of the article shall for the purposes of subsection one, and 30 paragraph (a) of subsection two, of this section, be deemed to be less than the weight or measure of the article marked on the package if that true weight or measure is less than the weight or measure stated in any of those statements.

#### (5) Where—

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35 (a) the stated price per unit of weight or measure of a pre-packed article is indicated in the manner prescribed by the regulations:

- (b) a statement of the price of the article is marked on the package containing the article; and
- (c) that statement exceeds the price correctly computed from the true weight or measure of the article and the indicated price per unit of weight or measure,

the person who marked the package with the statement of price and the person who sold the article, are each guilty of an offence against this Act.

(6) In proceedings in respect of an offence against 10 this Act arising under paragraph (a) of subsection two of this section, it shall be a defence for the person charged—

#### (a) to prove—

- (i) that he obtained the article from another person who packed the article or delivered it to him pursuant to a sale to him and that that other person furnished him with a written statement (in this section referred to as a "guarantee") that the weight or measure of the article stated on the package containing the article was correct; and
- (ii) that he sold the article in the same state as it was when delivered to him; or
- (b) to prove that, in the case of an article of any description to which section 29D of this Act applies,-
  - (i) he obtained the article from another person who delivered it to him pursuant to a sale to him and that when he so obtained the article it was in a package that was marked as required by section 29B and by section 29<sub>D</sub> of this Act; and
  - (ii) that he sold the article in the same state as it was when delivered to him.

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- (7) Where a person gives a guarantee referred to in paragraph (a) of subsection six of this section and the true weight or measure of any pre-packed article in respect of which the guarantee was given is found by an inspector to 5 be less than the weight or measure of the article as stated in the guarantee, that person shall, subject to this section, be guilty of an offence against this Act and be liable to a penalty not exceeding four hundred dollars.
- (8) In proceedings against a person in respect of an 10 offence against this Act arising under subsection seven of this section, it shall be a defence for the person charged to prove that any deficiency in the true weight or measure of the article to which the proceedings relate—
- (a) arose after the giving of the guarantee and was attributable wholly to factors for which reasonable allowance was made in stating the weight or measure of the article; or
  - (b) is due to the act or default of some other person after the article had passed from the control of the person charged.

#### (9) Where—

- (a) the true weight or measure of a pre-packed article is found by an inspector to be less than the weight or measure (in this subsection referred to as "the stated weight or measure") of the article as marked on the package containing the article, as stated in any invoice or delivery note referred to in paragraph (b) of subsection two of this section and relating to the article or as stated in any guarantee relating to the article;
  - (b) the deficiency of weight or measure of the article (in this subsection referred to as "the deficient article")—
    - (i) not being an article of a description to which section 29H of this Act applies, is found by that inspector not to exceed five parts per

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centum

Weights and Measures (Amendment). centum of the stated weight or measure of the article or, if the article is contained in a glass bottle and the stated weight or measure of the article does not exceed five ounces or five fluid ounces, seven and one-half parts 5 per centum of the stated weight or measure of the article; or (ii) being an article of a description to which section 29н of this Act applies, is found 10 by that inspector— (a) at any time on the day on which the article was packed, not to exceed five parts per centum of the stated weight of the article; or 15 (b) at any other time, not to exceed the prescribed number, being more than five, of parts per centum of the stated weight of the article; and (c) at the place where the deficient article was obtained 20 by the inspector or, if the deficient article was packed in New South Wales at the place where it was packed, there are, when an inspector enters any such place for the purpose of taking packages as referred to in paragraph (d) of this subsection, 25 available five or more packages (in this subsection referred to as "similar packages")— (i) that contain articles of the same kind as the deficient article; (ii) that are marked with the name and address 30 or the approved brand of the person whose

- (ii) that are marked with the name and address or the approved brand of the person whose name and address or approved brand are or is marked on the package containing the deficient article;
- (iii) that are marked with the same weight or measure as the stated weight or measure of the deficient article; and

(iv) that, where the deficient article is of a description to which section 29H of this Act applies and the deficiency of weight of that article was found by the inspector at any time on the day on which that article was packed, were packed on that day,

no proceedings for an offence arising under subsection one, two or seven, as the case may be, of this section shall be commenced unless-

- 10 (d) as soon as practicable after the deficiency in the deficient article was found an inspector enters the place where the deficient article was obtained or, if the deficient article was packed in New South Wales, the place where it was packed and there 15 takes-
  - (i) where there are eleven or more similar packages available, eleven similar packages:
  - (ii) where there are five or more but less than eleven similar packages, all of the similar packages; and
    - (e) where the deficient article was deficient—
      - (i) in weight, that or any other inspector weighed the articles contained in the similar packages so taken and, where the deficient article is of a description to which section 29H of this Act applies and the deficiency of weight of that article was found by the inspector referred to in paragraph (a) of this subsection at any time on the day on which that article was packed, weighed those articles on that day; or
        - (ii) in measure, that or any other inspector measured the articles contained in the similar packages so taken.

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#### Weights and Measures (Amendment).

- (10) Where an inspector referred to in paragraph
  (e) of subsection nine of this section finds that the average true weight or measure of the deficient article referred to in that subsection and of all the articles contained in the similar
  5 packages taken as referred to in that subsection is—
  - (a) where the articles are not of a description to which section 29H of this Act applies—not less than the weight or measure of any of the articles as marked on any of the packages containing the articles or as stated in the guarantee relating to the deficient article, as the case may be; or
  - (b) where the articles are of a description to which section 29H of this Act applies and the deficiency of weight of the deficient article—
  - (i) was found by the inspector at any time on the day on which the article was packed not less than the weight of any of the articles as marked on any of the packages containing the articles or as stated in the guarantee relating to the deficient article, as the case may be; or
    - (ii) was found by the inspector at any other time—less than the weight of any of the articles as so marked or as so stated but to an extent not exceeding the prescribed permissible average deficiency,

no proceedings for an offence arising under subsection one, two or seven, as the case may be, of this section shall be commenced against any person referred to in any such 30 subsection.

(11) Subsections six and eight of this section do not apply unless the person charged has, not less than two days before the date set down for the hearing of the proceedings, by a notice in writing informed the informant that

he intends to rely on a defence provided by any of the provisions of those subsections of this section and of the particulars of that defence.

29H. (1) A person shall not mark the words "net weight Articles 5 when packed" or words to the like effect on a package that may be marked containing an article unless-

- (a) the article is of a description to which this section packed". applies; and
- (b) where the regulations prescribe the manner of 10 marking any such words on a package, the package is marked in that manner.
- (2) The regulations may require that in relation to any other particulars required by or under this Act to be marked on a package containing an article of a description 15 to which this section applies, a package shall be marked in the prescribed manner with the date on which the article was packed or with an approved brand indicating that date.
  - (3) This section applies to articles of such descriptions as may be prescribed.
- 291. (1) A person shall not mark the words "at standard Articles conditions" or words to the like effect on a package containing that may be marked an article unless-

- (a) the article is of a description to which this section standard conditions. applies; and
- 25 (b) where the regulations prescribe the manner of marking any such words on a package, the package is marked in that manner.
- (2) In the application of section 29g of this Act to any article of a description to which this section applies a 30 reference in that section to the true weight of an article shall be construed as a reference to the weight ascertained in the prescribed manner of the article if it were weighed at the prescribed standard conditions.

expressions

on packages.

### Weights and Measures (Amendment).

- (3) This section applies to articles of such descriptions as may be prescribed.
- 29J. (1) Subject to this section, a person who, on or after Prohibition the appointed day, packs a pre-packed article in a package and restriction of use 5 on which is marked a prohibited expression or a restricted of certain expression shall be guilty of an offence against this Act.

(2) Subject to this section, a person who, on or after the appointed day, sells a pre-packed article contained in a package on which a prohibited expression or a restricted 10 expression is marked shall be guilty of an offence against this Act.

- (3) The provisions of subsections one and two of this section relating to the marking on a package of a restricted expression shall not apply to or in relation to an article con-15 tained in a package on which a restricted expression appears if, in addition to that expression-
- (a) there is marked on every part of the package on which the restricted expression appears such a statement as to the purported weight or measure of the article contained in the package as is referred 20 to in subsection one of section 29p of this Act. whether or not the article is an article of a description to which that section applies;
- (b) the restricted expression and that statement are so placed and so marked that both may be seen clearly 25 at the same time; and
  - (c) each of the letters or figures contained in that statement-
    - (i) is of a size not less than the minimum size of print prescribed by the regulations in relation to the dimensions of the package;
    - (ii) is of a size not less than one-third of the size of the largest letter or figure contained in the restricted expression; and
    - (iii) is marked in a colour of a distinct contrast to the colour of its background.

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(4)

#### (4) In this section—

"prohibited expression" means any expression, whether consisting of a single word or of more words than one and whether in an abbreviated form or not, that directly or indirectly relates to or qualifies a unit of measurement of a physical quantity and, without prejudice to the generality of the foregoing, includes any expression declared by the regulations to be a prohibited expression for the purposes of this section;

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"restricted expression" means any expression, not being a prohibited expression, and whether consisting of a single word or of more words than one or of any word or words in combination with any figure or figures and whether in an abbreviated form or not, that directly or indirectly relates to the size of the package containing the article, not being such a statement as to the purported weight or measure of the article as is required by subsection one of section 29p of this Act, and, without prejudice to the generality of the foregoing, includes any expression that is declared by the regulations to be a restricted expression for the purposes of this section.

25 (5) In subsections one and two of this section the appointed day means such day or days as the Minister may, by order published in the Gazette, declare, for the purposes of those or either of those subsections, to be the appointed day, those days or that day being not earlier than one year after the 30 date of the commencement of the subsections or subsection for the purposes of which the day is appointed and not earlier than the day on which the order is published in the Gazette.

29K. (1) Where any fraud is wilfully committed in the Fraud in using of any weight, measure, weighing instrument or using weights, 35 measuring instrument, the person committing the fraud shall measures, be guilty of an offence against this Act.

- (2) Where the weight, measure, weighing instrument or measuring instrument with which any such fraud was so committed was in the possession of the person by whom the fraud was committed, the weight, measure, weighing instru-5 ment or measuring instrument may be seized by an inspector.
- 29L. (1) Notwithstanding any other law or rule of law Liability of where any person, in this section referred to as "the agent", principal acting, otherwise than as an employee, for or on behalf of of agent. another person, in this section referred to as "the principal", 10 contravenes this Part or is guilty of an offence against this Act arising under any of the provisions of this Part, the principal shall be guilty of an offence against this Act in like manner as the agent and may be proceeded against and convicted accordingly unless he proves that he had no knowledge 15 of the commission of the offence and that he took all reasonable precautions and used all due diligence to avoid the commission of the offence.
- (2) The principal may be proceeded against and convicted pursuant to subsection one of this section whether 20 or not the agent has been proceeded against or been convicted under this Act.
- (3) Nothing in subsection one of this section shall prejudice or affect any liability imposed by or under this Act on any person by whom an offence against this Act is actually 25 committed.
- 29м. (1) Notwithstanding any other law or rule of law, Liability of where any person, as the employee of another person, who employer for offence in this section is referred to as "the employer", contravenes by emthis Part or is guilty of an offence against this Act arising ployee. 30 under any of the provisions of this Part, the employer shall be guilty of an offence against this Act in like manner as the employee, whether or not the offence was committed without

the employer's authority or contrary to his orders or instructions, and may be proceeded against and convicted accordingly unless he proves that he had no knowledge of the commission of the offence and could not, by the exercise of due diligence, 5 have prevented the commission of the offence.

- (2) The employer may be proceeded against and convicted pursuant to subsection one of this section whether or not the employee has been proceeded against or been convicted under this Act.
- 10 (3) Nothing in subsection one of this section shall prejudice or affect any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.
- 29N. (1) Where a person, in this subsection referred to General 15 as "the defendant", is convicted of an offence against this relating to Act arising under this Part and the court by which he is proceedings convicted is of the opinion that some other person was defrauded or suffered pecuniary loss by reason of the commission of the offence, the court may, in addition to imposing 20 a penalty for the offence, order the defendant to pay to that other person, by way of recoupment of his loss, such sum as the court thinks fit and as may be specified in the order.
- (2) Any order made under subsection one of this section shall operate as an order for the payment of money25 under the Small Debts Recovery Act, 1912, as subsequently amended, and be enforceable as such under the provisions of that Act.
- (3) A prosecution for an offence against this Act arising under this Part may be instituted at any time within a 30 period of twelve months after the commission of the offence or within a period of six months after the commission of the offence comes to the knowledge of an inspector, whichever period last expires.

- (4) In any proceedings for an offence against this Act arising under this Part, a witness shall not be excused from answering any question or producing any document on the ground that the answer or production may criminate 5 or tend to criminate him, but an answer made or a document produced by any such witness shall not be admissible in evidence against him in any proceedings for an offence against this Act arising under this Part.
- 290. (1) In proceedings in respect of an offence against Defences. 10 this Act arising under section 29B of this Part, it is a defence for the person charged to prove that the article to which the proceedings relate was packed on any premises for sale on those premises to a person for the purpose of consumption or use and not for the purpose of re-sale.
- 15 (2) In proceedings in respect of an offence against this Act arising under section 29c or 29d of this Act, it is a defence for the person charged to prove that the article to which the proceedings relate was packed for export from Australia and that the marking on the package containing 20 the article clearly so indicated and, in the case of an offence against this Act arising under subsection two of section 29c, or subsection three of section 29d, of this Act, that the article was sold for export from Australia.
- (3) In proceedings in respect of an offence against 25 this Act arising under subsection two of section 29B, subsection two of section 29C, subsection three of section 29D, subsection two or subsection five of section 29G or subsection two of section 29J of this Act, it is a defence for the person charged to prove—
- 30 (a) that the commission of the offence was due to a cause or to causes beyond his control;

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(b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the article to which the proceedings relate; and

- (c) that he obtained the article from another person and sold or delivered it in the same state as it was when delivered to him.
- (4) In proceedings in respect of an offence against5 this Act arising under subsection one of section 29g of this Act, it is a defence for the person charged to prove—
  - (a) that-

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- (i) the deficiency arose after the packing of the article and the marking of the package and was attributable wholly to factors for which reasonable allowance was made in stating the weight or measure of the article; or
- (ii) the commission of the offence was due to a cause or to causes beyond his control;
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the article to which the proceedings relate.
- (5) For the purposes of subsections three and four of this section a cause is not beyond the control of a person against whom proceedings referred to in either of those subsections are brought unless the court before which the 25 proceedings are brought is satisfied that the cause was one that the person charged could not reasonably have foreseen or for which he could not reasonably have made allowance.
- (6) Subsections one, two, three and four of this section do not apply unless the person charged has, not less 30 than two days before the date set down for the hearing of the proceedings, by a notice in writing, informed the informant that he intends to rely on a defence provided by any of the provisions of those subsections and of the particulars of that defence.

- 29P. (1) On the application of a person by whom or for or Approval on whose behalf an article is packed as mentioned in subsection one of section 29B of this Act, the superintendent may approve in writing of a brand for use by that person—
- 5 (a) for the purpose of marking on packages—
  - (i) the name and address required by paragraph (a) of subsection one of section 29B of this Act to be marked on packages; or
- (ii) the name and address required by paragraph
  (b) of that subsection to be marked on packages; or
- (b) which, where the regulations require the dates when the articles contained in the packages were packed to be marked on the packages is, or incorporates, a device approved by the superintendent for the purpose of indicating those dates.
- (2) An approval under subsection one of this section may be granted subject to such conditions, if any, as the 20 superintendent determines and specifies in the approval and may be cancelled by the superintendent at any time by notice in writing given to the person to whom the approval was granted.
- (3) A person to whom an approval under subsection 25 one of this section has been granted subject to conditions shall not mark a package containing an article with the brand specified in the approval otherwise than in compliance in all respects with those conditions.
- (4) Where a brand has been approved under sub-30 section one of this section for use by a person for the purposes of marking on packages the name and address referred to in subparagraph (i) or (ii) of paragraph (a) of that subsection, a person other than the person to whom that approval was granted or a person having his authority so to do shall not 35 mark a package containing an article with the brand specified

in the approval or with any other brand so closely resembling the brand specified in the approval as to be likely to lead to the belief that it is the brand specified in the approval.

29Q. In proceedings in respect of an offence against this 5 Act arising under this Part in relation to a pre-packed article—

Evidentiary provisions.

- (a) the marking on the package in which the article is contained indicating the name of the person who packed the article shall be evidence that the article was packed by that person;
- (b) the marking on the package in which the article is contained indicating the name and address of a person for or on whose behalf the article was packed shall be evidence that the article was packed for or on behalf of that person;
- 15 (c) the marking on the package in which the article is contained indicating the place where the article was packed shall be evidence that the article was packed at that place;
- (d) the marking on the package in which the article is contained indicating the date when the article was packed shall be evidence that the article was packed on that date;
- (e) a document purporting to be certified by the superintendent to be a copy of a permit granted by the Minister under section 29F of this Act shall be evidence of the granting of the permit and of the conditions, if any, specified in the permit;
  - (f) a certificate purporting to be signed by the superintendent and stating—
- 30 (i) that a permit granted by the Minister under section 29F of this Act was cancelled on a date specified in the certificate;

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#### Weights and Measures (Amendment).

- (ii) that a permit cancelled under subsection five of section 29F of this Act has not been delivered up to him,
- shall be evidence of the matters stated in the certificate;
- (g) a document purporting to be certified by the superintendent to be a copy of an approval granted by him under subsection one of section 29P of this Act shall be evidence of the approval and of the conditions, if any, subject to which the approval was granted, and the fact that such a brand is marked on a package containing an article shall be evidence-
  - (i) where the approval was granted to a person for the purpose referred to in subparagraph (i) of paragraph (a) of that subsection, that the article was packed by the person to whom the approval was granted and at the place the address of which is specified in the approval as the address indicated by the brand;
  - (ii) where the approval was granted to a person for the purpose referred to in subparagraph (ii) of paragraph (a) of that subsection, that the article was packed for or on behalf of the person whose name and address are indicated by the brand; or
  - (iii) where approval is of a brand which is, or incorporates, a device referred to in paragraph (b) of that subsection, that the article was packed on the date indicated by that device,

as the case requires; and

(h) a certificate purporting to be signed by the superintendent and stating that an approval granted by him under subsection one of section 29P of this Act was cancelled on a date specified in the certificate shall be evidence of the matters stated in the certificate.

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#### Weights and Measures (Amendment).

29R. (1) The Governor may make regulations for or with Regulations. respect to—

- (a) the form and manner in which packages required or permitted by any provision of this Act to be marked with any particulars, statement, or approved brand, shall or may be so marked;
- (b) the denominations of weight or measure in which articles of any prescribed description shall or may be packed or sold;
- (c) specifying or describing the machines or classes of machines that shall be vending machines for the purposes of the regulations;
  - (d) regulating, controlling, or restricting the sale or supply of articles by means of vending machines referred to in paragraph (c) of this subsection and prohibiting the sale or supply of articles by means of any such machine otherwise than in accordance with the regulations;
- (e) securing that articles that are sold by means of a vending machine referred to in paragraph (c) of this subsection are so sold only if there is displayed in or on the machine such particulars or statements, with respect to such matters, as may be prescribed, and the manner in which the particulars or statements so prescribed shall be so displayed;
  - (f) the units of weight or measure to be used in marking or displaying on packages or vending machines referred to in paragraph (c) of this subsection any particulars or statements required to be marked or displayed thereon and the manner in which those units of weight or measure shall or may be expressed, whether in figures or words or figures and words, and the abbreviations that may or may not be used for the purposes of expressing those units;

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#### Weights and Measures (Amendment).

- (g) the method by which, and the conditions under which, the weight or measure of articles is to be determined in connection with the marking or displaying on packages or on vending machines referred to in paragraph (c) of this subsection of any particulars or statements referred to in the foregoing provisions of this subsection;
- (h) permitting, in the case of such articles and in such circumstances as may be specified in the regulations, the weight or measure of any articles used in packing the first-mentioned articles for sale as may be so specified to be included, notwithstanding any other provision of this Part, in the net weight or measure of the first-mentioned articles;
- 15 (i) exempting, either wholly or to such extent as may be prescribed, or authorising a prescribed person to exempt, either unconditionally or subject to such conditions and restrictions as that person may determine, from any of the provisions of this Part—
  - (i) articles of any description prescribed or referred to in the regulations and packages containing any such articles; and
  - (ii) prescribed transactions and classes of sales;
  - (j) prescribing standard specifications of capacity for or in relation to packages used in the packing or sale of prescribed articles, prescribing distinctive marks for packages made to those specifications, and prohibiting or regulating the sale of any such articles, when packed, otherwise than in prescribed packages made to those specifications and bearing the prescribed distinctive marks;
- (k) requiring packages containing articles to be marked with a statement of the sale price per unit of weight or measure of the articles;

- (1) generally regulating and controlling the packing of articles and the marking of packages in which articles are contained; and
- (m) prescribing all matters which by this Part are required or permitted to be prescribed or which are necessary or convenient for giving effect to this Part.
- (2) The regulations made under this Part may impose a penalty not exceeding one hundred dollars for any 10 offence against the regulations.
  - (3) The regulations made under this Part—
  - (a) may make different provision in respect of different descriptions of articles, packages, transactions and classes of sales;
- (b) may be made so as to apply generally or only in respect of the packing or sale of articles of denominations of weight or measure greater than or less than some other prescribed multiple of a prescribed denomination;
- (c) may be of general or specially limited application; and
  - (d) may differ according to differences in time, locality, place or circumstance.
- (2) Notwithstanding the repeal of Part III of the 25 Principal Act by subsection one of this section, subsection three of section twenty-five of the Principal Act as in force immediately before the commencement of section 29p of the Principal Act (as inserted by subsection one of this section) shall after that commencement continue in force in relation
- 30 to any article in a package, not being an article referred to in paragraph (a) or (b) of subsection four of the said section twenty-five, until the appointed day referred to in subsection three of section 29D of the Principal Act (as so inserted) and a person contravening the provisions of subsection three
- 35 of the said section twenty-five may be proceeded against and shall be liable to the same penalty as if that subsection had not been repealed.

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4.	The Principal Act is further amended—	Further amendment of Act No. 10, 1915. (Part IV— Verification and Stamp- ing.)
(	a) by inserting next after subsection one of section thirty the following new subsections:—	Sec. 30. (Verification and stamp-
5	(1A) Subsection one of this section does not operate to require any measure made entirely of glass to be stamped, if that measure—	ing.)
10	<ul> <li>(a) is of a class that the Minister, by order, specifies in a notification published in the Gazette as a class of measures to which subsection one of this section does not apply;</li> </ul>	
15	(b) was manufactured in New South Wales by a manufacturer who is the holder of an instrument of approval issued to him by the Minister;	
	(c) was manufactured in a batch, some of which were tested by sample in the prescribed manner by an inspector; and	
20	(d) is marked by the manufacturer in the prescribed manner to show that it was part of a batch that was so tested.	
	(1B) An approval referred to in paragraph (b) of subsection (1A) of this section—	
25	(a) may be given subject to such conditions as the Minister thinks fit and specifies in the instrument of approval, including condi- tions relating to the facilities and equipment to be made available by the manufacturer	Principal shall after to any and parar ampl
30	for use by any inspector making tests referred to in paragraph (c) of subsection (1A) of this section; and	
	(b) may be revoked by the Minister for any reason that to the Minister seems sufficient.  (1c)	

- (1c) An application for an approval referred to in paragraph (b) of subsection (1A) of this section may be refused by the Minister if he is of the opinion that the number of measures to be manufactured by the applicant is insufficient to warrant his being granted the approval or for any other reason that to the Minister seems sufficient.
- (b) by inserting in subsection one of section thirty-one Sec. 31. after the word "glass," the words "or a weight, (Reverificameasure, weighing instrument or measuring tion and re-stamping.) 10 instrument of a prescribed class";
- (c) by inserting in section thirty-three after the word Sec. 33. "thereon" the words "and, unless the weight, (Using defective measure, weighing instrument or measuring instrument has been produced at the office of an inspec-weights, tor and reverified and stamped, notify the re-stamped.) 15 superintendent in writing within twenty-one days after destroying the stamp that the stamp has been destroyed".

#### 20 The Principal Act is further amended—

Further amendment of Act No. 10, 1915. (Part V-Sale of Coal and Firewood.)

(a) by omitting section thirty-seven;

Sec. 37. (Application of last two preceding sections.)

(b) by omitting from paragraph (e) of section thirty- Sec. 39. nine the words "forty dollars" and by inserting (Regulain lieu thereof the words "one hundred dollars". tions.)

6.	The	Principal	Act	is	further	amended—
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Further amendment of Act No. 10, 1915. (Part VI-General and Supplemental.)

(a) (i) by omitting paragraph (a) of subsection one Sec. 41. of section forty-one and by inserting in lieu (Inspection thereof the following paragraph:

in packages.)

- (a) enter any building or place where any article is packed for sale or sold or where he has reasonable cause to believe that any article is packed for sale or sold;
- (ii) by inserting next after the same subsection the following new subsections: -
  - (1A) Where any article referred to in subsection one of this section is contained in a package, the inspector may, for the purpose of weighing or measuring it, break open and remove the article from the package.
  - (1B) An inspector may require the driver or person in charge of a vehicle by whom any invoice or delivery note relating to any articles being carried on the vehicle for delivery to a purchaser is held to produce that invoice or delivery note to the inspector.
- (b) by omitting section forty-two and by inserting in Subst. lieu thereof the following section: -
  - 42. Any person who—

Obstruc-

(a) hinders or obstructs or attempts to hinder inspector. or obstruct in any manner an inspector in the execution of his duty under this Act;

(b)

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- (b) does not, when requested to do so by an inspector, produce all weights, measures, weighing instruments or measuring instruments in his possession for examination or testing;
  (c) refuses when requested to do so by an inspector to state his name and address, or when so requested states a false name or address to an inspector;
  (d) refuses or fails to stop a vehicle of which he is the driver or person in charge when required to do so by an inspector;
- (e) does not comply with a requirement made by an inspector under subsection (1B) of section forty-one of this Act;
- (f) uses abusive language to or directly or indirectly threatens an inspector;
- (g) assaults an inspector while the inspector is executing his duties under this Act;
- 20 (h) impersonates an inspector,

shall be guilty of an offence against this Act.

- (c) by omitting from section forty-four the words "one Sec. 44. hundred dollars" and by inserting in lieu thereof (Penalties.) the words "two hundred dollars for a first offence or four hundred dollars for a second or subsequent offence";
- (d) by inserting at the end of section fifty-four the Sec. 54.
  following new subsection:—

  (Evidence of regulations.)
  - (2) A certificate purporting to be signed by the superintendent certifying—
    - (a) that any weight or measure specified in the certificate is a standard of measurement—
      - (i) that has been provided and maintained by the Minister under subsection one of section twelve of this Act: or

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## Weights and Measures (Amendment).

- (ii) that is or was at a time or during a period specified in the certificate a primary State standard, a secondary State standard, a tertiary State standard or an inspector's standard; or
- (b) that a person specified in the certificate is or was at a time or during a period specified in the certificate an inspector,
- shall be prima facie evidence of the particulars stated in the certificate.
  - (e) (i) by omitting paragraphs (o1) and (q) of sub- Sec. 57. section one of section fifty-seven; (Regulations (Canada and
    - (ii) by inserting next before paragraph (r) of Board of Trade).) the same subsection the following new paragraphs:—
      - (q1) The registration, examination and licensing of persons carrying on the business of repairing or adjusting weighing and measuring instruments and the regulation of persons carrying on any such business.
      - (q2) The manner of testing of glass measures for the purposes of paragraph (c) of subsection (1A) of section thirty of this Act, the manner of marking any such measures, requiring the manufacturer to produce to an inspector production records relating to the manufacture of any such measures and prohibiting the removal from the manufacturer's premises of any such measures bearing a mark of verification without approval of an inspector.

(iii)

## Weights and Measures (Amendment).

- (iii) by omitting from paragraph (s) of the same subsection the words "forty dollars" and by inserting in lieu thereof the words "one hundred dollars";
- 5 (iv) by omitting subsection two of the same section.

BY AUTHORITY: V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1968 [35c]

No. , 1968.

# A BILL

To control and regulate the packing of certain articles and the sale of certain articles, whether in packages or not; for this and other purposes to amend the Weights and Measures Act, 1915, as subsequently amended; and for purposes connected therewith.

[MR WILLIS-28 March, 1968.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Weights and Short title, citation and commence22737 10—A (2)

- (2) The Weights and Measures Act, 1915, as subsequently amended, is in this Act referred to as the Principal Act.
- (3) The Principal Act, as amended by this Act, may 5 be cited as the Weights and Measures Act, 1915–1968.
  - (4) The several provisions of this Act shall commence upon such day or days as may be appointed by the Governor in respect thereof and notified by proclamation published in the Gazette.

## 10 2. The Principal Act is amended—

Amendment of Act No. 10, 1915. (Part I—

(Part I— Preliminary.)

(a) by omitting from subsection two of section one the Sec. 1. matter relating to Part III and by inserting in lieu (Short thereof the following matter:—

# PART III.—SALE AND PACKAGING OF ARTICLES —ss. 22–29r.

(b) by inserting next after section five the following new New sec. section:—

5A. This Act shall be read and construed subject Constructo the limits of the legislative powers of the State tion of Act. and so as not to exceed those powers, to the intent that, where any enactment thereof, but for this provision, would be construed as being in excess of those powers, it shall nevertheless be a valid enactment to the extent to which it is not in excess of those powers.

(c) (i) by inserting in section six next before the Sec. 6. definition of "Coal" the following new (Definitions.)

"Approved brand" means a brand approved by the superintendent pursuant to section 29P of this Act.

"Brand"

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- "Brand" includes any mark, device, name, word, letter, numeral or symbol, or any combination thereof.
- (ii) by omitting from the definition of "Coal" in the same section the words ", coke, and charcoal" and by inserting in lieu thereof the words "and coke";
  - (iii) by inserting in the same section next before the definition of "Measuring instrument" the following new definition:—

"Mark" includes cause, permit or suffer to be marked.

(iv) by omitting from the same section the definition of "Package" and by inserting in lieu thereof the following definitions:—

"Pack" includes cause, permit or suffer to be packed.

"Package" includes anything by means of which any article is packed for sale, or any articles are packed for sale as a single item, and in particular and without prejudice to the generality of the foregoing, includes a wrapper and a confining band.

- (v) by omitting from the definition of "Purchaser" in the same section the words "person purchasing" and by inserting in lieu thereof the words "a person who purchases an article";
- (vi) by inserting in the same section next after the definition of "Schedule" the following new definition:—

"Sell" includes-

- (a) offer or expose for sale:
- (b) keep or have in possession for sale;
- (c) barter or exchange;

(d)

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•	Weights and Measures (Amendment).	
	(d) deal in or agree to sell;	
	(e) send, forward or deliver for sale or on sale; and	
5	(f) authorise, direct, cause, permit or suffer any of those acts or things,	
	and "sale" and "sold" have corresponding interpretations.	
10	(vii) by omitting from the same section the definition of "Weighman" and by inserting in lieu thereof the following definition:—	
	"Weighman" means a person carrying out or assisting in carrying out weighings by means of a public weighing instru-	
15	ment or issuing weight tickets in respect of weighings carried out by means of such an instrument.	
	(d) by omitting from section eleven the words ", outside the metropolitan police district,".	Sec. 11. (Superintendent or inspector not to derive profit from making, adjusting, or selling weights or
20	3. (1) The Principal Act is further amended by omitting Part III and by inserting in lieu thereof the following Part:—	Further amendment of Act No. 10, 1915.
	PART III.	Subst. Part III.
	SALE AND PACKAGING OF ARTICLES.	
	22. (1) For the purposes of this Part—	Interpreta-
25	(a) an article shall be desired to 1 1 10 to	tion.

(a) an article shall be deemed to be pre-packed if it is packed in advance ready for sale; and 25

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## Weights and Measures (Amendment).

- (b) any article of any description, being an article contained in a package, that is found on premises where articles of that description are so packed, or are kept or stored for sale after being so packed, shall be deemed to be pre-packed within the meaning of this Part unless the contrary is proved, and it shall not be sufficient proof to the contrary to show that the package has not been marked in accordance with or has been marked in contravention of the provisions of this or any other Part of this Act or any other Act or the regulations made under this or any other Act with respect to the marking of packages containing articles of that description.
- (2) Except as otherwise prescribed, a reference in 15 this Part or the regulations to the weight or measure or the true weight or measure of an article shall be construed as a reference to the weight or measure of the article excluding the weight or measure of the package in which the article is contained.
- or the true weight or measure of an article shall, in the case of an article of a kind that is ordinarily packed or sold by number, be construed as a reference to a quantity of that article counted by number.
- 25 (4) Where by or under this Part, any particulars or words are, or any statement or expression is, required, permitted or forbidden to be marked on a package containing an article, the particulars, words, statement or expression shall be deemed to be marked on the package if marked on a 30 label attached to the package or to the article.
- (5) A reference in this Part, however expressed, to the marking of a package with a statement of the weight or measure of the article contained in the package shall be construed as including a reference to the marking with such 35 a statement of a label attached to the package or the article.

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## Weights and Measures (Amendment).

- (6) A reference in this Part, however expressed, to-
- (a) a package containing an article, or a package in which an article is contained, shall be construed, where appropriate, as including a reference to a package to which an article is attached or around which an article is wound or wrapped; and
- (b) an article contained in a package, shall be construed, where appropriate, as including a reference to an article that is attached to, wound around, or wrapped around, a package.
- (7) For the purposes of this Part, an article shall be deemed not to be weighed or measured in the presence of a purchaser unless the weighing instrument or the measure or measuring instrument by which the article is weighed or 15 measured is so constructed, placed in such a position, and so used as to enable the purchaser to have a clear and unobstructed view of and to see easily—
  - (a) the weight or measure, or indication of the weight or measure of the article; and
- 20 (b) the operation of the weighing or measuring of the article.
  - 23. (1) The provisions of this Part, sections twenty-four Exemptions. and twenty-seven excepted, do not apply to or in relation to coal or firewood.
- 25 (2) The provisions of this Part prohibiting a person from selling an article that is not packed or marked in accordance with the provisions of this Part do not apply where the article sold is packed and weighed or measured in the presence of the purchaser.
- 30 24. An article sold by weight or measure shall be sold Sales to be only by reference to a Commonwealth legal unit of measure-wealth ment the use of which in respect of that article is permitted legal units.

- 25. In any contract for the sale by the bushel of any Weight articles mentioned in Schedule E, the bushel shall be deter- of bushel. mined by weighing, the weight equivalent to a bushel of any such articles being that stated in the said Schedule.
- 26. A person shall not, except as prescribed or as other-Sales to be wise provided by or under any other Act weight or measure.
  - (a) sell an article by weight or measure otherwise than by net weight or measure: or
- (b) mark a package containing any article, or cause, 10 permit or suffer such a package to be marked, with the words "gross weight" or words to the like effect or sell an article in a package so marked.
- 27. (1) Where an article sold by weight or measure is Invoice or delivered to the purchaser at a place other than the premises delivery note to be 15 of the seller, the seller shall deliver to the purchaser with supplied in the article an invoice or delivery note showing as the weight certain or measure of the article a weight or measure that is not cases. more than its true weight or measure.
- (2) Subsection one of this section does not apply
  - (a) any article exempted from provisions of that subsection by the regulations;
  - (b) bread:

- (c) any article weighed or measured at the premises of the purchaser; and purchase something to willing ad that
  - (d) any pre-packed article contained in a package on which is marked the true weight or measure of the article; or
- (e) any liquors, within the meaning of the Liquor Act, 30 1912, as subsequently amended, sold by measure in quantities of less than two fluid ounces or more than two gallons.

28. Where any person sells by retail an article by weight or Provision measure, he shall have at the place where the sale is made a for weighing or suitable weighing instrument for weighing the article or, as measuring. the case may require, a suitable measure or measuring instru-5 ment for measuring the article and shall at the request of the purchaser weigh or measure the article in the presence of the purchaser.

#### 29. (1) Any person who-

declaration

- (a) by means of words, description or other indication, as to direct or indirect, makes any false declaration or measures, weight, &c. 10 statement or misleads any person as to the true weight, measure or gauge of any article sold by him; or
- (b) sells an article, not being a pre-packed article, by 15 weight, measure or gauge short of or smaller than the quantity or gauge ordered or purchased without informing the person ordering or purchasing the article of the true weight, measure or gauge of the article.

20 shall be guilty of an offence against this Act.

- (2) Where an article is purchased by weight or measure, the weight or measure thereof is determined by the purchaser at or before the time of the sale and the purchaser, by means of words, description or other indication, direct 25 or indirect, makes to the seller or to his agent a false declaration or statement or misleads the seller or his agent as to the true weight or measure of the article, the purchaser shall be guilty of an offence against this Act.
- 29A. Where any person sells any article by weight or Sale at 30 measure at a stated price per unit of weight or measure and stated price per unit the price charged for the article exceeds the price correctly of weight computed from the true weight or measure of the article and or measure. the stated price per unit of weight or measure, that person shall be guilty of an offence against this Act.

29B. (1) A person shall not, except as prescribed, on or Name, etc., after the appointed day, pack an article as a pre-packed of packer to be article, unless the package in which the article is contained marked on is marked—

packages.

- (a) where the person packing the article—
  - (i) is an individual and he packs the article otherwise than as an employee of another person or as a member of a firm trading under a registered business name—with his name;
  - (ii) is an individual and he packs the article as an employee of another person-with the name of that other person;
  - (iii) is a corporation—with the name of that corporation; or
  - (iv) is a member of a firm trading under a registered business name-with that business name,

and with the address of the place where the article was packed or, instead of that name and address, 20 with an approved brand approved for use by that person or, where that person is an employee of another person, by that other person; and

- (b) where the article is packed for or on behalf of 25 another person by a person who is not an employee of that other person, and that other person—
  - (i) is an individual—with the name and address of that individual;
  - (ii) is a corporation—with the name of that corporation and if it has a registered office. in New South Wales, the address of that office or if it has no such office in New South Wales, the address of its sole or principal place of business; or

(iii)

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- (iii) is a firm trading under a registered business name—with that business name and the address of its sole or principal place of business,
- or, instead of that name and address, with an approved brand approved for use by that other person,

and, where the regulations prescribe the manner of marking any such name or address or approved brand on the package, 10 the package is so marked in that manner.

- (2) A person shall not, on or after the appointed day, sell a pre-packed article unless the package containing the article is marked as mentioned in subsection one of this section.
- 15 (3) Nothing in subsection two of this section prohibits the sale, pursuant to a permit under section 29F of this Act, of an article to which the permit relates.
- (4) In this section, "registered business name", in relation to a firm, means the business name of that firm registered under the law in force in the place where that firm has its sole or principal place of business.
- 29c. (1) A person shall not, on or after the appointed Certain day, pack, as a pre-packed article, an article of any description to which this section applies except in a weight or and sold to articles of that description.
- (2) A person shall not, on or after the appointed day, sell a pre-packed article of any description to which this section applies unless the article is packed as mentioned in 30 subsection one of this section.
  - (3) Nothing in subsection two of this section prohibits the sale, pursuant to a permit under section 29F of this Act, of an article to which the permit relates.

- (4) Notwithstanding the provisions contained in this or any other Act or in any regulation relating to the denominations of weight or measure in which an article of any description to which this section applies may be packed for 5 sale, a person may, on and after the date of the commencement of this section and before the appointed day under subsection one of this section in relation to any such article, pack for sale or sell any such article in a weight or measure of a denomination prescribed for the purposes of this section 10 in relation to articles of that description.
  - (5) This section applies to articles of such description as may be prescribed.
- 29D. (1) A person shall not, on or after the appointed Packages, day, pack, as a pre-packed article, an article of any description be marked 15 to which this section applies unless a statement of the pur- with ported weight or measure of the article is marked, as of the prescribed, on the package containing the article.

quantity of the articles contained therein.

- (2) For the purposes of subsection one of this section any statement of weight or measure marked on a 20 package containing an article shall be deemed to be a statement of the purported weight or measure of the article unless the context in which the statement is made indicates the contrary.
- (3) A person shall not, on or after the appointed 25 day, sell a pre-packed article of any description to which this section applies unless the package in which the article is contained is marked as mentioned in subsection one of this section.
- (4) Nothing in subsection three of this section pro-30 hibits the sale, pursuant to a permit issued under the provisions of section 29F of this Act, of an article to which the permit relates.

- (5) Notwithstanding the provisions contained in this or any other Act relating to the marking of a package containing an article with particulars of the weight or measure of the article, a person may, on and after the date of the 5 commencement of this section and before the appointed day under subsection one of this section in relation to any such article, pack for sale, or, on or after that date of commencement and before the appointed day under subsection three of this section in relation to any such article, sell, any such 10 article if the package in which the article is contained is marked in accordance with subsection one of this section.
  - (6) This section applies to all articles other than articles of such descriptions as may be prescribed.
- 29E. (1) In subsections one and two of section 29c of this "Appointed 15 Act, the appointed day in relation to articles of any particular day description means such day as the Minister may, by order sections published in the Gazette, declare for the such as the day in relation to articles of any particular day for purposes of published in the Gazette, declare for the such as the first purpose of the such as the such as the first purpose of the such as the suc published in the Gazette, declare, for the purposes of those <sup>29B</sup> (1), (2) or either of those subsections, to be the appointed day in and 29p (1), relation to articles of that description.

- 20 (2) An order made by the Minister under subsection one of this section may declare different days as the appointed days in relation to articles of different descriptions, but any day so declared shall be a day not earlier than one year after the date of commencement of the subsection for the purposes 25 of which the day is appointed and not earlier than the day on which the order is published in the Gazette.
- (3) In subsection one of section 29B, and in subsections one and three of section 29D, of this Act, the appointed day means such day as the Minister may, by order published 30 in the Gazette, declare, for the purposes of those or any of those subsections, to be the appointed day, that day or any of those days being not earlier than one year after the date of the commencement of the subsection for the purposes of which the day is appointed and not earlier than the day on 35 which the order is published in the Gazette.

29F. (1) Where any pre-packed articles were not packed, Permits for or the packages in which the articles are contained are not sale of marked, in the manner prescribed by or under this Act and that do not the Minister is satisfied that-

comply with the pre-

- (a) the articles were, when packed, intended to be scribed requirements. 5 exported from Australia and he considers that it is just or reasonable that the sale in New South Wales of the articles should be permitted:
- (b) the articles were packed outside Australia and were 10 brought into New South Wales in such circumstances as, in the opinion of the Minister, render it just and reasonable that the sale in New South Wales of the articles should be permitted; or
- (c) the articles were packed within Australia and he considers that, having regard to the date when the 15 articles were so packed or to any other relevant circumstances, it is just and reasonable that the sale in New South Wales of the articles should be permitted,
- 20 the Minister may, on an application in writing made to him by any person, grant to that person a permit in writing authorising the sale in New South Wales of the articles by that person.
- (2) A permit under this section may be granted 25 upon and subject to-

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- (a) such conditions as are specified in the permit with respect to-
  - (i) the number of individual articles the sale of which is authorised by the permit;
  - (ii) the form and manner in which the weight or measure of the articles contained in each package shall be indicated;
  - (iii) the weight or measure of the articles contained in each package; and

(iv)

- (iv) the furnishing by the holder of the permit of returns relating to the sale of the articles;and
- (b) such other conditions as the Minister thinks fit and specifies in the permit.

## (3) A person— and find side flowers to be a

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- (a) being the holder of a permit under this section, shall not sell a pre-packed article the sale of which is authorised by a permit under this section otherwise than in accordance with the conditions specified in the permit;
- (b) shall not falsely represent that a permit has been granted under this section in relation to any particular article;
- 15 (c) shall not, where a permit issued to him under this section has ceased to be in force, whether by reason of its cancellation or the effluxion of time, sell any article to which the permit related; or
- (d) shall not, where he has been authorised by a permit under this section to sell a specified number of articles of any description, sell any greater number of those articles.
- (4) Unless sooner cancelled pursuant to subsection five of this section a permit under this section shall be in25 force for such period as is specified in the permit, but may be renewed from time to time by the Minister for such further period or periods as the Minister may think fit.
- (5) The Minister may, at any time, by notice in writing to the holder of a permit under this section, cancel30 the permit if the Minister is satisfied that it is desirable in the public interest so to do.
  - (6) Where a permit under this section is cancelled pursuant to subsection five of this section the holder thereof shall forthwith deliver up the permit to the superintendent.

29G. (1) Subject to this section, where the true weight Short or measure of a pre-packed article is found by an inspector weight or to be less than the weight or measure of the article marked pre-packed on the package containing the article, the person who packed articles.

5 the article shall be guilty of an offence against this Act.

(2) Subject to this section, a person who—

- (a) sells a pre-packed article the true weight or measure of which is found by an inspector to be less than the weight or measure of the article marked on the package containing the article; or
- (b) delivers or sends to a purchaser an invoice or delivery note relating to a pre-packed article sold to the purchaser which states as the weight or measure of the article a weight or measure that is found by an inspector to be greater than the true weight or measure of the article so sold,

shall be guilty of an offence against this Act.

- (3) Subsection one of this section and paragraph (a) of subsection two of this section shall have effect in relation20 to any pre-packed article whether or not the package containing the article is required, by or under this Act, to be marked with a statement of the weight or measure of the article.
- (4) Where a package is marked with two or more statements of the weight or measure of the article contained 25 therein, the true weight or measure of the article shall for the purposes of subsection one, and paragraph (a) of subsection two, of this section, be deemed to be less than the weight or measure of the article marked on the package if that true weight or measure is less than the weight or measure 30 stated in any of those statements.

#### (5) Where—

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(a) the stated price per unit of weight or measure of a pre-packed article is indicated in the manner prescribed by the regulations;

- (b) a statement of the price of the article is marked on the package containing the article; and
- (c) that statement exceeds the price correctly computed from the true weight or measure of the article and the indicated price per unit of weight or measure.

the person who marked the package with the statement of price and the person who sold the article, are each guilty of an offence against this Act.

10 (6) In proceedings in respect of an offence against this Act arising under paragraph (a) of subsection two of this section, it shall be a defence for the person charged—

## (a) to prove—

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- (i) that he obtained the article from another person who packed the article or delivered it to him pursuant to a sale to him and that that other person furnished him with a written statement (in this section referred to as a "guarantee") that the weight or measure of the article stated on the package containing the article was correct; and
  - (ii) that he sold the article in the same state as it was when delivered to him; or
- (b) to prove that, in the case of an article of any description to which section 29p of this Act applies,—
  - (i) he obtained the article from another person who delivered it to him pursuant to a sale to him and that when he so obtained the article it was in a package that was marked as required by section 29B and by section 29D of this Act; and
  - (ii) that he sold the article in the same state as it was when delivered to him.

(7)

- (7) Where a person gives a guarantee referred to in paragraph (a) of subsection six of this section and the true weight or measure of any pre-packed article in respect of which the guarantee was given is found by an inspector to 5 be less than the weight or measure of the article as stated in the guarantee, that person shall, subject to subsection nine of this section, be guilty of an offence against this Act and be liable to a penalty not exceeding four hundred dollars.
- (8) In proceedings against a person in respect of an 10 offence against this Act arising under subsection seven of this section, it shall be a defence for the person charged to prove that any deficiency in the true weight or measure of the article to which the proceedings relate—
- (a) arose after the giving of the guarantee and was attributable wholly to factors for which reasonable allowance was made in stating the weight or measure of the article; or
  - (b) is due to the act or default of some other person after the article had passed from the control of the person charged.

#### (9) Where—

- (a) the true weight or measure of a pre-packed article is found by an inspector to be less than the weight or measure (in this subsection referred to as "the stated weight or measure") of the article as marked on the package containing the article or as stated in any guarantee relating to the article;
- (b) the deficiency of weight or measure of the article (in this subsection referred to as "the deficient article")—
  - (i) not being an article of a description to which section 29H of this Act applies, is found by that inspector not to exceed five parts per centum of the stated weight or measure of the article or, if the article is contained in a glass bottle and the stated weight or measure

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## Weights and Measures (Amendment).

of the article does not exceed five ounces or five fluid ounces, seven and one-half parts per centum of the stated weight or measure of the article; or

- (ii) being an article of a description to which section 29H of this Act applies, is found by that inspector—
  - (a) at any time on the day on which the article was packed, not to exceed five parts per centum of the stated weight of the article; or
  - (b) at any other time, not to exceed the prescribed number, being more than five, of parts per centum of the stated weight of the article; and
- (c) at the place where the deficient article was obtained by the inspector or, if the deficient article was packed in New South Wales at the place where it was packed, there are, when an inspector enters any such place for the purpose of taking packages as referred to in paragraph (f) of this subsection, available five or more packages (in this subsection referred to as "similar packages")—
  - (i) that contain articles of the same kind as the deficient article;
  - (ii) that are marked with the name and address or the approved brand of the person whose name and address or approved brand are or is marked on the package containing the deficient article:
  - (iii) that are marked with the same weight or measure as the stated weight or measure of the deficient article; and
  - (iv) that, where the deficient article is of a description to which section 29H of this Act applies and the deficiency of weight of that

article

article was found by the inspector at any time on the day on which that article was packed, were packed on that day,

#### no proceedings for an offence-

- (d) where the stated weight or measure of the article is the weight or measure of the article marked on the package containing the article—arising under subsection one or two of this section; or
- (e) where the stated weight or measure of the article is the weight or measure of the article as stated in a guarantee relating to the article—arising under subsection seven of this section.

#### shall be commenced unless-

- (f) as soon as practicable after the deficiency in the deficient article was found an inspector enters the place where the deficient article was obtained or, if the deficient article was packed in New South Wales, the place where it was packed and there takes—
  - (i) where there are eleven or more similar packages available, eleven similar packages;
    - (ii) where there are five or more but less than eleven similar packages, all of the similar packages; and
    - (g) where the deficient article was deficient—
      - (i) in weight, that or any other inspector weighed the articles contained in the similar packages so taken and, where the deficient article is of a description to which section 29H of this Act applies and the deficiency of weight of that article was found by the inspector referred to in paragraph (a) of this subsection at any time on the day on which that article was packed, weighed those articles on that day; or

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- (ii) in measure, that or any other inspector measured the articles contained in the similar packages so taken.
- (10) Where an inspector referred to in paragraph 5 (g) of subsection nine of this section finds that the average true weight or measure of the deficient article referred to in that subsection and of all the articles contained in the similar packages taken as referred to in that subsection is—
- (a) where the articles are not of a description to which section 29H of this Act applies—not less than the weight or measure of any of the articles as marked on any of the packages containing the articles or as stated in the guarantee relating to the deficient article, as the case may be; or
- 15 (b) where the articles are of a description to which section 29H of this Act applies and the deficiency of weight of the deficient article—

- (i) was found by the inspector at any time on the day on which the article was packed not less than the weight of any of the articles as marked on any of the packages containing the articles or as stated in the guarantee relating to the deficient article, as the case may be; or
- 25 (ii) was found by the inspector at any other time—less than the weight of any of the articles as so marked or as so stated but to an extent not exceeding the prescribed permissible average deficiency,
- 30 no proceedings for an offence arising under subsection one, two or seven, as the case may be, of this section shall be commenced against any person referred to in that subsection.
- (11) Subsections six and eight of this section do not apply unless the person charged has, not less than two 35 days before the date set down for the hearing of the proceedings, by a notice in writing informed the informant that

he intends to rely on a defence provided by subsection six or, as the case may be, subsection eight of this section and of the particulars of that defence.

29H. (1) A person shall not mark the words "net weight Articles 5 when packed" or words to the like effect on a package that may containing an article unless-

- (a) the article is of a description to which this section packed". applies; and
- (b) where the regulations prescribe the manner of marking any such words on a package, the package 10 is marked in that manner.
- (2) The regulations may require that in relation to any other particulars required by or under this Act to be marked on a package containing an article of a description 15 to which this section applies, a package shall be marked in the prescribed manner with the date on which the article was packed or with an approved brand indicating that date.
  - (3) This section applies to articles of such descriptions as may be prescribed.
- 291. (1) A person shall not mark the words "at standard Articles conditions" or words to the like effect on a package containing that may be marked an article unless-

- (a) the article is of a description to which this section standard conditions. applies; and
- 25 (b) where the regulations prescribe the manner of marking any such words on a package, the package is marked in that manner.
- (2) In the application of section 29g of this Act to any article of a description to which this section applies a 30 reference in that section to the true weight of an article shall be construed as a reference to the weight ascertained in the prescribed manner of the article if it were weighed at the prescribed standard conditions.

- (3) This section applies to articles of such descriptions as may be prescribed.
- 29J. (1) Subject to this section, a person who, on or after Prohibition the appointed day, packs a pre-packed article in a package tion of use 5 on which is marked a prohibited expression or a restricted of certain expression shall be guilty of an offence against this Act.

expressions on packages.

- (2) Subject to this section, a person who, on or after the appointed day, sells a pre-packed article contained in a package on which a prohibited expression or a restricted 10 expression is marked shall be guilty of an offence against this Act.
- (3) The provisions of subsections one and two of this section relating to the marking on a package of a restricted expression shall not apply to or in relation to an article con-15 tained in a package on which a restricted expression appears if, in addition to that expression-
- (a) there is marked on every part of the package on which the restricted expression appears such a statement as to the purported weight or measure of the article contained in the package as is referred 20 to in subsection one of section 29D of this Act, whether or not the article is an article of a description to which that section applies;
- (b) the restricted expression and that statement are so placed and so marked that both may be seen clearly 25 at the same time; and
  - (c) each of the letters or figures contained in that statement-
    - (i) is of a size not less than the minimum size of print prescribed by the regulations in relation to the dimensions of the package;
    - (ii) is of a size not less than one-third of the size of the largest letter or figure contained in the restricted expression; and
    - (iii) is marked in a colour of a distinct contrast to the colour of its background.

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(4)

#### (4) In this section—

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"prohibited expression" means any expression, whether consisting of a single word or of more words than one and whether in an abbreviated form or not, that directly or indirectly relates to or qualifies a unit of measurement of a physical quantity and, without prejudice to the generality of the foregoing, includes any expression declared by the regulations to be a prohibited expression for the purposes of this section:

"restricted expression" means any expression, not being a prohibited expression, and whether consisting of a single word or of more words than one or of any word or words in combination with any figure or 15 figures and whether in an abbreviated form or not, that directly or indirectly relates to the size of the package containing the article, not being such a statement as to the purported weight or measure of the article as is required by subsection one of section 29p of this Act, and, without prejudice to 20 the generality of the foregoing, includes any expression that is declared by the regulations to be a restricted expression for the purposes of this section.

25 (5) In subsections one and two of this section the appointed day means such day or days as the Minister may, by order published in the Gazette, declare, for the purposes of those or either of those subsections, to be the appointed day, those days or that day being not earlier than one year after the 30 date of the commencement of the subsections or subsection for the purposes of which the day is appointed and not earlier than the day on which the order is published in the Gazette.

29k. (1) Where any fraud is wilfully committed in the Fraud in using of any weight, measure, weighing instrument or using weights, 35 measuring instrument, the person committing the fraud shall measures, be guilty of an offence against this Act.

- (2) Where the weight, measure, weighing instrument or measuring instrument with which any such fraud was so committed was in the possession of the person by whom the fraud was committed, the weight, measure, weighing instru-5 ment or measuring instrument may be seized by an inspector.
- 29L. (1) Notwithstanding any other law or rule of law Liability of where any person, in this section referred to as "the agent", principal acting, otherwise than as an employee, for or on behalf of of agent. another person, in this section referred to as "the principal", 10 packs an article for sale, marks a package containing an article, or sells an article and commits an offence against this Part in relation to that packing, marking, or sale, the principal shall be guilty of an offence against this Act in like manner as the agent and may be proceeded against and con-15 victed accordingly unless he proves that he had no knowledge of the commission of the offence and that he took all reasonable precautions and used all due diligence to avoid the commission of the offence in relation to the article to which the proceedings relate.
- 20 (2) The principal may be proceeded against and convicted pursuant to subsection one of this section whether or not the agent has been proceeded against or been convicted under this Act.
- (3) Nothing in subsection one of this section shall 25 prejudice or affect any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.
- 29M. (1) Notwithstanding any other law or rule of law, Liability of where any person, as the employee of another person, who employer for offence 30 in this section is referred to as "the employer", packs an article by emfor sale, marks a package containing an article, or sells an ployee. article, and commits an offence against this Act in relation to that packing, marking, or sale, the employer shall be guilty of an offence against this Act in like manner as the employee. 35 whether or not the offence was committed without the

employer's

employer's authority or contrary to his orders or instructions, and may be proceeded against and convicted accordingly unless he proves that he had no knowledge of the commission of the offence and could not, by the exercise of due diligence, 5 have prevented the commission of the offence.

- (2) The employer may be proceeded against and convicted pursuant to subsection one of this section whether or not the employee has been proceeded against or been convicted under this Act.
- 10 (3) Nothing in subsection one of this section shall prejudice or affect any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.
- 29N. (1) Where a person, in this subsection referred to General 15 as "the defendant", is convicted of an offence against this provisions relating to Part and the court by which he is convicted is of the opinion proceedings that some other person was defrauded or suffered pecuniary for offences. loss by reason of the commission of the offence, the court may, in addition to imposing a penalty for the offence, order 20 the defendant to pay to that other person, by way of recoupment of his loss, such sum as the court thinks fit and as may be specified in the order.

- (2) Any order made under subsection one of this section shall operate as an order for the payment of money 25 under the Small Debts Recovery Act, 1912, as subsequently amended, and be enforceable as such under the provisions of that Act.
- (3) A prosecution for an offence against this Part may be instituted at any time within a period of twelve 30 months after the commission of the offence or within a period of six months after the commission of the offence comes to the knowledge of an inspector, whichever period last expires.

- (4) In any proceedings for an offence against any of the provisions of this Part, a witness shall not be excused from answering any question or producing any document on the ground that the answer or production may criminate 5 or tend to criminate him, but an answer made or a document produced by any such witness shall not be admissible in evidence against him in any proceedings for an offence under this Part.
- 290. (1) In proceedings in respect of an offence against Defences. 10 this Act arising under section 29B of this Part, it is a defence for the person charged to prove that the article to which the proceedings relate was packed on any premises for sale on those premises to a person for the purpose of consumption or use and not for the purpose of re-sale.
- 15 (2) In proceedings in respect of an offence against this Act arising under subsection two of section 29B, subsection one of section 29C or subsection one of section 29D of this Act, it is a defence for the person charged to prove that the article to which the proceedings relate was packed 20 for export from Australia and that the marking on the package containing the article clearly so indicated.
- (3) In proceedings in respect of an offence against this Act arising under subsection two of section 29B, subsection two of section 29C, subsection three of section 29D,
  25 paragraph (a) of subsection three of section 29F, subsection two or subsection five of section 29G or subsection two of section 29J of this Act, it is a defence for the person charged to prove—
  - (a) that the commission of the offence was due to a cause or to causes beyond his control;

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(b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the article to which the proceedings relate; and

- (c) that he obtained the article from another person and sold or delivered it in the same state as it was when delivered to him.
- (4) In proceedings in respect of an offence against 5 this Act arising under subsection one of section 29g of this Act, it is a defence for the person charged to prove-
  - (a) that—

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- (i) the deficiency arose after the packing of the article and the marking of the package and was attributable wholly to factors for which reasonable allowance was made in stating the weight or measure of the article; or
- (ii) the commission of the offence was due to a cause or to causes beyond his control; and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the article to which the proceedings relate.
- (5) For the purposes of subsections three and four of this section a cause is not beyond the control of a person against whom proceedings referred to in either of those subsections are brought unless the court before which the 25 proceedings are brought is satisfied that the cause was one that the person charged could not reasonably have foreseen or for which he could not reasonably have made allowance.
- (6) Subsections three and four of this section do not apply unless the person charged has, not less than two 30 days before the date set down for the hearing of the proceedings, by a notice in writing, informed the informant that he intends to rely on a defence provided by any of the provisions of those subsections and of the particulars of that defence.

- 29P. (1) On the application of a person whose business Approval consists of or includes the packing of articles for sale, the of brands. superintendent may approve in writing of a brand for use by that person—
- 5 (a) for the purpose of marking on packages—
  - (i) the name and address required by paragraph (a) of subsection one of section 29B of this Act to be marked on packages; or
- (ii) the name and address required by paragraph
  (b) of that subsection to be marked on packages; or
- (b) which, where the regulations require the dates when the articles contained in the packages were packed to be marked on the packages is, or incorporates, a device approved by the superintendent for the purpose of indicating those dates.
- (2) An approval under subsection one of this section may be granted subject to such conditions, if any, as the superintendent determines and specifies in the approval and may be cancelled by the superintendent at any time by notice in writing given to the person to whom the approval was granted.
- (3) A person to whom an approval under subsection 25 one of this section has been granted subject to conditions shall not mark a package containing an article with the brand specified in the approval otherwise than in compliance in all respects with those conditions.
- (4) Where a brand has been approved under sub-30 section one of this section for use by a person for the purposes of marking on packages the name and address referred to in subparagraph (i) or (ii) of paragraph (a) of that subsection, a person other than the person to whom that approval was granted or a person having his authority so to do shall not 35 mark a package containing an article with the brand specified

in the approval or with any other brand so closely resembling the brand specified in the approval as to be likely to lead to the belief that it is the brand specified in the approval.

29Q. In proceedings in respect of an offence against this Evidentiary 5 Act arising under this Part in relation to a pre-packed article—

- (a) the marking on the package in which the article is contained indicating the name of the person who packed the article shall be evidence that the article was packed by that person:
- 10 (b) the marking on the package in which the article is contained indicating the name and address of a person for or on whose behalf the article was packed shall be evidence that the article was packed for or on behalf of that person;
- 15 (c) the marking on the package in which the article is contained indicating the place where the article was packed shall be evidence that the article was packed at that place;
- (d) the marking on the package in which the article 20 is contained indicating the date when the article was packed shall be evidence that the article was packed on that date;
- (e) a document purporting to be certified by the superintendent to be a copy of a permit granted by the Minister under section 29F of this Act shall be 25 evidence of the granting of the permit and of the conditions, if any, specified in the permit;
  - (f) a certificate purporting to be signed by the superintendent and stating-
- (i) that a permit granted by the Minister 30 under section 29F of this Act was cancelled on a date specified in the certificate:

(ii) that a permit cancelled under subsection five of section 29F of this Act has not been delivered up to him,

shall be evidence of the matters stated in the certificate;

- (g) a document purporting to be certified by the superintendent to be a copy of an approval granted by him under subsection one of section 29P of this Act shall be evidence of the approval and of the conditions, if any, subject to which the approval was granted, and the fact that such a brand is marked on a package containing an article shall be evidence-
  - (i) where the approval was granted to a person for the purpose referred to in subparagraph (i) of paragraph (a) of that subsection, that the article was packed by the person to whom the approval was granted and at the place the address of which is specified in the approval as the address indicated by the brand;
  - (ii) where the approval was granted to a person for the purpose referred to in subparagraph (ii) of paragraph (a) of that subsection, that the article was packed for or on behalf of the person whose name and address are indicated by the brand; or
  - (iii) where approval is of a brand which is, or incorporates, a device referred to in paragraph (b) of that subsection, that the article was packed on the date indicated by that device,

as the case requires; and

(h) a certificate purporting to be signed by the superintendent and stating that an approval granted by him under subsection one of section 29P of this Act was cancelled on a date specified in the certificate shall be evidence of the matters stated in the certificate.

29R.

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#### Weights and Measures (Amendment).

29R. (1) The Governor may make regulations for or with Regulations. respect to—

- (a) the form and manner in which packages required or permitted by any provision of this Act to be marked with any particulars, statement, or approved brand, shall or may be so marked;
- (b) the denominations of weight or measure in which articles of any prescribed description shall or may be packed or sold;
- 10 (c) specifying or describing the machines or classes of machines that shall be vending machines for the purposes of the regulations;
  - (d) regulating, controlling, or restricting the sale or supply of articles by means of vending machines referred to in paragraph (c) of this subsection and prohibiting the sale or supply of articles by means of any such machine otherwise than in accordance with the regulations;
- (e) securing that articles that are sold by means of a vending machine referred to in paragraph (c) of this subsection are so sold only if there is displayed in or on the machine such particulars or statements, with respect to such matters, as may be prescribed, and the manner in which the particulars or statements so prescribed shall be so displayed;
  - (f) the units of weight or measure to be used in marking or displaying on packages or vending machines referred to in paragraph (c) of this subsection any particulars or statements required to be marked or displayed thereon and the manner in which those units of weight or measure shall or may be expressed, whether in figures or words or figures and words, and the abbreviations that may or may not be used for the purposes of expressing those units;

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#### Weights and Measures (Amendment).

- (g) the method by which, and the conditions under which, the weight or measure of articles is to be determined in connection with the marking or displaying on packages or on vending machines referred to in paragraph (c) of this subsection of any particulars or statements referred to in the foregoing provisions of this subsection;
- (h) permitting, in the case of such articles and in such circumstances as may be specified in the regulations, the weight or measure of any articles used in packing the first-mentioned articles for sale as may be so specified to be included, notwithstanding any other provision of this Act, in the net weight or measure of the first-mentioned articles;
- 15 (i) exempting, either wholly or to such extent as may be prescribed, or authorising a prescribed person to exempt, either unconditionally or subject to such conditions and restrictions as that person may determine, from any of the provisions of this Part—
  - (i) articles of any description prescribed or referred to in the regulations and packages containing any such articles; and
  - (ii) prescribed transactions and classes of sales:
  - (j) prescribing standard specifications of capacity for or in relation to packages used in the packing or sale of prescribed articles, prescribing distinctive marks for packages made to those specifications, and prohibiting or regulating the sale of any such articles, when packed, otherwise than in prescribed packages made to those specifications and bearing the prescribed distinctive marks;
- (k) requiring packages containing articles to be marked with a statement of the sale price per unit of weight or measure of the articles;

- (1) generally regulating and controlling the packing of articles and the marking of packages in which pre-packed articles are contained; and
- (m) prescribing all matters which by this Part are required or permitted to be prescribed or which are necessary or convenient for giving effect to this Part.
- (2) The regulations made under this Part may impose a penalty not exceeding one hundred dollars for any 10 offence against the regulations.
  - (3) The regulations made under this Part-
  - (a) may make different provision in respect of different descriptions of articles, packages, transactions and classes of sales;
- (b) may be made so as to apply generally or only in respect of the packing or sale of articles of denominations of weight or measure greater than or less than some other prescribed multiple of a prescribed denomination;
- (c) may be of general or specially limited application; and
  - (d) may differ according to differences in time, locality, place or circumstance.
- (2) Notwithstanding the repeal of Part III of the 25 Principal Act by subsection one of this section, subsection three of section twenty-five of the Principal Act as in force immediately before the commencement of section 29p of the Principal Act (as inserted by subsection one of this section) shall after that commencement continue in force in relation
- 30 to any article in a package, not being an article referred to in paragraph (a) or (b) of subsection four of the said section twenty-five, until the appointed day referred to in subsection three of section 29D of the Principal Act (as so inserted) and a person contravening the provisions of subsection three
- 35 of the said section twenty-five may be proceeded against and shall be liable to the same penalty as if that subsection had not been repealed.

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4. The Principal Act is further amend	led—
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Further amendment of Act No. 10, 1915. (Part IV— Verification and Stamping.)

- (a) by inserting next after subsection one of section Sec. 30.
  thirty the following new subsections:—

  (Verification and stamp-
  - (1A) Subsection one of this section does not ing.) operate to require any measure made entirely of glass to be stamped, if that measure—
    - (a) is of a class that the Minister, by order, specifies in a notification published in the Gazette as a class of measures to which subsection one of this section does not apply:
    - (b) was manufactured in New South Wales by a manufacturer who is the holder of an instrument of approval issued to him by the Minister;
    - (c) was manufactured in a batch, some of which were tested by sample in the prescribed manner by an inspector; and
  - (d) is marked by the manufacturer in the prescribed manner to show that it was part of a batch that was so tested.
  - (1B) An approval referred to in paragraph (b) of subsection (1A) of this section—
    - (a) may be given subject to such conditions as the Minister thinks fit and specifies in the instrument of approval, including conditions relating to the facilities and equipment to be made available by the manufacturer for use by any inspector making tests referred to in paragraph (c) of subsection (1A) of this section; and
    - (b) may be revoked by the Minister for any reason that to the Minister seems sufficient.

(1c)

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- (1c) An application for an approval referred to in paragraph (b) of subsection (1A) of this section may be refused by the Minister if he is of the opinion that the number of measures to be manufactured by the applicant is insufficient to warrant his being granted the approval or for any other reason that to the Minister seems sufficient.
- (b) by inserting in subsection one of section thirty-one Sec. 31. after the word "glass," the words "or a weight, (Reverificameasure, weighing instrument or measuring tion and re-stamping.) 10 instrument of a prescribed class";
- (c) by inserting in section thirty-three after the word Sec. 33. "thereon" the words "and, unless the weight, (Using defective measure, weighing instrument or measuring instru- or repaired ment has been produced at the office of an inspec-weights, &c., until re-stamped.) 15 superintendent in writing within twenty-one days after destroying the stamp that the stamp has been destroyed".

20 The Principal Act is further amendedFurther amendment of Act No. 10, 1915. (Part V-Sale of Coal and Firewood.)

(a) by omitting section thirty-seven;

- Sec. 37. (Application of last two preceding
- (b) by omitting from paragraph (e) of section thirty- sec. 39. nine the words "forty dollars" and by inserting (Regula-in lieu thereof the words "one hundred dollars". tions.)

# The Principal Act is further amended—

Further amendment of Act No. 10, 1915. (Part VI-General and Supplemental.)

(a) (i) by omitting paragraph (a) of subsection one Sec. 41. of section forty-one and by inserting in lieu (Inspection thereof the following paragraph:—

in packages.)

(a) enter any building or place where any article is packed for sale or sold or where he has reasonable cause to

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sale or sold;

(ii) by inserting next after the same subsection 10 the following new subsections: -

> (1A) Where any article referred to in subsection one of this section is contained in a package, the inspector may, for the purpose of weighing or measuring it, break open and remove the article from the package.

believe that any article is packed for

(1B) An inspector may require the driver or person in charge of a vehicle by whom any invoice or delivery note relating to any

articles being carried on the vehicle for delivery to a purchaser is held to produce that invoice or delivery note to the inspector.

- (b) by omitting section forty-two and by inserting in Subst. lieu thereof the following section: sec. 42.
  - 42. Any person who—

Obstruc-

(a) hinders or obstructs or attempts to hinder inspector. or obstruct in any manner an inspector in the execution of his duty under this Act;

		Weights and Measures (Amendment).
5		<ul> <li>(b) does not, when requested to do so by an inspector, produce all weights, measures, weighing instruments or measuring instruments in his possession for examination or testing;</li> </ul>
		(c) refuses when requested to do so by an inspector to state his name and address, or when so requested states a false name or address to an inspector;
10		<ul><li>(d) refuses or fails to stop a vehicle of which he is the driver or person in charge when required to do so by an inspector;</li></ul>
15		(e) does not comply with a requirement made by an inspector under subsection (1B) of section forty-one of this Act;
		<ul><li>(f) uses abusive language to or directly or indirectly threatens an inspector;</li><li>(g) assaults an inspector while the inspector is</li></ul>
20		executing his duties under this Act; (h) impersonates an inspector,
20		shall be guilty of an offence against this Act.
25	(c)	by omitting from section forty-four the words "one Sec. 44. hundred dollars" and by inserting in lieu thereof (Penalties.) the words "two hundred dollars for a first offence or four hundred dollars for a second or subsequent offence";
	(d)	by inserting at the end of section fifty-four the Sec. 54. following new subsection:—  (Evidence of regulations.)

(2) A certificate purporting to be signed by the regulations.) superintendent certifying—

(a) that any weight or measure specified in the certificate is a standard of measurement—

(i) that has been provided and maintained by the Minister under subsection one of section twelve of this Act; or

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- (ii) that is or was at a time or during a period specified in the certificate a primary State standard, a secondary State standard, a tertiary State standard or an inspector's standard;
- (b) that a person specified in the certificate is or was at a time or during a period specified in the certificate an inspector.
- shall be prima facie evidence of the particulars 10 stated in the certificate.
  - (e) (i) by omitting paragraphs (o1) and (q) of sub- Sec. 57. section one of section fifty-seven: (Canada and
    - (ii) by inserting next before paragraph (r) of Trade).) the same subsection the following new paragraphs:-
      - (q1) The registration, examination and licensing of persons carrying on the business of repairing or adjusting weighing and measuring instruments and the regulation of persons carrying on any such business.
      - (q2) The manner of testing of glass measures for the purposes of paragraph (c) of subsection (1A) of section thirty of this Act, the manner of marking any such measures, requiring the manufacturer to produce to an inspector production records relating to manufacture of any such measures and prohibiting the removal from the manufacturer's premises of any such measures bearing a mark of verification without approval of an inspector.

(iii)

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- (iii) by omitting from paragraph (s) of the same subsection the words "forty dollars" and by inserting in lieu thereof the words "one hundred dollars";
- (iv) by omitting subsection two of the same section.

BY AUTHORITY:
V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1968
[35c]

# WEIGHTS AND MEASURES (AMENDMENT) BILL, 1968

#### **EXPLANATORY NOTE**

THE objects of this Bill are—

- (a) to repeal Part III of the Weights and Measures Act, 1915, as subsequently amended, which contains the law of weights and measures relating to the sale of goods, and to substitute for that Part provisions—
  - (i) that relate to the sale of articles by reference to Commonwealth legal units of measurement or by bushel, in the same terms as sections 23 and 24 of the existing Act;
  - (ii) that prohibit the sale of articles by weight or measure otherwise than by net weight or measure;
  - (iii) that prohibit the marking of a package containing an article with the words "gross weight";
  - (iv) that require the seller of certain articles sold by weight or measure and delivered to the purchaser at a place other than a seller's premises to deliver to the seller an invoice or delivery note;
  - (v) that require the seller by retail of an article by weight or measure to have a suitable weighing instrument or measure or measuring instrument available and at the request of the purchaser to weigh or measure the article;
  - (vi) that prohibit the use of false or misleading statements as to the weight or measure of articles sold;
  - (vii) that prohibit the sale of articles by weight or measure short of the quantity ordered or purchased unless the seller informs the purchaser of the true weight or measure of the article;
  - (viii) that prohibit a purchaser of an article by weight or measure deternimed by the purchaser from making a false or misleading statement to the seller as to the weight or measure of the article;
  - (ix) that prohibit the sale of an article by weight or measure at a stated price per unit of weight or measure where the price charged is incorrect for the weight or measure of the article sold;
  - (x) that require—
    - (a) the name and address of certain persons who pack pre-packed articles or for or on whose behalf any such articles are packed to be marked on the packages;
    - (b) certain articles to be packed and sold only in certain denominations;
    - (c) packages to be marked with particulars of the quantity of the articles contained in them;

- (xi) that authorise the Minister to grant permits permitting the sale of pre-packed articles not complying with prescribed requirements;
- (xii) that prohibit the packing or sale of pre-packed articles that contain an average deficiency exceeding that prescribed;
- (xiii) that control the use of the expressions "net weight when packed" or "at standard conditions" on packages;
- (xiv) that prohibit or restrict the use of certain expressions on packages;
- (xv) that prohibit the use of weights, measures, weighing instruments or measuring instruments for fraudulent purposes;
- (xvi) that define the liability under the substituted Part III of-
  - (a) a principal for acts of his agent;
  - (b) an employer for acts of his employee;
  - (c) a director or member of the governing authority of a corporation or an officer concerned in the management of a corporation;
- (xvii) that specify the defences available to packers or sellers of pre-packed articles in respect of proceedings for offences under certain provisions of the substituted Part III;
- (xviii) that authorise the use of approved brands on packages instead of names and addresses;
- (b) to provide for the verification and stamping of glass measures by batch testing;
- (c) to extend the intervals at which certain weights, measures and weighing or measuring instruments are required to be submitted to an inspector for reverification and stamping;
- (d) to require any person repairing a defective weight, measure or weighing or measuring instrument to notify the superintendent in writing within 21 days after the destruction of the stamp unless the appliance has been previously re-verified and stamped by an inspector;
- (e) to extend the provisions of the existing Act relating to the sale of coal and firewood to the whole of the State;
- (f) to increase the powers of an inspector relating to the inspection of premises and of articles found in premises;
- (g) to increase penalties for breaches of the Act and the regulations;
- (h) to make provisions of a machinery or consequential character.

# A BILL

To control and regulate the packing of certain articles and the sale of certain articles, whether in packages or not; for this and other purposes to amend the Weights and Measures Act, 1915, as subsequently amended; and for purposes connected therewith.

[MR WILLIS—28 March, 1968.]

**B**<sup>E</sup> it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as 5 follows:—

1. (1) This Act may be cited as the "Weights and Short title, citation and commence-Measures (Amendment) Act, 1968".

- (2) The Weights and Measures Act, 1915, as subsequently amended, is in this Act referred to as the Principal Act.
- (3) The Principal Act, as amended by this Act, may 5 be cited as the Weights and Measures Act, 1915–1968.
  - (4) The several provisions of this Act shall commence upon such day or days as may be appointed by the Governor in respect thereof and notified by proclamation published in the Gazette.

# 10 2. The Principal Act is amended—

Amendment of Act No. 10, 1915.

(Part I— Preliminary.)

(a) by omitting from subsection two of section one the Sec. 1. matter relating to Part III and by inserting in lieu (Short thereof the following matter:—

PART III.—SALE AND PACKAGING OF ARTICLES
—ss. 22–29R.

(b) by inserting next after section five the following new New sec. section:—

5A. This Act shall be read and construed subject Constructo the limits of the legislative powers of the State tion of Act. and so as not to exceed those powers, to the intent that, where any enactment thereof, but for this provision, would be construed as being in excess of those powers, it shall nevertheless be a valid enactment to the extent to which it is not in excess of those powers.

(c) (i) by inserting in section six next before the Sec. 6.
definition of "Coal" the following new (Definitions.)

"Approved brand" means a brand approved by the superintendent pursuant to section 29P of this Act.

"Brand"

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- "Brand" includes any mark, device, name, word, letter, numeral or symbol, or any combination thereof.
- (ii) by omitting from the definition of "Coal" in the same section the words ", coke, and charcoal" and by inserting in lieu thereof the words "and coke";
- (iii) by inserting in the same section next before the definition of "Measuring instrument" the following new definition:—

"Mark" includes cause, permit or suffer to be marked."

(iv) by omitting from the same section the definition of "Package" and by inserting in lieu thereof the following definitions:—

"Pack" includes cause, permit or suffer to be packed.

"Package" includes anything by means of which any article is packed for sale, or any articles are packed for sale as a single item, and in particular and without prejudice to the generality of the foregoing, includes a wrapper and a confining band.

- (v) by omitting from the definition of "Purchaser" in the same section the words "person purchasing" and by inserting in lieu thereof the words "a person who purchases an article";
- (vi) by inserting in the same section next after the definition of "Schedule" the following new definition:—

"Sell" includes-

- (a) offer or expose for sale;
- (b) keep or have in possession for sale;
- (c) barter or exchange;

(d)

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# Weights and Measures (Amendment).

- (d) deal in or agree to sell;
- (e) send, forward or deliver for sale or on sale; and
- (f) authorise, direct, cause, permit or suffer any of those acts or things,

and "sale" and "sold" have corresponding interpretations.

(vii) by omitting from the same section the definition of "Weighman" and by inserting in lieu thereof the following definition:—

> "Weighman" means a person carrying out or assisting in carrying out weighings by means of a public weighing instrument or issuing weight tickets in respect of weighings carried out by means of such an instrument.

(d) by omitting from section eleven the words ", outside Sec. 11. the metropolitan police district,".

Sec. 11.
(Superintendent or inspector not to derive profit from making, adjusting, or selling weights or measures.)

20 3. (1) The Principal Act is further amended by omitting Further Part III and by inserting in lieu thereof the following Part:— amendment

Further amendment of Act No. 10, 1915. Subst. Part III.

#### PART III.

SALE AND PACKAGING OF ARTICLES.

22. (1) For the purposes of this Part—

Interpreta-

25 (a) an article shall be deemed to be pre-packed if it is packed in advance ready for sale; and

- (b) any article of any description, being an article contained in a package, that is found on premises where articles of that description are so packed, or are kept or stored for sale after being so packed, shall be deemed to be pre-packed within the meaning of this Part unless the contrary is proved, and it shall not be sufficient proof to the contrary to show that the package has not been marked in accordance with or has been marked in contravention of the provisions of this or any other Part of this Act or any other Act or the regulations made under this or any other Act with respect to the marking of packages containing articles of that description.
- (2) Except as otherwise prescribed, a reference in 15 this Part or the regulations to the weight or measure or the true weight or measure of an article shall be construed as a reference to the weight or measure of the article excluding the weight or measure of the package in which the article is contained.
- 20 (3) A reference in this Part to the weight or measure or the true weight or measure of an article shall, in the case of an article of a kind that is ordinarily packed or sold by number, be construed as a reference to a quantity of that article counted by number.
- 25 (4) Where by or under this Part, any particulars or words are, or any statement or expression is, required, permitted or forbidden to be marked on a package containing an article, the particulars, words, statement or expression shall be deemed to be marked on the package if marked on a 30 label attached to the package or to the article.
- (5) A reference in this Part, however expressed, to the marking of a package with a statement of the weight or measure of the article contained in the package shall be construed as including a reference to the marking with such 35 a statement of a label attached to the package or the article.

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# Weights and Measures (Amendment).

- (6) A reference in this Part, however expressed, to-
- (a) a package containing an article, or a package in which an article is contained, shall be construed, where appropriate, as including a reference to a package to which an article is attached or around which an article is wound or wrapped; and
- (b) an article contained in a package, shall be construed, where appropriate, as including a reference to an article that is attached to, wound around, or wrapped around, a package.
- (7) For the purposes of this Part, an article shall be deemed not be weighed or measured in the presence of a purchaser unless the weighing instrument or the measure or measuring instrument by which the article is weighed or measured is so constructed, placed in such a position, and so used as to enable the purchaser to have a clear and unobstructed view of and to see easily—
  - (a) the weight or measure, or indication of the weight or measure of the article; and
- 20 (b) the operation of the weighing or measuring of the article.
  - 23. (1) The provisions of this Part, sections twenty-four Exemptions. and twenty-seven excepted, do not apply to or in relation to coal or firewood.
- 25 (2) The provisions of this Part prohibiting a person from selling an article that is not packed or marked in accordance with the provisions of this Part do not apply where the article sold is packed and weighed or measured in the presence of the purchaser.
- 30 24. An article sold by weight or measure shall be sold Sales to be only by reference to a Commonwealth legal unit of measure—wealth ment the use of which in respect of that article is permitted legal units.

- 25. In any contract for the sale by the bushel of any weight articles mentioned in Schedule E, the bushel shall be deter- of bushel. mined by weighing, the weight equivalent to a bushel of any such articles being that stated in the said Schedule.
- 26. A person shall not, except as prescribed or as other-Sales to be wise provided by or under any other Act weight or measure.
  - (a) sell an article by weight or measure otherwise than by net weight or measure; or
- (b) mark a package containing any article, or cause, 10 permit or suffer such a package to be marked, with the words "gross weight" or words to the like effect or sell an article in a package so marked.
- 27. (1) Where an article sold by weight or measure is Invoice or delivered to the purchaser at a place other than the premises delivery note to be of the seller, the seller shall deliver to the purchaser with supplied in the article an invoice or delivery note showing as the weight cases. or measure of the article a weight or measure that is not more than its true weight or measure.

- (2) Subsection one of this section does not apply 20 to—
  - (a) any article exempted from provisions of that subsection by the regulations;
  - (b) bread:

- (c) any article weighed or measured at the premises of the purchaser;
  - (d) any pre-packed article contained in a package on which is marked the true weight or measure of the article; or
- (e) any liquors, within the meaning of the Liquor Act, 30 1912, as subsequently amended, sold by measure in quantities of less than two fluid ounces or more than two gallons.

28. Where any person sells by retail an article by weight or Provision measure, he shall have at the place where the sale is made a for weighsuitable weighing instrument for weighing the article or, as measuring. the case may require, a suitable measure or measuring instru-5 ment for measuring the article and shall at the request of the purchaser weigh or measure the article in the presence of the purchaser.

## 29. (1) Any person who—

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(a) by means of words, description or other indication, as to direct or indirect, makes any false declaration or measures, statement or misleads any person as to the true weight, measure or gauge of any article sold by him: or

False declaration

- (b) sells an article, not being a pre-packed article, by 15 weight, measure or gauge short of or smaller than the quantity or gauge ordered or purchased without informing the person ordering or purchasing the article of the true weight, measure or gauge of the article.
- 20 shall be guilty of an offence against this Act.
- (2) Where an article is purchased by weight or measure, the weight or measure thereof is determined by the purchaser at or before the time of the sale and the purchaser, by means of words, description or other indication, direct 25 or indirect, makes to the seller or to his agent a false declaration or statement or misleads the seller or his agent as to the true weight or measure of the article, the purchaser shall be guilty of an offence against this Act.
- 29A. Where any person sells any article by weight or Sale at 30 measure at a stated price per unit of weight or measure and stated price per unit the price charged for the article exceeds the price correctly of weight computed from the true weight or measure of the article and the stated price per unit of weight or measure, that person shall be guilty of an offence against this Act.

29B. (1) A person shall not, except as prescribed, on or Name, etc., after the appointed day, pack an article as a pre-packed of packer to be article, unless the package in which the article is contained marked on packages.

5 (a) where the person packing the article—

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- (i) is an individual and he packs the article otherwise than as an employee of another person or as a member of a firm trading under a registered business name—with his name;
- (ii) is an individual and he packs the article as an employee of another person—with the name of that other person;
- (iii) is a corporation—with the name of that corporation; or
- (iv) is a member of a firm trading under a registered business name—with that business name,
- and with the address of the place where the article was packed or, instead of that name and address, with an approved brand approved for use by that person or, where that person is an employee of another person, by that other person; and
- (b) where the article is packed for or on behalf of another person by a person who is not an employee of that other person, and that other person—
  - (i) is an individual—with the name and address of that individual;
  - (ii) is a corporation—with the name of that corporation and if it has a registered office in New South Wales, the address of that office or if it has no such office in New South Wales, the address of its sole or principal place of business; or

(iii)

- (iii) is a firm trading under a registered business name—with that business name and the address of its sole or principal place of business,
- or, instead of that name and address, with an 5 approved brand approved for use by that other person,

and, where the regulations prescribe the manner of marking any such name or address or approved brand on the package. 10 the package is so marked in that manner.

- (2) A person shall not, on or after the appointed day, sell a pre-packed article unless the package containing the article is marked as mentioned by subsection one of this section.
- 15 (3) Nothing in subsection two of this section prohibits the sale, pursuant to a permit under section 29F of this Act, of an article to which the permit relates.
- (4) In this section, "registered business name", in relation to a firm, means the business name of that firm regis-20 tered under the law in force in the place where that firm has its sole or principal place of business.
- 29c. (1) A person shall not, on or after the appointed Certain day, pack, as a pre-packed article, an article of any descrip- articles to be packed tion to which this section applies except in a weight or and sold 25 measure of such denomination as may be prescribed in relation only in certain deto articles of that description.

nominations.

- (2) A person shall not, on or after the appointed day, sell a pre-packed article of any description to which this section applies unless the article is packed as mentioned by 30 subsection one of this section.
  - (3) Nothing in subsection two of this section prohibits the sale, pursuant to a permit under section 29F of this Act, of an article to which the permit relates.

- (4) Notwithstanding the provisions contained in this or any other Act or in any regulation relating to the denominations of weight or measure in which an article of any description to which this section applies may be packed for 5 sale, a person may, on and after the date of the commencement of this section and before the appointed day under subsection one of this section in relation to any such article. pack for sale or sell any such article in a weight or measure of a denomination prescribed for the purposes of this section 10 in relation to articles of that description.
  - (5) This section applies to articles of such description as may be prescribed.
- 29D. (1) A person shall not, on or after the appointed Packages, day, pack, as a pre-packed article, an article of any description be marked 15 to which this section applies unless a statement of the pur- with ported weight or measure of the article is marked, as of the prescribed, on the package containing the article.

quantity of the articles contained therein.

- (2) For the purposes of subsection one of this section any statement of weight or measure marked on a 20 package containing an article shall be deemed to be a statement of the purported weight or measure of the article unless the context in which the statement is made indicates the contrary.
- (3) A person shall not, on or after the appointed 25 day, sell a pre-packed article of any description to which this section applies unless the package in which the article is contained is marked as mentioned by subsection one of this section.
- (4) Nothing in subsection three of this section pro-30 hibits the sale, pursuant to a permit issued under the provisions of section 29F of this Act, of an article to which the permit relates.

- (5) Notwithstanding the provisions contained in this or any other Act relating to the marking of a package containing an article with particulars of the weight or measure of the article, a person may, on and after the date of the 5 commencement of this section and before the appointed day under subsection one of this section in relation to any such article, pack for sale, or, on or after that date of commencement and before the appointed day under subsection three of this section in relation to any such article, sell, any such 10 article if the package in which the article is contained is marked in accordance with subsection one of this section.
  - (6) This section applies to all articles other than articles of such descriptions as may be prescribed.
- 29E. (1) In subsection one and two of section 29c of this "Appointed 15 Act, the appointed day in relation to articles of any particular day" for purposes of description means such day as the Minister may, by order sections published in the Gazette, declare, for the purposes of those <sup>29B</sup><sub>29c</sub> (1), (2) or either of those subsections, to be the appointed day in and 290 (1), relation to articles of that description.

- 20 (2) An order made by the Minister under subsection one of this section may declare different days as the appointed days in relation to articles of different descriptions, but any day so declared shall be a day not earlier than one year after the date of commencement of the subsection for the purposes 25 of which the day is appointed and not earlier than the day on which the order is published in the Gazette.
- (3) In subsection one of section 29B, and in subsections one and three of section 29D, of this Act, the appointed day means such day as the Minister may, by order published 30 in the Gazette, declare, for the purposes of those or any of those subsections, to be the appointed day, that day or any of those days being not earlier than one year after the date of the commencement of the subsection for the purposes of which the day is appointed and not earlier than the day on 35 which the order is published in the Gazette.

29<sub>F</sub>. (1) Where any pre-packed articles were not packed, Permits for or the packages in which the articles are contained are not sale of marked, in the manner prescribed by or under this Act and that do not the Minister is satisfied that-

comply with

- (a) the articles were, when packed, intended to be scribed requirements. 5 exported from Australia and he considers that it is just or reasonable that the sale in New South Wales of the articles should be permitted:
- (b) the articles were packed outside Australia and were brought into New South Wales in such circum-10 stances as, in the opinion of the Minister, render it just and reasonable that the sale in New South Wales of the articles should be permitted; or
- (c) the articles were packed within Australia and he 15 considers that, having regard to the date when the articles were so packed or to any other relevant circumstances, it is just and reasonable that the sale in New South Wales of the articles should be permitted,
- 20 the Minister may, on an application in writing made to him by any person, grant to that person a permit in writing authorising the sale in New South Wales of the articles by that person.
- (2) A permit under this section may be granted 25 upon and subject to—
  - (a) such conditions as are specified in the permit with respect to-
    - (i) the number of individual articles the sale of which is authorised by the permit;
    - (ii) the form and manner in which the weight or measure of the articles contained in each package shall be indicated:
    - (iii) the weight or measure of the articles contained in each package; and

- (iv) the furnishing by the holder of the permit of returns relating to the sale of the articles; and
- (b) such other conditions as the Minister thinks fit and specifies in the permit.

#### (3) A person—

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- (a) being the holder of a permit under this section, shall not sell a pre-packed article the sale of which is authorised by a permit under this section otherwise than in accordance with the conditions specified in the permit;
- (b) shall not falsely represent that a permit has been granted under this section in relation to any particular article;
- (c) shall not, where a permit issued to him under this section has ceased to be in force, whether by reason of its cancellation or the effluxion of time, sell any article to which the permit related; or
- (d) shall not, where he has been authorised by a permit under this section to sell a specified number of articles of any description, sell any greater number of those articles.
- (4) Unless sooner cancelled pursuant to subsection five of this section a permit under this section shall be in25 force for such period as is specified in the permit, but may be renewed from time to time by the Minister for such further period or periods as the Minister may think fit.
- (5) The Minister may, at any time, by notice in writing to the holder of a permit under this section, cancel 30 the permit if the Minister is satisfied that it is desirable in the public interest so to do.
  - (6) Where a permit under this section is cancelled pursuant to subsection five of this section the holder thereof shall forthwith deliver up the permit to the superintendent.

29G.

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29G. (1) Subject to this section, where the true weight short or measure of a pre-packed article is found by an inspector weight or to be less than the weight or measure of the article marked pre-packed on the package containing the article the person who packed articles. 5 the article shall be guilty of an offence against this Act.

- (2) Subject to this section, a person who—
- (a) sells a pre-packed article the true weight or measure of which is found by an inspector to be less than the weight or measure of the article marked on the package containing the article; or
  - (b) delivers or sends to a purchaser an invoice or delivery note relating to a pre-packed article sold to the purchaser which states as the weight or measure of the article a weight or measure that is found by an inspector to be greater than the true weight or measure of the article so sold,

shall be guilty of an offence against this Act.

- (3) Subsection one of this section and paragraph (a) of subsection two of this section shall have effect in relation 20 to any pre-packed article whether or not the package containing the article is required, by or under this Act, to be marked with a statement of the weight or measure of the article.
- (4) Where a package is marked with two or more statements of the weight or measure of the article contained 25 therein, the true weight or measure of the article shall for the purposes of subsection one, and paragraph (a) of subsection two, of this section, be deemed to be less than the weight or measure of the article marked on the package if that true weight or measure is less than the weight or measure 30 stated in any of those statements.

## (5) Where—

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(a) the stated price per unit of weight or measure of a pre-packed article is indicated in the manner prescribed by the regulations;

- (b) a statement of the price of the article is marked on the package containing the article; and
- (c) that statement exceeds the price correctly computed from the true weight or measure of the article and the indicated price per unit of weight or measure,

the person who marked the package with the statement of price and the person who sold the article, are each guilty of an offence against this Act.

10 (6) In proceedings in respect of an offence against this Act arising under paragraph (a) of subsection two of this section, it shall be a defence for the person charged—

#### (a) to prove—

- (i) that he obtained the article from another person who packed the article or delivered it to him pursuant to a sale to him and that that other person furnished him with a written statement (in this section referred to as a "guarantee") that the weight or measure of the article stated on the package containing the article was correct; and
  - (ii) that he sold the article in the same state as it was when delivered to him; or
- (b) to prove that, in the case of an article of any description to which section 29D of this Act applies,—
  - (i) he obtained the article from another person who delivered it to him pursuant to a sale to him and that when he so obtained the article it was in a package that was marked as required by section 29B and by section 29D of this Act; and
  - (ii) that he sold the article in the same state as it was when delivered to him.

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- (7) Where a person gives a guarantee referred to in paragraph (a) of subsection six of this section and the true weight or measure of any pre-packed article in respect of which the guarantee was given is found by an inspector to 5 be less than the weight or measure of the article as stated in the guarantee, that person shall, subject to subsection nine of this section, be guilty of an offence against this Act and be liable to a penalty not exceeding four hundred dollars.
- (8) In proceedings against a person in respect of an 10 offence against this Act arising under subsection seven of this section it shall be a defence for the person charged to prove that any deficiency in the true weight or measure of the article to which the proceedings relate—
- (a) arose after the giving of the guarantee and was attributable wholly to factors for which reasonable allowance was made in stating the weight or measure of the article; or
  - (b) is due to the act or default of some other person after the article had passed from the control of the person charged.

#### (9) Where-

- (a) the true weight or measure of a pre-packed article is found by an inspector to be less than the weight or measure (in this subsection referred to as "the stated weight or measure") of the article as marked on the package containing the article or as stated in any guarantee relating to the article;
- (b) the deficiency of weight or measure of the article (in this subsection referred to as "the deficient article")—
  - (i) not being an article of a description to which section 29H of this Act applies, is found by that inspector not to exceed five parts per centum of the stated weight or measure of the article or, if the article is contained in a glass bottle and the stated weight or measure

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## Weights and Measures (Amendment).

of the article does not exceed five ounces or five fluid ounces, seven and one-half parts per centum of the stated weight or measure of the article; or

- (ii) being an article of a description to which section 29н of this Act applies, is found by that inspector—
  - (a) at any time on the day on which the article was packed, not to exceed five parts per centum of the stated weight of the article; or
  - (b) at any other time, not to exceed the prescribed number, being more than five, of parts per centum of the stated weight of the article; and
- (c) at the place where the deficient article was obtained by the inspector or, if the deficient article was packed in New South Wales at the place where it was packed, there are, when an inspector enters any such place for the purpose of taking packages as referred to in paragraph (f) of this subsection, available five or more packages (in this subsection referred to as "similar packages")—
  - (i) that contain articles of the same kind as the deficient article;
  - (ii) that are marked with the name and address or the approved brand of the person whose name and address or approved brand are or is marked on the package containing the deficient article;
  - (iii) that are marked with the same weight or measure as the stated weight or measure of the deficient article; and
  - (iv) that, where the deficient article is of a description to which section 29H of this Act applies and the deficiency of weight of that

article

article was found by the inspector at any time on the day on which that article was packed, were packed on that day,

#### no proceedings for an offence—

- (d) where the stated weight or measure of the article is the weight or measure of the article marked on the package containing the article—arising under subsection one or two of this section; or
- (e) where the stated weight or measure of the article is the weight or measure of the article as stated 10 in a guarantee relating to the article—arising under subsection seven of this section,

#### shall be commenced unless—

- (f) as soon as practicable after the deficiency in the deficient article was found an inspector enters the 15 place where the deficient article was obtained or, if the deficient article was packed in New South Wales, the place where it was packed and there takes-
- (i) where there are eleven or more similar 20 packages available, eleven similar packages;
  - (ii) where there are five or more but less than eleven similar packages, all of the similar packages; and
  - (g) where the deficient article was deficient-
  - (i) in weight, that or any other inspector weighed the articles contained in the similar packages so taken and, where the deficient article is of a description to which section 29H of this Act applies and the deficiency of weight of that article was found by the inspector referred to in paragraph (a) of this subsection at any time on the day on which that article was packed, weighed those articles on that day; or long and sembers

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(ii)

- (ii) in measure, that or any other inspector measured the articles contained in the similar packages so taken.
- (10) Where an inspector referred to in paragraph 5 (g) of subsection nine of this section finds that the average true weight or measure of the deficient article referred to in that subsection and of all the articles contained in the similar packages taken as referred to in that subsection is—
- (a) where the articles are not of a description to which section 29H of this Act applies—not less than the weight or measure of any of the articles as marked on any of the packages containing the articles or as stated in the guarantee relating to the deficient article, as the case may be: or
- 15 (b) where the articles are of a description to which section 29H of this Act applies and the deficiency of weight of the deficient article—

- (i) was found by the inspector at any time on the day on which the article was packed not less than the weight of any of the articles as marked on any of the packages containing the articles or as stated in the guarantee relating to the deficient article, as the case may be; or
- 25 (ii) was found by the inspector at any other time—less than the weight of any of the articles as so marked or as so stated but to an extent not exceeding the prescribed permissible average deficiency,
- 30 no proceedings for an offence arising under subsection one, two or seven, as the case may be, of this section shall be commenced against any person referred to in that subsection.
- (11) Subsections six and eight of this section shall not apply unless the person charged has, not less than two 35 days before the date set down for the hearing of the proceedings, by a notice in writing informed the informant that

he intends to rely on a defence provided by subsection six or, as the case may be, subsection eight of this section and of the particulars of that defence.

29H. (1) A person shall not mark the words "net weight Articles 5 when packed" or words to the like effect on a package that may be marked containing an article unless-

"net weight when

- (a) the article is of a description to which this section packed". applies; and
- (b) where the regulations prescribe the manner of 10 marking any such words on a package, the package is marked in that manner.
- (2) The regulations may require that in relation to any other particulars required by or under this Act to be marked on a package containing an article of a description 15 to which this section applies, a package shall be marked in the prescribed manner with the date on which the article was packed or with an approved brand indicating that date.
  - (3) This section applies to articles of such descriptions as may be prescribed.
- 291. (1) A person shall not mark the words "at standard Articles conditions" or words to the like effect on a package containing be marked an article unless-

with their

- (a) the article is of a description to which this section standard conditions. applies; and
- 25 (b) where the regulations prescribe the manner of marking any such words on a package, the package is marked in that manner.
- (2) In the application of section 29g of this Act to any article of a description to which this section applies a 30 reference in that section to the true weight of an article shall be construed as a reference to the weight ascertained in the prescribed manner of the article if it were weighed at the prescribed standard conditions.

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# Weights and Measures (Amendment).

- (3) This section applies to articles of such descriptions as may be prescribed.
- 29J. (1) Subject to this section, a person who, on or after Prohibition the appointed day, packs a pre-packed article in a package and restriction of use 5 on which is marked a prohibited expression or a restricted of certain expression shall be guilty of an offence against this Act.

expressions on packages.

- (2) Subject to this section, a person who, on or after the appointed day, sells a pre-packed article contained in a package on which a prohibited expression or a restricted 10 expression is marked shall be guilty of an offence against this Act.
- (3) The provisions of subsections one and two of this section relating to the marking on a package of a restricted expression shall not apply to or in relation to an article con-15 tained in a package on which a restricted expression appears if, in addition to that expression-
  - (a) there is marked on every part of the package on which the restricted expression appears such a statement as to the purported weight or measure of the article contained in the package as is referred to in subsection one of section 29D of this Act, whether or not the article is an article of a description to which that section applies;
- (b) the restricted expression and that statement are so placed and so marked that both may be seen clearly 25 at the same time; and
  - (c) each of the letters or figures contained in that state-
    - (i) is of a size not less than the minimum size of print prescribed by the regulations in relation to the dimensions of the package;
      - (ii) is of a size not less than one-third of the size of the largest letter or figure contained in the restricted expression; and
      - (iii) is marked in a colour of a distinct contrast to the colour of its background.

#### (4) In this section—

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"prohibited expression" means any expression, whether consisting of a single word or of more words than one and whether in an abbreviated form or not, that directly or indirectly relates to or qualifies a unit of measurement of a physical quantity and, without prejudice to the generality of the foregoing, includes any expression declared by the regulations to be a prohibited expression for the purposes of this section;

"restricted expression" means any expression, not being a prohibited expression, and whether consisting of a single word or of more words than one or of any word or words in combination with any figure or figures and whether in an abbreviated form or not, 15 that directly or indirectly relates to the size of the package containing the article, not being such a statement as to the purported weight or measure of the article as is required by subsection one of section 29p of this Act, and, without prejudice to 20 the generality of the foregoing, includes any expression that is declared by the regulations to be a restricted expression for the purposes of this section.

25 (5) In subsections one and two of this section the appointed day means such day or days as the Minister may, by order published in the Gazette, declare, for the purposes of those or either of those subsections, to be the appointed day, those days or that day being not earlier than one year after the 30 date of the commencement of the subsections or subsection for the purposes of which the day is appointed and not earlier than the day on which the order is published in the Gazette.

29K. (1) Where any fraud is wilfully committed in the Fraud in using of any weight, measure, weighing instrument or using weights, 35 measuring instrument, the person committing the fraud shall measures, be guilty of an offence against this Act.

- (2) Where the weight, measure, weighing instrument or measuring instrument with which any such fraud was so committed was in the possession of the person by whom the fraud was committed, the weight, measure, weighing instru-5 ment or measuring instrument may be seized by an inspector.
- 29L. (1) Notwithstanding any other law or rule of law Liability of where any person, in this section referred to as "the agent", principal acting, otherwise than as an employee, for or on behalf of of agent. another person, in this section referred to as "the principle". 10 packs an article for sale, marks a package containing an article, or sells an article and commits an offence against this Part in relation to that packing, marking, or sale, the principal shall be guilty of an offence against this Act in like manner as the agent and may be proceeded against and con-15 victed accordingly unless he proves that he had no knowledge of the commission of the offence and that he took all reasonable precautions and used all due diligence to avoid the commission of the offence in relation to the article to which
- 20 (2) The principal may be proceeded against and convicted pursuant to subsection one of this section whether or not the agent has been proceeded against or been convicted under this Act.

the proceedings relate.

- (3) Nothing in subsection one of this section shall 25 prejudice or affect any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.
- 29м. (1) Notwithstanding any other law or rule of law, Liability of where any person, as the employee of another person, who employer for offence 30 in this section is referred to as "the employer", packs an article by emfor sale, marks a package containing an article, or sells an ployee. article, and commits an offence against this Act in relation to that packing, marking, or sale, the employer shall be guilty of an offence against this Act in like manner as the employee, 35 whether or not the offence was committed without the

employer's

employer's authority or contrary to his orders or instructions, and may be proceeded against and convicted accordingly unless he proves that he had no knowledge of the commission of the offence and could not, by the exercise of due diligence, 5 have prevented the commission of the offence.

- (2) The employer may be proceeded against and convicted pursuant to subsection one of this section whether or not the employee has been proceeded against or been convicted under this Act.
- 10 (3) Nothing in subsection one of this section shall prejudice or affect any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.
- 29N. (1) Where a person, in this subsection referred to General 15 as "the defendant", is convicted of an offence against this provisions Part and the court by which he is convicted is of the opinion proceedings that some other person was defrauded or suffered pecuniary for offences. loss by reason of the commission of the offence, the court may, in addition to imposing a penalty for the offence, order 20 the defendant to pay to that other person, by way of recoupment of his loss, such sum as the court thinks fit and as may be specified in the order.

- (2) Any order made under subsection one of this section shall operate as an order for the payment of money 25 under the Small Debts Recovery Act, 1912, as subsequently amended, and be enforceable as such under the provisions of that Act.
- (3) A prosecution for an offence against this Part may be instituted at any time within a period of twelve 30 months after the commission of the offence or within a period of six months after the commission of the offence comes to the knowledge of an inspector, whichever period last expires.

- (4) In any proceedings for an offence against any of the provisions of this Part, a witness shall not be excused from answering any question or producing any document on the ground that the answer or production may criminate 5 or tend to criminate him, but an answer made or a document produced by any such witness shall not be admissible in evidence against him in any proceedings for an offence under this Part.
- 290. (1) In proceedings in respect of an offence against Defences. 10 this Act arising under section 29B of this Part, it is a defence for the person charged to prove that the article to which the proceedings relate was packed on any premises for sale on those premises to a person for the purpose of consumption or use and not for the purpose of re-sale.
- 15 (2) In proceedings in respect of an offence against this Act arising under subsection two of section 29B, subsection one of section 29c or subsection one of section 29D of this Act, it is a defence for the person charged to prove that the article to which the proceedings relate was packed 20 for export from Australia and that the marking on the package containing the article clearly so indicated.
- (3) In proceedings in respect of an offence against this Act arising under subsection two of section 29B, subsection two of section 29c, subsection three of section 29d, 25 paragraph (a) of subsection three of section 29F, subsection two or subsection five of section 29g or subsection two of section 29J of this Act, it is a defence for the person charged to prove-
  - (a) that the commission of the offence was due to a cause or to causes beyond his control;

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(b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the article to which the proceedings relate; and

- (c) that he obtained the article from another person and sold or delivered it in the same state as it was when delivered to him.
- (4) In proceedings in respect of an offence against5 this Act arising under subsection one of section 29g of this Act, it is a defence for the person charged to prove—

#### (a) that—

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- (i) the deficiency arose after the packing of the article and the marking of the package and was attributable wholly to factors for which reasonable allowance was made in stating the weight or measure of the article; or
  - (ii) the commission of the offence was due to a cause or to causes beyond his control; and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the article to which the proceedings relate.
- (5) For the purposes of subsections three and four of this section a cause is not beyond the control of a person against whom proceedings referred to in either of those subsections are brought unless the court before which the 25 proceedings are brought is satisfied that the cause was one that the person charged could not reasonably have foreseen or for which he could not reasonably have made allowance.
- (6) Subsections three and four of this section do not apply unless the person charged has, not less than two 30 days before the date set down for the hearing of the proceedings, by a notice in writing, informed the informant that he intends to rely on a defence provided by any of the provisions of those subsections and of the particulars of that defence.

- 29P. (1) On the application of a person whose business Approval consists of or includes the packing of articles for sale, the of brands. superintendent may approve in writing of a brand for use by that person—
- 5 (a) for the purpose of marking on packages—
  - (i) the name and address required by paragraph (a) of subsection one of section 29B of this Act to be marked on packages; or
- (ii) the name and address required by paragraph
  (b) of that subsection to be marked on packages; or
- (b) which, where the regulations require the dates when the articles contained in the packages were packed to be marked on the packages is, or incorporates, a device approved by the superintendent for the purpose of indicating those dates.
- (2) An approval under subsection one of this section may be granted subject to such conditions, if any, as the 20 superintendent determines and specifies in the approval and may be cancelled by the superintendent at any time by notice in writing given to the person to whom the approval was granted.
- (3) A person to whom an approval under subsection 25 one of this section has been granted subject to conditions shall not mark a package containing an article with the brand specified in the approval otherwise than in compliance in all respects with those conditions.
- (4) Where a brand has been approved under sub-30 section one of this section for use by a person for the purposes of marking on packages the name and address referred to in subparagraph (i) or (ii) of paragraph (a) of that subsection, a person other than the person to whom that approval was granted or a person having his authority so to do shall not 35 mark a package containing an article with the brand specified

in the approval or with any other brand so closely resembling the brand specified in the approval as to be likely to lead to the belief that it is the brand specified in the approval.

29Q. In proceedings in respect of an offence against this Evidentiary provisions.

5 Act arising under this Part in relation to a pre-packed article—

- (a) the marking on the package in which the article is contained indicating the name of the person who packed the article shall be evidence that the article was packed by that person;
- 10 (b) the marking on the package in which the article is contained indicating the name and address of a person for or on whose behalf the article was packed shall be evidence that the article was packed for or on behalf of that person;
- (c) the marking on the package in which the article is contained indicating the place where the article was packed shall be evidence that the article was packed at that place;
- (d) the marking on the package in which the article is contained indicating the date when the article was packed shall be evidence that the article was packed on that date;
- (e) a document purporting to be certified by the superintendent to be a copy of a permit granted by the Minister under section 29F of this Act shall be evidence of the granting of the permit and of the conditions, if any, specified in the permit;

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- (f) a certificate purporting to be signed by the superintendent and stating—
- (i) that a permit granted by the Minister under section 29F of this Act was cancelled on a date specified in the certificate;

(ii)

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# Weights and Measures (Amendment).

(ii) that a permit cancelled under subsection five of section 29F of this Act has not been delivered up to him,

shall be evidence of the matters stated in the certificate;

- (g) a document purporting to be certified by the superintendent to be a copy of an approval granted by him under subsection one of section 29P of this Act shall be evidence of the approval and of the conditions, if any, subject to which the approval was granted, and the fact that such a brand is marked on a package containing an article shall be evidence-
  - (i) where the approval was granted to a person for the purpose referred to in subparagraph (i) of paragraph (a) of that subsection, that the article was packed by the person to whom the approval was granted and at the place the address of which is specified in the approval as the address indicated by the brand;
  - (ii) where the approval was granted to a person for the purpose referred to in subparagraph (ii) of paragraph (a) of that subsection, that the article was packed for or on behalf of the person whose name and address are indicated by the brand; or
  - (iii) where approval is of a brand which is, or incorporates, a device referred to in paragraph (b) of that subsection, that the article was packed on the date indicated by that device,

as the case requires; and

(h) a certificate purporting to be signed by the superintendent and stating that an approval granted by him under subsection one of section 29P of this Act was cancelled on a date specified in the certificate shall be evidence of the matters stated in the certificate.

29R.

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# Weights and Measures (Amendment).

- 29R. (1) The Governor may make regulations for or with Regulations. respect to—
  - (a) the form and manner in which packages required or permitted by any provision of this Act to be marked with any particulars, statement, or approved brand, shall or may be so marked;
  - (b) the denominations of weight or measure in which articles of any prescribed description shall or may be packed or sold;
- 10 (c) specifying or describing the machines or classes of machines that shall be vending machines for the purposes of the regulations;
  - (d) regulating, controlling, or restricting the sale or supply of articles by means of vending machines referred to in paragraph (c) of this subsection and prohibiting the sale or supply of articles by means of any such machine otherwise than in accordance with the regulations;
- (e) securing that articles that are sold by means of a vending machine referred to in paragraph (c) of this subsection are so sold only if there is displayed in or on the machine such particulars or statements, with respect to such matters, as may be prescribed, and the manner in which the particulars or statements so prescribed shall be so displayed;
- (f) the units of weight or measure to be used in marking or displaying on packages or vending machines referred to in paragraph (c) of this subsection any particulars or statements required to be marked or displayed thereon and the manner in which those units of weight or measure shall or may be expressed, whether in figures or words or figures and words, and the abbreviations that may or may not be used for the purposes of expressing those units;

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# Weights and Measures (Amendment).

- (g) the method in which, and the conditions under which, the weight or measure of articles is to be determined in connection with the marking or displaying on packages or on vending machines referred to in paragraph (c) of this subsection of any particulars or statements referred to in the foregoing provisions of this subsection;
- (h) permitting, in the case of such articles and in such circumstances as may be specified in the regulations, the weight or measure of any articles used in packing the first-mentioned articles for sale as may be so specified to be included, notwithstanding any other provision of this Act, in the net weight or measure of the first-mentioned articles:
- 15 (i) exempting, either wholly or to such extent as may be prescribed, or authorising a prescribed person to exempt, either unconditionally or subject to such conditions and restrictions as that person may determine, from any of the provisions of this 20 Part-
  - (i) articles of any description prescribed or referred to in the regulations and packages containing any such articles; and
  - (ii) prescribed transactions and classes of sales;
  - (i) prescribing standard specifications of capacity for or in relation to packages used in the packing or sale of prescribed articles, prescribing distinctive marks for packages made to those specifications, and prohibiting or regulating the sale of any such articles, when packed, otherwise than in prescribed packages made to those specifications and bearing the prescribed distinctive marks;
- (k) requiring packages containing articles to be marked with a statement of the sale price per unit of 35 weight or measure of the articles;

- (1) generally regulating and controlling the packing of articles and the marking of packages in which pre-packed articles are contained; and
- (m) prescribing all matters which by this Part are 5 required or permitted to be prescribed or which are necessary or convenient for giving effect to this Part.
- (2) The regulations made under this Part may impose a penalty not exceeding one hundred dollars for any 10 offence against the regulations.
  - (3) The regulations made under this Part—
  - (a) may make different provision in respect of different descriptions of articles, packages, transactions and classes of sales;
- 15 (b) may be made so as to apply generally or only in respect of the packing or sale of articles of denominations of weight or measure greater than or less than some other prescribed multiple of a prescribed denomination:
- 20 (c) may be of general or specially limited application;
  - (d) may differ according to differences in time, locality, place or circumstance.
- (2) Notwithstanding the repeal of Part III of the 25 Principal Act by subsection one of this section, subsection three of section twenty-five of the Principal Act as in force immediately before the commencement of section 29p of the Principal Act (as inserted by subsection one of this section) shall after that commencement continue in force in relation
- 30 to any article in a package, not being an article referred to in paragraph (a) or (b) of subsection four of the said section twenty-five, until the appointed day referred to in subsection three of section 29D of the Principal Act (as so inserted) and a person contravening the provisions of subsection three
- 35 of the said section twenty-five may be proceeded against and shall be liable to the same penalty as if that subsection had not been repealed. 10—C

4.

The Principal Act is further amended—	Further amendment
	of Act No. 10, 1915.
	(Part IV—

(Part IV— Verification and Stamping.)

- (a) by inserting next after subsection one of section Sec. 30. thirty the following new subsections:—

  (Verification and stamp-
  - (1A) Subsection one of this section does not ing.) operate to require any measure made entirely of glass to be stamped, if that measure—
    - (a) is of a class that the Minister, by order, specifies in a notification published in the Gazette as a class of measures to which subsection one of this section does not apply;
    - (b) was manufactured in New South Wales by a manufacturer who is the holder of an instrument of approval issued to him by the Minister;
    - (c) was manufactured in a batch, some of which were tested by sample in the prescribed manner by an inspector; and
    - (d) is marked by the manufacturer in the prescribed manner to show that it was part of a batch that was so tested.
  - (1B) An approval referred to in paragraph (b) of subsection (1A) of this section—
  - (a) may be given subject to such conditions as the Minister thinks fit and specifies in the instrument of approval, including conditions relating to the facilities and equipment to be made available by the manufacturer for use by any inspector making tests referred to in paragraph (c) of subsection (1A) of this section; and
    - (b) may be revoked by the Minister for any reason that to the Minister seems sufficient.

      (1c)

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# Weights and Measures (Amendment).

- (1c) An application for an approval referred to in paragraph (b) of subsection (1A) of this section may be refused by the Minister if he is of the opinion that the number of measures to be manufactured by the applicant is insufficient to warrant his being granted the approval or for any other reason that to the Minister seems sufficient.
- (b) by inserting in subsection one of section thirty-one Sec. 31.

  after the word "glass," the words "or a weight, (Reverificameasure, weighing instrument or measuring tion and reinstrument of a prescribed class";
- (c) by inserting in section thirty-three after the word Sec. 33.

  "thereon" the words "and, unless the weight, (Using defective or repaired measure, weighing instrument or measuring instruor repaired ment has been produced at the office of an inspective or repaired tor and reverified and stamped, notify the superintendent in writing within twenty-one days after destroying the stamp that the stamp has been destroyed".

#### 20 5. The Principal Act is further amended—

Further amendment of Act No. 10, 1915. (Part V— Sale of Coal and Firewood.)

(a) by omitting section thirty-seven;

- Sec. 37.
  (Application of last two preceding sections.)
- (b) by omitting from paragraph (e) of section thirty- Sec. 39. nine the words "forty dollars" and by inserting (Regulain lieu thereof the words "one hundred dollars". tions.)

#### 6. The Principal Act is further amended—

Further amendment of Act No. 10, 1915. (Part VI— General and Supplemental.)

- (a) (i) by omitting paragraph (a) of subsection one Sec. 41.
  of section forty-one and by inserting in lieu (Inspection of articles thereof the following paragraph:—

  (Inspection of articles in packages.)
  - (a) enter any building or place where any article is packed for sale or sold or where he has reasonable cause to believe that any article is packed for sale or sold;

. 1968.

- (ii) by inserting next after the same subsection the following new subsections:—
  - (1A) Where any article referred to in subsection one of this section is contained in a package, the inspector may, for the purpose of weighing or measuring it, break open and remove the article from the package.
  - (1B) An inspector may require the driver or person in charge of a vehicle by whom any invoice or delivery note relating to any articles being carried on the vehicle for delivery to a purchaser is held to produce that invoice or delivery note to the inspector.
- (b) by omitting section forty-two and by inserting in Subst. lieu thereof the following section:—
- 42. Any person who—

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Obstruction of

(a) hinders or obstructs or attempts to hinder inspector. or obstruct in any manner an inspector in the execution of his duty under this Act;

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Weights	and	Measures	(Amendment)	

, 1968.

	rreignis and ricustres (rimenantia).
5	<ul> <li>(b) does not, when requested to do so by an inspector, produce all weights, measures, weighing instruments or measuring instruments in his possession for examination or testing;</li> </ul>
	(c) refuses when requested to do so by an inspector to state his name and address, or when so requested states a false name or address to an inspector;
10	<ul><li>(d) refuses or fails to stop a vehicle of which he is the driver or person in charge when required to do so by an inspector;</li></ul>
15	(e) does not comply with a requirement made by an inspector under subsection (1B) of section forty-one of this Act;
	<ul><li>(f) uses abusive language to or directly or indirectly threatens an inspector;</li><li>(g) assaults an inspector while the inspector is executing his duties under this Act;</li></ul>
20	(h) impersonates an inspector, shall be guilty of an offence against this Act.
	(c) by omitting from section forty-four the words "one Sec. 44. hundred dollars" and by inserting in lieu thereof (Penalties.) the words "two hundred dollars for a first offence
25	or four hundred dollars for a second or subsequent offence";
	(d) by inserting at the end of section fifty-four the Sec. 54.  following new subsection:—  (Evidence of regulations.)
30	(2) A certificate purporting to be signed by the superintendent certifying—

(a) that any weight or measure specified in the certificate is a standard of measurement-

(i) that has been provided and maintained by the Minister under subsection one of section twelve of this Act; or (ii)

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# Weights and Measures (Amendment).

- (ii) that is or was at a time or during a period specified in the certificate a primary State standard, a secondary State standard, a tertiary State standard or an inspector's standard; or
- (b) that a person specified in the certificate is or was at a time or during a period specified in the certificate an inspector,
- shall be prima facie evidence of the particulars stated in the certificate.
  - (e) (i) by omitting paragraphs (o1) and (q) of sub- Sec. 57. section one of section fifty-seven; (Regulations (Canada and
    - (ii) by inserting next before paragraph (r) of Trade).)
      the same subsection the following new paragraphs:—
- (q1) The registration, examination and licensing of persons carrying on the business of repairing or adjusting weighing and measuring instruments and the regulation of persons carrying on any such business.
  - (q2) The manner of testing of glass measures for the purposes of paragraph (c) of subsection (1A) of section thirty of this Act, the manner of marking any such measures, requiring the manufacturer to produce to an inspector production records relating to the manufacture of any such measures and prohibiting the removal from the manufacturer's premises of any such measures bearing a mark of verification without approval of an inspector.

(iii)

- (iii) by omitting from paragraph (s) of the same subsection the words "forty dollars" and by inserting in lieu thereof the words "one hundred dollars";
- (iv) by omitting subsection two of the same 5 section.

BY AUTHORITY:
V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1968

# New South Wales



ANNO SEPTIMO DECIMO

# ELIZABETHÆ II REGINÆ

# Act No. 12, 1968.

An Act to control and regulate the packing of certain articles and the sale of certain articles, whether in packages or not; for this and other purposes to amend the Weights and Measures Act, 1915, as subsequently amended; and for purposes connected therewith. [Assented to, 24th April, 1968.1

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows: --

1. (1) This Act may be cited as the "Weights and Short title, Measures (Amendment) Act, 1968".

P 37415 A [35c] citation and commencement.

(2)

- (2) The Weights and Measures Act, 1915, as subsequently amended, is in this Act referred to as the Principal Act.
- (3) The Principal Act, as amended by this Act, may be cited as the Weights and Measures Act, 1915–1968.
- (4) The several provisions of this Act shall commence upon such day or days as may be appointed by the Governor in respect thereof and notified by proclamation published in the Gazette.

Amendment of Act No. 10, 1915.

(Part I— Preliminary.)

Sec. 1. (Short title.)

2. The Principal Act is amended—

(a) by omitting from subsection two of section one the matter relating to Part III and by inserting in lieu thereof the following matter:—

PART III.—Sale and Packaging of Articles—ss. 22–29r.

New sec. 5A.

Construction of Act. (b) by inserting next after section five the following new section:—

5A. This Act shall be read and construed subject to the limits of the legislative powers of the State and so as not to exceed those powers, to the intent that, where any enactment thereof, but for this provision, would be construed as being in excess of those powers, it shall nevertheless be a valid enactment to the extent to which it is not in excess of those powers.

Sec. 6. (Definitions.)

(c) (i) by inserting in section six next before the definition of "Coal" the following new definitions:—

"Approved brand" means a brand approved by the superintendent pursuant to section 29P of this Act.

"Brand"

- "Brand" includes any mark, device, name, word, letter, numeral or symbol, or any combination thereof.
- (ii) by omitting from the definition of "Coal" in the same section the words ", coke, and charcoal" and by inserting in lieu thereof the words "and coke";
- (iii) by inserting in the same section next before the definition of "Measuring instrument" the following new definition:—
  - "Mark" includes authorise, direct, cause, permit or suffer to be marked.
- (iv) by omitting from the same section the definition of "Package" and by inserting in lieu thereof the following definitions:—
  - "Pack" includes authorise, direct, cause, permit or suffer to be packed.
  - "Package" includes anything by means of which any article is packed for sale, or any articles are packed for sale as a single item, and in particular and without prejudice to the generality of the foregoing, includes a wrapper and a confining band.
- (v) by omitting from the definition of "Purchaser" in the same section the words "person purchasing" and by inserting in lieu thereof the words "a person who purchases an article";
- (vi) by inserting in the same section next after the definition of "Schedule" the following new definition:—

"Sell" includes-

- (a) offer or expose for sale;
- (b) keep or have in possession for sale;
- (c) barter or exchange;

- (d) deal in or agree to sell:
- (e) send, forward or deliver for sale or on sale; and
- (f) authorise, direct, cause, permit or suffer any of those acts or things,

and "sale" and "sold" have corresponding interpretations.

- (vii) by omitting from the same section the definition of "Weighman" and by inserting in lieu thereof the following definition:-
  - "Weighman" means a person carrying out or assisting in carrying out weighings by means of a public weighing instrument or issuing weight tickets in respect of weighings carried out by means of such an instrument.

Sec. 11. (Superintendent or inspector not to derive profit from making, adjusting, or selling weights or measures.)

Further

amendment of Act No. 10, 1915. Subst. Part III.

(d) by omitting from section eleven the words ", outside the metropolitan police district,".

(1) The Principal Act is further amended by omitting Part III and by inserting in lieu thereof the following Part:—

#### PART III.

SALE AND PACKAGING OF ARTICLES.

Interpretation.

- 22. (1) For the purposes of this Part—
  - (a) an article shall be deemed to be pre-packed if it is packed in advance ready for sale; and

- (b) any article of any description, being an article contained in a package, that is found on premises where articles of that description are so packed, or are kept or stored for sale after being so packed, shall be deemed to be pre-packed within the meaning of this Part unless the contrary is proved, and it shall not be sufficient proof to the contrary to show that the package has not been marked in accordance with or has been marked in contravention of the provisions of this or any other Part of this Act or any other Act or the regulations made under this or any other Act with respect to the marking of packages containing articles of that description.
- (2) Except as otherwise prescribed, a reference in this Part or the regulations to the weight or measure or the true weight or measure of an article shall be construed as a reference to the weight or measure of the article excluding the weight or measure of the package in which the article is contained.
- (3) A reference in this Part to the weight or measure or the true weight or measure of an article shall, in the case of an article of a kind that is ordinarily packed or sold by number, be construed as a reference to a quantity of that article counted by number.
- (4) Where by or under this Part, any particulars or words are, or any statement or expression is, required, permitted or forbidden to be marked on a package containing an article, the particulars, words, statement or expression shall be deemed to be marked on the package if marked on a label attached to the package or to the article.
- (5) A reference in this Part, however expressed, to the marking of a package with a statement of the weight or measure of the article contained in the package shall be construed as including a reference to the marking with such a statement of a label attached to the package or the article.

- (6) A reference in this Part, however expressed, to—
- (a) a package containing an article, or a package in which an article is contained, shall be construed, where appropriate, as including a reference to a package to which an article is attached or around which an article is wound or wrapped; and
- (b) an article contained in a package, shall be construed, where appropriate, as including a reference to an article that is attached to, wound around, or wrapped around, a package.
- (7) For the purposes of this Part, an article shall be deemed not to be weighed or measured in the presence of a purchaser unless the weighing instrument or the measure or measuring instrument by which the article is weighed or measured is so constructed, placed in such a position, and so used as to enable the purchaser to have a clear and unobstructed view of and to see easily—
  - (a) the weight or measure, or indication of the weight or measure of the article; and
  - (b) the operation of the weighing or measuring of the article.
- 23. (1) The provisions of this Part, sections twenty-four Exemptions. and twenty-seven excepted, do not apply to or in relation to coal or firewood.
  - (2) The provisions of this Part prohibiting a person from selling an article that is not packed or marked in accordance with the provisions of this Part do not apply where the article sold is packed and weighed or measured in the presence of the purchaser.

24. An article sold by weight or measure shall be sold Sales to be only by reference to a Commonwealth legal unit of measurement the use of which in respect of that article is permitted units. by the regulations.

by Commonwealth legal

- 25. In any contract for the sale by the bushel of any Weight articles mentioned in Schedule E, the bushel shall be deter- of bushel. mined by weighing, the weight equivalent to a bushel of any such articles being that stated in the said Schedule.
- 26. A person shall not, except as prescribed or as other-Sales to be wise provided by or under any other Act weight or measure.
  - (a) sell an article by weight or measure otherwise than by net weight or measure; or
  - (b) mark a package containing any article with the words "gross weight" or words to the like effect or sell an article in a package so marked.
- 27. (1) Where an article sold by weight or measure is Invoice or delivered to the purchaser at a place other than the premises delivery note to be of the seller, the seller shall deliver to the purchaser with supplied in the article an invoice or delivery note showing as the weight certain or measure of the article a weight or measure that is not more than its true weight or measure.

- (2) Subsection one of this section does not apply to-
  - (a) any article exempted from provisions of that subsection by the regulations:
  - (b) bread;
  - (c) any article weighed or measured at the premises of the purchaser:
  - (d) any pre-packed article of a description to which section 29D of this Act applies; or
  - (e) any liquors, within the meaning of the Liquor Act, 1912, as subsequently amended, sold by measure in quantities of less than two fluid ounces or more than two gallons.

Provision for weighing or measuring. 28. Where any person sells by retail an article by weight or measure, he shall have at the place where the sale is made a suitable weighing instrument for weighing the article or, as the case may require, a suitable measure or measuring instrument for measuring the article and shall at the request of the purchaser weigh or measure the article in the presence of the purchaser.

False declaration as to measures, weight, &c.

#### 29. (1) Any person who—

- (a) by means of words, description or other indication, direct or indirect, makes any false declaration or statement or misleads any person as to the true weight, measure or gauge of any article sold by him; or
- (b) sells an article, not being a pre-packed article, by weight, measure or gauge short of or smaller than the quantity or gauge ordered or purchased without informing the person ordering or purchasing the article of the true weight, measure or gauge of the article,

shall be guilty of an offence against this Act.

(2) Where an article is purchased by weight or measure, the weight or measure thereof is determined by the purchaser at or before the time of the sale and the purchaser, by means of words, description or other indication, direct or indirect, makes to the seller or to his agent a false declaration or statement or misleads the seller or his agent as to the true weight or measure of the article, the purchaser shall be guilty of an offence against this Act.

Sale at stated price per unit of weight or measure. 29A. Where any person sells any article by weight or measure at a stated price per unit of weight or measure and the price charged for the article exceeds the price correctly computed from the true weight or measure of the article and the stated price per unit of weight or measure, that person shall be guilty of an offence against this Act.

29B. (1) A person shall not, except as prescribed, on or Name, etc., after the appointed day, pack an article as a pre-packed of packer to be article, unless the package in which the article is contained marked on packages.

- (a) where the person packing the article—
  - (i) is an individual and he packs the article otherwise than as an employee of another person or as a member of a firm trading under a registered business name—with his name;
  - (ii) is an individual and he packs the article as an employee of another person—with the name of that other person;
  - (iii) is a corporation—with the name of that corporation; or
  - (iv) is a member of a firm trading under a registered business name—with that business name,

and with the address of the place where the article was packed or, instead of that name and address, with an approved brand approved for use by that person or, where that person is an employee of another person, by that other person; and

- (b) where the article is packed for or on behalf of another person by a person who is not an employee of that other person, and that other person—
  - (i) is an individual—with the name and address of that individual;
  - (ii) is a corporation—with the name of that corporation and if it has a registered office in New South Wales, the address of that office or if it has no such office in New South Wales, the address of its sole or principal place of business; or

(iii) is a firm trading under a registered business name-with that business name and the address of its sole or principal place of business.

or, instead of that name and address, with an approved brand approved for use by that other person,

and, where the regulations prescribe the manner of marking any such name or address or approved brand on the package, the package is so marked in that manner.

- (2) A person shall not, on or after the appointed day, sell a pre-packed article unless the package containing the article is marked as mentioned in subsection one of this section.
- (3) Nothing in subsection two of this section prohibits the sale, pursuant to a permit under section 29F of this Act, of an article to which the permit relates.
- (4) In this section, "registered business name", in relation to a firm, means the business name of that firm registered under the law in force in the place where that firm has its sole or principal place of business.

Certain articles to be packed and sold only in certain de-

- 29c. (1) A person shall not, on or after the appointed day, pack, as a pre-packed article, an article of any description to which this section applies except in a weight or measure of such denomination as may be prescribed in relation nominations, to articles of that description.
  - (2) A person shall not, on or after the appointed day, sell a pre-packed article of any description to which this section applies unless the article is packed as mentioned in subsection one of this section.
  - (3) Nothing in subsection two of this section prohibits the sale, pursuant to a permit under section 29F of this Act, of an article to which the permit relates.

- (4) Notwithstanding the provisions contained in this or any other Act or in any regulation relating to the denominations of weight or measure in which an article of any description to which this section applies may be packed for sale, a person may, on and after the date of the commencement of this section and before the appointed day under subsection one of this section in relation to any such article. pack for sale or, on or after that date of commencement and before the appointed day under subsection two of this section in relation to any such article, sell, any such article in a weight or measure of a denomination prescribed for the purposes of this section in relation to articles of that description.
- (5) This section applies to articles of such description as may be prescribed.
- 29D. (1) A person shall not, on or after the appointed Packages, day, pack, as a pre-packed article, an article of any description etc., to be marked to which this section applies unless a statement of the pur- with ported weight or measure of the article is marked, as particulars of the prescribed, on the package containing the article.

quantity of the articles contained

- (2) For the purposes of subsection one of this therein. section any statement of weight or measure marked on a package containing an article shall be deemed to be a statement of the purported weight or measure of the article unless the context in which the statement is made indicates the contrary.
- (3) A person shall not, on or after the appointed day, sell a pre-packed article of any description to which this section applies unless the package in which the article is contained is marked as mentioned in subsection one of this section.
- (4) Nothing in subsection three of this section prohibits the sale, pursuant to a permit under the provisions of section 29F of this Act, of an article to which the permit relates.

- (5) Notwithstanding the provisions contained in this or any other Act relating to the marking of a package containing an article with particulars of the weight or measure of the article, a person may, on and after the date of the commencement of this section and before the appointed day under subsection one of this section in relation to any such article, pack for sale, or, on or after that date of commencement and before the appointed day under subsection three of this section in relation to any such article, sell, any such article if the package in which the article is contained is marked in accordance with subsection one of this section.
- (6) This section applies to all articles other than articles of such descriptions as may be prescribed.

"Appointed day" for purposes of sections 29в (1), (2), 29c (1), (2) (3).

- 29E. (1) In subsections one and two of section 29c of this Act, the appointed day in relation to articles of any particular description means such day as the Minister may, by order published in the Gazette, declare, for the purposes of those and 290 (1), or either of those subsections, to be the appointed day in relation to articles of that description.
  - (2) An order made by the Minister under subsection one of this section may declare different days as the appointed days in relation to articles of different descriptions, but any day so declared shall be a day not earlier than one year after the date of commencement of the subsection for the purposes of which the day is appointed and not earlier than the day on which the order is published in the Gazette.
  - (3) In subsections one and two of section 29B, and in subsections one and three of section 29D, of this Act, the appointed day means such day as the Minister may, by order published in the Gazette, declare, for the purposes of those or any of those subsections, to be the appointed day, that day or any of those days being not earlier than one year after the date of the commencement of the subsection for the purposes of which the day is appointed and not earlier than the day on which the order is published in the Gazette.

29F. (1) Where any pre-packed articles were not packed, Permits for or the packages in which the articles are contained are not sale of marked, in the manner prescribed by or under this Act and that do not the Minister is satisfied that-

comply with the pre-

- (a) the articles were, when packed, intended to be quirements. exported from Australia and he considers that it is just or reasonable that the sale in New South Wales of the articles should be permitted:
- (b) the articles were packed outside Australia and were brought into New South Wales in such circumstances as, in the opinion of the Minister, render it iust and reasonable that the sale in New South Wales of the articles should be permitted: or
- (c) the articles were packed within Australia and he considers that, having regard to the date when the articles were so packed or to any other relevant circumstances, it is just and reasonable that the sale in New South Wales of the articles should be permitted.

the Minister may, on an application in writing made to him by any person, grant to that person a permit in writing authorising the sale in New South Wales of the articles.

- (2) A permit under this section may be granted upon and subject to-
  - (a) such conditions as are specified in the permit with respect to-
    - (i) the number of individual articles the sale of which is authorised by the permit:
    - (ii) the form and manner in which the weight or measure of the articles contained in each package shall be indicated;
    - (iii) the weight or measure of the articles contained in each package; and

- (iv) the furnishing by the holder of the permit of returns relating to the sale of the articles;
- (b) such other conditions as the Minister thinks fit and specifies in the permit.

#### (3) A person—

- (a) being the holder of a permit under this section, shall not sell a pre-packed article the sale of which is authorised by a permit under this section otherwise than in accordance with the conditions specified in the permit;
- (b) shall not falsely represent that a permit has been granted under this section in relation to any particular article;
- (c) shall not, where a permit issued to him under this section has ceased to be in force, whether by reason of its cancellation or the effluxion of time, sell any article to which the permit related; or
- (d) shall not, where he has been authorised by a permit under this section to sell a specified number of articles of any description, sell any greater number of those articles.
- (4) Unless sooner cancelled pursuant to subsection five of this section a permit under this section shall be in force for such period as is specified in the permit, but may be renewed from time to time by the Minister for such further period or periods as the Minister may think fit.
- (5) The Minister may, at any time, by notice in writing to the holder of a permit under this section, cancel the permit if the Minister is satisfied that it is desirable in the public interest so to do.
- (6) Where a permit under this section is cancelled pursuant to subsection five of this section the holder thereof shall forthwith deliver up the permit to the superintendent.

29G. (1) Subject to this section, where the true weight Short or measure of a pre-packed article is found by an inspector weight or measure of to be less than the weight or measure of the article marked pre-packed on the package containing the article, the person who packed articles. the article shall be guilty of an offence against this Act.

- (2) Subject to this section, a person who—
- (a) sells a pre-packed article the true weight or measure of which is found by an inspector to be less than the weight or measure of the article marked on the package containing the article; or
- (b) delivers or sends to a purchaser an invoice or delivery note relating to a pre-packed article sold to the purchaser which states as the weight or measure of the article a weight or measure that is found by an inspector to be greater than the true weight or measure of the article so sold,

shall be guilty of an offence against this Act.

- (3) Subsection one of this section and paragraph (a) of subsection two of this section shall have effect in relation to any pre-packed article whether or not the package containing the article is required, by or under this Act, to be marked with a statement of the weight or measure of the article.
- (4) Where a package is marked with two or more statements of weight or measure, each of those statements shall, for the purposes of this section, be deemed to be a statement of the weight or measure of the article contained in the package unless the context in which the statement is made indicates the contrary, and the true weight or measure of the article shall for the purposes of subsection one, and paragraph (a) of subsection two, of this section, be deemed to be less than the weight or measure of the article marked on the package if that true weight or measure is less than the weight or measure stated in any of those statements.
  - (5) Where—
  - (a) the stated price per unit of weight or measure of a pre-packed article is indicated in the manner prescribed by the regulations:

- (b) a statement of the price of the article is marked on the package containing the article; and
- (c) that statement exceeds the price correctly computed from the true weight or measure of the article and the indicated price per unit of weight or measure.

the person who marked the package with the statement of price and the person who sold the article, are each guilty of an offence against this Act.

(6) In proceedings in respect of an offence against this Act arising under paragraph (a) of subsection two of this section, it shall be a defence for the person charged—

#### (a) to prove—

- (i) that he obtained the article from another person who packed the article or delivered it to him pursuant to a sale to him and that that other person furnished him with a written statement (in this section referred to as a "guarantee") that the weight or measure of the article stated on the package containing the article was correct; and
- (ii) that he sold the article in the same state as it was when delivered to him; or
- (b) to prove that, in the case of an article of any description to which section 29D of this Act applies,—
  - (i) he obtained the article from another person who delivered it to him pursuant to a sale to him and that when he so obtained the article it was in a package that was marked as required by section 29B and by section 29D of this Act; and
  - (ii) that he sold the article in the same state as it was when delivered to him.

- (7) Where a person gives a guarantee referred to in paragraph (a) of subsection six of this section and the true weight or measure of any pre-packed article in respect of which the guarantee was given is found by an inspector to be less than the weight or measure of the article as stated in the guarantee, that person shall, subject to this section, be guilty of an offence against this Act and be liable to a penalty not exceeding four hundred dollars.
- (8) In proceedings against a person in respect of an offence against this Act arising under subsection seven of this section, it shall be a defence for the person charged to prove that any deficiency in the true weight or measure of the article to which the proceedings relate—
  - (a) arose after the giving of the guarantee and was attributable wholly to factors for which reasonable allowance was made in stating the weight or measure of the article; or
  - (b) is due to the act or default of some other person after the article had passed from the control of the person charged.

# (9) Where—

- (a) the true weight or measure of a pre-packed article is found by an inspector to be less than the weight or measure (in this subsection referred to as "the stated weight or measure") of the article as marked on the package containing the article, as stated in any invoice or delivery note referred to in paragraph (b) of subsection two of this section and relating to the article or as stated in any guarantee relating to the article;
- (b) the deficiency of weight or measure of the article (in this subsection referred to as "the deficient article")—
  - (i) not being an article of a description to which section 29H of this Act applies, is found by that inspector not to exceed five parts per

centum

centum of the stated weight or measure of the article or, if the article is contained in a glass bottle and the stated weight or measure of the article does not exceed five ounces or five fluid ounces, seven and one-half parts per centum of the stated weight or measure of the article; or

- (ii) being an article of a description to which section 29H of this Act applies, is found by that inspector—
  - (a) at any time on the day on which the article was packed, not to exceed five parts per centum of the stated weight of the article; or
  - (b) at any other time, not to exceed the prescribed number, being more than five, of parts per centum of the stated weight of the article; and
- (c) at the place where the deficient article was obtained by the inspector or, if the deficient article was packed in New South Wales at the place where it was packed, there are, when an inspector enters any such place for the purpose of taking packages as referred to in paragraph (d) of this subsection, available five or more packages (in this subsection referred to as "similar packages")—
  - (i) that contain articles of the same kind as the deficient article;
  - (ii) that are marked with the name and address or the approved brand of the person whose name and address or approved brand are or is marked on the package containing the deficient article;
  - (iii) that are marked with the same weight or measure as the stated weight or measure of the deficient article; and

(iv) that, where the deficient article is of a description to which section 29H of this Act applies and the deficiency of weight of that article was found by the inspector at any time on the day on which that article was packed, were packed on that day,

no proceedings for an offence arising under subsection one, two or seven, as the case may be, of this section shall be commenced unless—

- (d) as soon as practicable after the deficiency in the deficient article was found an inspector enters the place where the deficient article was obtained or, if the deficient article was packed in New South Wales, the place where it was packed and there takes—
  - (i) where there are eleven or more similar packages available, eleven similar packages;or
  - (ii) where there are five or more but less than eleven similar packages, all of the similar packages; and
- (e) where the deficient article was deficient—
  - (i) in weight, that or any other inspector weighed the articles contained in the similar packages so taken and, where the deficient article is of a description to which section 29H of this Act applies and the deficiency of weight of that article was found by the inspector referred to in paragraph (a) of this subsection at any time on the day on which that article was packed, weighed those articles on that day; or
  - (ii) in measure, that or any other inspector measured the articles contained in the similar packages so taken.

- (10) Where an inspector referred to in paragraph (e) of subsection nine of this section finds that the average true weight or measure of the deficient article referred to in that subsection and of all the articles contained in the similar packages taken as referred to in that subsection is—
  - (a) where the articles are not of a description to which section 29H of this Act applies—not less than the weight or measure of any of the articles as marked on any of the packages containing the articles or as stated in the guarantee relating to the deficient article, as the case may be; or
  - (b) where the articles are of a description to which section 29H of this Act applies and the deficiency of weight of the deficient article—
    - (i) was found by the inspector at any time on the day on which the article was packed not less than the weight of any of the articles as marked on any of the packages containing the articles or as stated in the guarantee relating to the deficient article, as the case may be; or
    - (ii) was found by the inspector at any other time—less than the weight of any of the articles as so marked or as so stated but to an extent not exceeding the prescribed permissible average deficiency,

no proceedings for an offence arising under subsection one, two or seven, as the case may be, of this section shall be commenced against any person referred to in any such subsection.

(11) Subsections six and eight of this section do not apply unless the person charged has, not less than two days before the date set down for the hearing of the proceedings, by a notice in writing informed the informant that

he intends to rely on a defence provided by any of the provisions of those subsections of this section and of the particulars of that defence.

29H. (1) A person shall not mark the words "net weight Articles when packed" or words to the like effect on a package that may be marked containing an article unless-

"net weight when

- (a) the article is of a description to which this section packed". applies; and
- (b) where the regulations prescribe the manner of marking any such words on a package, the package is marked in that manner.
- (2) The regulations may require that in relation to any other particulars required by or under this Act to be marked on a package containing an article of a description to which this section applies, a package shall be marked in the prescribed manner with the date on which the article was packed or with an approved brand indicating that date.
- (3) This section applies to articles of such descriptions as may be prescribed.
- 291. (1) A person shall not mark the words "at standard Articles conditions" or words to the like effect on a package containing be marked an article unless-

with their weight at

- (a) the article is of a description to which this section standard conditions. applies; and
- (b) where the regulations prescribe the manner of marking any such words on a package, the package is marked in that manner.
- (2) In the application of section 29g of this Act to any article of a description to which this section applies a reference in that section to the true weight of an article shall be construed as a reference to the weight ascertained in the prescribed manner of the article if it were weighed at the prescribed standard conditions.

(3) This section applies to articles of such descriptions as may be prescribed.

Prohibition and restriction of use of certain expressions on packages.

- 29J. (1) Subject to this section, a person who, on or after the appointed day, packs a pre-packed article in a package on which is marked a prohibited expression or a restricted expression shall be guilty of an offence against this Act.
- (2) Subject to this section, a person who, on or after the appointed day, sells a pre-packed article contained in a package on which a prohibited expression or a restricted expression is marked shall be guilty of an offence against this Act.
- (3) The provisions of subsections one and two of this section relating to the marking on a package of a restricted expression shall not apply to or in relation to an article contained in a package on which a restricted expression appears if, in addition to that expression—
  - (a) there is marked on every part of the package on which the restricted expression appears such a statement as to the purported weight or measure of the article contained in the package as is referred to in subsection one of section 29p of this Act, whether or not the article is an article of a description to which that section applies;
  - (b) the restricted expression and that statement are so placed and so marked that both may be seen clearly at the same time; and
  - (c) each of the letters or figures contained in that statement—
    - (i) is of a size not less than the minimum size of print prescribed by the regulations in relation to the dimensions of the package;
    - (ii) is of a size not less than one-third of the size of the largest letter or figure contained in the restricted expression; and
    - (iii) is marked in a colour of a distinct contrast to the colour of its background.

#### (4) In this section—

"prohibited expression" means any expression, whether consisting of a single word or of more words than one and whether in an abbreviated form or not, that directly or indirectly relates to or qualifies a unit of measurement of a physical quantity and, without prejudice to the generality of the foregoing, includes any expression declared by the regulations to be a prohibited expression for the purposes of this section;

"restricted expression" means any expression, not being a prohibited expression, and whether consisting of a single word or of more words than one or of any word or words in combination with any figure or figures and whether in an abbreviated form or not, that directly or indirectly relates to the size of the package containing the article, not being such a statement as to the purported weight or measure of the article as is required by subsection one of section 29p of this Act, and, without prejudice to the generality of the foregoing, includes any expression that is declared by the regulations to be a restricted expression for the purposes of this section.

(5) In subsections one and two of this section the appointed day means such day or days as the Minister may, by order published in the Gazette, declare, for the purposes of those or either of those subsections, to be the appointed day, those days or that day being not earlier than one year after the date of the commencement of the subsections or subsection for the purposes of which the day is appointed and not earlier than the day on which the order is published in the Gazette.

29K. (1) Where any fraud is wilfully committed in the Fraud in using of any weight, measure, weighing instrument or weights, measuring instrument, the person committing the fraud shall measures, be guilty of an offence against this Act.

(2) Where the weight, measure, weighing instrument or measuring instrument with which any such fraud was so committed was in the possession of the person by whom the fraud was committed, the weight, measure, weighing instrument or measuring instrument may be seized by an inspector.

Liability of principal for acts of agent.

- 29L. (1) Notwithstanding any other law or rule of law where any person, in this section referred to as "the agent", acting, otherwise than as an employee, for or on behalf of another person, in this section referred to as "the principal", contravenes this Part or is guilty of an offence against this Act arising under any of the provisions of this Part, the principal shall be guilty of an offence against this Act in like manner as the agent and may be proceeded against and convicted accordingly unless he proves that he had no knowledge of the commission of the offence and that he took all reasonable precautions and used all due diligence to avoid the commission of the offence.
- (2) The principal may be proceeded against and convicted pursuant to subsection one of this section whether or not the agent has been proceeded against or been convicted under this Act.
- (3) Nothing in subsection one of this section shall prejudice or affect any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.

Liability of employer for offence by employee. 29M. (1) Notwithstanding any other law or rule of law, where any person, as the employee of another person, who in this section is referred to as "the employer", contravenes this Part or is guilty of an offence against this Act arising under any of the provisions of this Part, the employer shall be guilty of an offence against this Act in like manner as the employee, whether or not the offence was committed without

the employer's authority or contrary to his orders or instructions, and may be proceeded against and convicted accordingly unless he proves that he had no knowledge of the commission of the offence and could not, by the exercise of due diligence, have prevented the commission of the offence.

- (2) The employer may be proceeded against and convicted pursuant to subsection one of this section whether or not the employee has been proceeded against or been convicted under this Act.
- (3) Nothing in subsection one of this section shall prejudice or affect any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.
- 29N. (1) Where a person, in this subsection referred to General as "the defendant", is convicted of an offence against this provisions relating to Act arising under this Part and the court by which he is proceedings convicted is of the opinion that some other person was for offences. defrauded or suffered pecuniary loss by reason of the commission of the offence, the court may, in addition to imposing a penalty for the offence, order the defendant to pay to that other person, by way of recoupment of his loss, such sum as the court thinks fit and as may be specified in the order.

- (2) Any order made under subsection one of this section shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, as subsequently amended, and be enforceable as such under the provisions of that Act.
- (3) A prosecution for an offence against this Act arising under this Part may be instituted at any time within a period of twelve months after the commission of the offence or within a period of six months after the commission of the offence comes to the knowledge of an inspector, whichever period last expires.

(4) In any proceedings for an offence against this Act arising under this Part, a witness shall not be excused from answering any question or producing any document on the ground that the answer or production may criminate or tend to criminate him, but an answer made or a document produced by any such witness shall not be admissible in evidence against him in any proceedings for an offence against this Act arising under this Part.

Defences.

- 290. (1) In proceedings in respect of an offence against this Act arising under section 29B of this Part, it is a defence for the person charged to prove that the article to which the proceedings relate was packed on any premises for sale on those premises to a person for the purpose of consumption or use and not for the purpose of re-sale.
- (2) In proceedings in respect of an offence against this Act arising under section 29c or 29d of this Act, it is a defence for the person charged to prove that the article to which the proceedings relate was packed for export from Australia and that the marking on the package containing the article clearly so indicated and, in the case of an offence against this Act arising under subsection two of section 29c, or subsection three of section 29d, of this Act, that the article was sold for export from Australia.
- (3) In proceedings in respect of an offence against this Act arising under subsection two of section 29B, subsection two of section 29C, subsection three of section 29D, subsection two or subsection five of section 29G or subsection two of section 29J of this Act, it is a defence for the person charged to prove—
  - (a) that the commission of the offence was due to a cause or to causes beyond his control;
  - (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the article to which the proceedings relate; and

- (c) that he obtained the article from another person and sold or delivered it in the same state as it was when delivered to him.
- (4) In proceedings in respect of an offence against this Act arising under subsection one of section 29g of this Act, it is a defence for the person charged to prove—

#### (a) that-

- (i) the deficiency arose after the packing of the article and the marking of the package and was attributable wholly to factors for which reasonable allowance was made in stating the weight or measure of the article; or
- (ii) the commission of the offence was due to a cause or to causes beyond his control;
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the article to which the proceedings relate.
- (5) For the purposes of subsections three and four of this section a cause is not beyond the control of a person against whom proceedings referred to in either of those subsections are brought unless the court before which the proceedings are brought is satisfied that the cause was one that the person charged could not reasonably have foreseen or for which he could not reasonably have made allowance.
- (6) Subsections one, two, three and four of this section do not apply unless the person charged has, not less than two days before the date set down for the hearing of the proceedings, by a notice in writing, informed the informant that he intends to rely on a defence provided by any of the provisions of those subsections and of the particulars of that defence.

Approval of brands.

- 29P. (1) On the application of a person by whom or for or on whose behalf an article is packed as mentioned in subsection one of section 29B of this Act, the superintendent may approve in writing of a brand for use by that person—
  - (a) for the purpose of marking on packages—
    - (i) the name and address required by paragraph (a) of subsection one of section 29B of this Act to be marked on packages; or
    - (ii) the name and address required by paragraph(b) of that subsection to be marked on packages; or
  - (b) which, where the regulations require the dates when the articles contained in the packages were packed to be marked on the packages is, or incorporates, a device approved by the superintendent for the purpose of indicating those dates.
- (2) An approval under subsection one of this section may be granted subject to such conditions, if any, as the superintendent determines and specifies in the approval and may be cancelled by the superintendent at any time by notice in writing given to the person to whom the approval was granted.
- (3) A person to whom an approval under subsection one of this section has been granted subject to conditions shall not mark a package containing an article with the brand specified in the approval otherwise than in compliance in all respects with those conditions.
- (4) Where a brand has been approved under subsection one of this section for use by a person for the purposes of marking on packages the name and address referred to in subparagraph (i) or (ii) of paragraph (a) of that subsection, a person other than the person to whom that approval was granted or a person having his authority so to do shall not mark a package containing an article with the brand specified

in the approval or with any other brand so closely resembling the brand specified in the approval as to be likely to lead to the belief that it is the brand specified in the approval.

29Q. In proceedings in respect of an offence against this Evidentiary Act arising under this Part in relation to a pre-packed article—

- (a) the marking on the package in which the article is contained indicating the name of the person who packed the article shall be evidence that the article was packed by that person;
- (b) the marking on the package in which the article is contained indicating the name and address of a person for or on whose behalf the article was packed shall be evidence that the article was packed for or on behalf of that person;
- (c) the marking on the package in which the article is contained indicating the place where the article was packed shall be evidence that the article was packed at that place;
- (d) the marking on the package in which the article is contained indicating the date when the article was packed shall be evidence that the article was packed on that date;
- (e) a document purporting to be certified by the superintendent to be a copy of a permit granted by the Minister under section 29F of this Act shall be evidence of the granting of the permit and of the conditions, if any, specified in the permit;
- (f) a certificate purporting to be signed by the superintendent and stating-
  - (i) that a permit granted by the Minister under section 29F of this Act was cancelled on a date specified in the certificate;

(ii) that a permit cancelled under subsection five of section 29F of this Act has not been delivered up to him,

shall be evidence of the matters stated in the certificate;

- (g) a document purporting to be certified by the superintendent to be a copy of an approval granted by him under subsection one of section 29p of this Act shall be evidence of the approval and of the conditions, if any, subject to which the approval was granted, and the fact that such a brand is marked on a package containing an article shall be evidence—
  - (i) where the approval was granted to a person for the purpose referred to in subparagraph
     (i) of paragraph (a) of that subsection, that the article was packed by the person to whom the approval was granted and at the place the address of which is specified in the approval as the address indicated by the brand;
  - (ii) where the approval was granted to a person for the purpose referred to in subparagraph
    (ii) of paragraph (a) of that subsection, that the article was packed for or on behalf of the person whose name and address are indicated by the brand; or
  - (iii) where approval is of a brand which is, or incorporates, a device referred to in paragraph (b) of that subsection, that the article was packed on the date indicated by that device,

as the case requires; and

(h) a certificate purporting to be signed by the superintendent and stating that an approval granted by him under subsection one of section 29P of this Act was cancelled on a date specified in the certificate shall be evidence of the matters stated in the certificate.

29<sub>R</sub>. (1) The Governor may make regulations for or with Regulations. respect to—

- (a) the form and manner in which packages required or permitted by any provision of this Act to be marked with any particulars, statement, or approved brand, shall or may be so marked;
- (b) the denominations of weight or measure in which articles of any prescribed description shall or may be packed or sold;
- (c) specifying or describing the machines or classes of machines that shall be vending machines for the purposes of the regulations;
- (d) regulating, controlling, or restricting the sale or supply of articles by means of vending machines referred to in paragraph (c) of this subsection and prohibiting the sale or supply of articles by means of any such machine otherwise than in accordance with the regulations;
- (e) securing that articles that are sold by means of a vending machine referred to in paragraph (c) of this subsection are so sold only if there is displayed in or on the machine such particulars or statements, with respect to such matters, as may be prescribed, and the manner in which the particulars or statements so prescribed shall be so displayed;
- (f) the units of weight or measure to be used in marking or displaying on packages or vending machines referred to in paragraph (c) of this subsection any particulars or statements required to be marked or displayed thereon and the manner in which those units of weight or measure shall or may be expressed, whether in figures or words or figures and words, and the abbreviations that may or may not be used for the purposes of expressing those units;

- (g) the method by which, and the conditions under which, the weight or measure of articles is to be determined in connection with the marking or displaying on packages or on vending machines referred to in paragraph (c) of this subsection of any particulars or statements referred to in the foregoing provisions of this subsection;
- (h) permitting, in the case of such articles and in such circumstances as may be specified in the regulations, the weight or measure of any articles used in packing the first-mentioned articles for sale as may be so specified to be included, notwithstanding any other provision of this Part, in the net weight or measure of the first-mentioned articles;
- (i) exempting, either wholly or to such extent as may be prescribed, or authorising a prescribed person to exempt, either unconditionally or subject to such conditions and restrictions as that person may determine, from any of the provisions of this Part—
  - (i) articles of any description prescribed or referred to in the regulations and packages containing any such articles; and
  - (ii) prescribed transactions and classes of sales;
- (j) prescribing standard specifications of capacity for or in relation to packages used in the packing or sale of prescribed articles, prescribing distinctive marks for packages made to those specifications, and prohibiting or regulating the sale of any such articles, when packed, otherwise than in prescribed packages made to those specifications and bearing the prescribed distinctive marks;
- (k) requiring packages containing articles to be marked with a statement of the sale price per unit of weight or measure of the articles;

- (1) generally regulating and controlling the packing of articles and the marking of packages in which articles are contained; and
- (m) prescribing all matters which by this Part are required or permitted to be prescribed or which are necessary or convenient for giving effect to this Part.
- (2) The regulations made under this Part may impose a penalty not exceeding one hundred dollars for any offence against the regulations.
  - (3) The regulations made under this Part-
  - (a) may make different provision in respect of different descriptions of articles, packages, transactions and classes of sales;
  - (b) may be made so as to apply generally or only in respect of the packing or sale of articles of denominations of weight or measure greater than or less than some other prescribed multiple of a prescribed denomination;
  - (c) may be of general or specially limited application;
  - (d) may differ according to differences in time, locality, place or circumstance.
- (2) Notwithstanding the repeal of Part III of the Principal Act by subsection one of this section, subsection three of section twenty-five of the Principal Act as in force immediately before the commencement of section 29p of the Principal Act (as inserted by subsection one of this section) shall after that commencement continue in force in relation to any article in a package, not being an article referred to in paragraph (a) or (b) of subsection four of the said section twenty-five, until the appointed day referred to in subsection three of section 29p of the Principal Act (as so inserted) and a person contravening the provisions of subsection three of the said section twenty-five may be proceeded against and shall be liable to the same penalty as if that subsection had not been repealed.

Further amendment of Act No. 10, 1915. (Part IV— Verification and Stamping.)

Sec. 30. (Verification and stamping.)

- 4. The Principal Act is further amended—
  - (a) by inserting next after subsection one of section thirty the following new subsections:—
    - (1A) Subsection one of this section does not operate to require any measure made entirely of glass to be stamped, if that measure—
      - (a) is of a class that the Minister, by order, specifies in a notification published in the Gazette as a class of measures to which subsection one of this section does not apply;
      - (b) was manufactured in New South Wales by a manufacturer who is the holder of an instrument of approval issued to him by the Minister;
      - (c) was manufactured in a batch, some of which were tested by sample in the prescribed manner by an inspector; and
      - (d) is marked by the manufacturer in the prescribed manner to show that it was part of a batch that was so tested.
    - (1B) An approval referred to in paragraph (b) of subsection (1A) of this section—
      - (a) may be given subject to such conditions as the Minister thinks fit and specifies in the instrument of approval, including conditions relating to the facilities and equipment to be made available by the manufacturer for use by any inspector making tests referred to in paragraph (c) of subsection (1A) of this section; and
      - (b) may be revoked by the Minister for any reason that to the Minister seems sufficient.

(1c)

- (1c) An application for an approval referred to in paragraph (b) of subsection (1A) of this section may be refused by the Minister if he is of the opinion that the number of measures to be manufactured by the applicant is insufficient to warrant his being granted the approval or for any other reason that to the Minister seems sufficient.
- (b) by inserting in subsection one of section thirty-one Sec. 31. after the word "glass," the words "or a weight, (Reverificameasure, weighing instrument or measuring tion and reinstrument of a prescribed class";
- (c) by inserting in section thirty-three after the word Sec. 33. "thereon" the words "and, unless the weight, (Using measure, weighing instrument or measuring instrument has been produced at the office of an inspector and reverified and stamped, notify the superintendent in writing within twenty-one days after destroying the stamp that the stamp has been destroyed".

5. The Principal Act is further amended—

Further amendment of Act No. 10, 1915. (Part V— Sale of Coal and

(a) by omitting section thirty-seven;

Sec. 37.
(Application of last two preceding sections.)

Firewood.)

(b) by omitting from paragraph (e) of section thirty- Sec. 39. nine the words "forty dollars" and by inserting (Regulain lieu thereof the words "one hundred dollars". tions.)

Further amendment of Act No. 10, 1915. (Part VI— General and Supplemental.) 6. The Principal Act is further amended—

- Sec. 41. (Inspection of articles in packages.)
- (a) (i) by omitting paragraph (a) of subsection one of section forty-one and by inserting in lieu thereof the following paragraph:—
  - (a) enter any building or place where any article is packed for sale or sold or where he has reasonable cause to believe that any article is packed for sale or sold;
  - (ii) by inserting next after the same subsection the following new subsections:—
    - (1A) Where any article referred to in subsection one of this section is contained in a package, the inspector may, for the purpose of weighing or measuring it, break open and remove the article from the package.
    - (1B) An inspector may require the driver or person in charge of a vehicle by whom any invoice or delivery note relating to any articles being carried on the vehicle for delivery to a purchaser is held to produce that invoice or delivery note to the inspector.

Subst. sec. 42.

(b) by omitting section forty-two and by inserting in lieu thereof the following section:—

Obstruction of inspector.

- 42. Any person who—
- (a) hinders or obstructs or attempts to hinder or obstruct in any manner an inspector in the execution of his duty under this Act;

- (b) does not, when requested to do so by an inspector, produce all weights, measures, weighing instruments or measuring instruments in his possession for examination or testing;
- (c) refuses when requested to do so by an inspector to state his name and address, or when so requested states a false name or address to an inspector;
- (d) refuses or fails to stop a vehicle of which he is the driver or person in charge when required to do so by an inspector;
- (e) does not comply with a requirement made by an inspector under subsection (1B) of section forty-one of this Act;
- (f) uses abusive language to or directly or indirectly threatens an inspector;
- (g) assaults an inspector while the inspector is executing his duties under this Act;
- (h) impersonates an inspector,

shall be guilty of an offence against this Act.

- (c) by omitting from section forty-four the words "one Sec. 44. hundred dollars" and by inserting in lieu thereof (Penalties.) the words "two hundred dollars for a first offence or four hundred dollars for a second or subsequent offence";
- (d) by inserting at the end of section fifty-four the Sec. 54.
  following new subsection:—

  (Evidence of regulations.)
  - (2) A certificate purporting to be signed by the superintendent certifying—
    - (a) that any weight or measure specified in the certificate is a standard of measurement—
      - (i) that has been provided and maintained by the Minister under subsection one of section twelve of this Act; or

- (ii) that is or was at a time or during a period specified in the certificate a primary State standard, a secondary State standard, a tertiary State standard or an inspector's standard; or
- (b) that a person specified in the certificate is or was at a time or during a period specified in the certificate an inspector,

shall be prima facie evidence of the particulars stated in the certificate.

Sec. 57.
(Regulations (Canada and Board of Trade).)

- (e) (i) by omitting paragraphs (o1) and (q) of subsection one of section fifty-seven;
  - (ii) by inserting next before paragraph (r) of the same subsection the following new paragraphs:—
    - (q1) The registration, examination and licensing of persons carrying on the business of repairing or adjusting weighing and measuring instruments and the regulation of persons carrying on any such business.
    - (q2) The manner of testing of glass measures for the purposes of paragraph (c) of subsection (1A) of section thirty of this Act, the manner of marking any such measures, requiring the manufacturer to produce to an inspector production records relating to the manufacture of any such measures and prohibiting the removal from the manufacturer's premises of any such measures bearing a mark of verification without approval of an inspector.

- (iii) by omitting from paragraph (s) of the same subsection the words "forty dollars" and by inserting in lieu thereof the words "one hundred dollars";
- (iv) by omitting subsection two of the same section.

BY AUTHORITY: V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1968

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE Assembly, has finally passed the Legislative Council and the Legis-LATIVE ASSEMBLY of NEW SOUTH WALES.

> I. P. K. VIDLER, Clerk of the Legislative Assembly.

Legislative Assembly Chamber, Sydney, 10 April, 1968.

# New South Wales



ANNO SEPTIMO DECIMO

# ELIZABETHÆ II REGINÆ

# Act No. 12, 1968.

An Act to control and regulate the packing of certain articles and the sale of certain articles, whether in packages or not; for this and other purposes to amend the Weights and Measures Act, 1915, as subsequently amended; and for purposes connected therewith. [Assented to, 24th April, 1968.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows: -

1. (1) This Act may be cited as the "Weights and Short title, citation and Measures (Amendment) Act, 1968". commencement. (2)

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

> L. A. PUNCH, Chairman of Committees of the Legislative Assembly.

- (2) The Weights and Measures Act, 1915, as subsequently amended, is in this Act referred to as the Principal Act.
- (3) The Principal Act, as amended by this Act, may be cited as the Weights and Measures Act, 1915–1968.
- (4) The several provisions of this Act shall commence upon such day or days as may be appointed by the Governor in respect thereof and notified by proclamation published in the Gazette.

Amendment of Act No. 10, 1915.

(Part I— Preliminary.)

Sec. 1. (Short title.)

2. The Principal Act is amended—

(a) by omitting from subsection two of section one the matter relating to Part III and by inserting in lieu thereof the following matter:—

PART III.—SALE AND PACKAGING OF ARTICLES
—ss. 22–29R.

New sec. 5A.

(b) by inserting next after section five the following new section:—

Construction of Act. 5A. This Act shall be read and construed subject to the limits of the legislative powers of the State and so as not to exceed those powers, to the intent that, where any enactment thereof, but for this provision, would be construed as being in excess of those powers, it shall nevertheless be a valid enactment to the extent to which it is not in excess of those powers.

Sec. 6. (Definitions.)

(c) (i) by inserting in section six next before the definition of "Coal" the following new definitions:—

"Approved brand" means a brand approved by the superintendent pursuant to section 29p of this Act.

"Brand"

- "Brand" includes any mark, device, name, word, letter, numeral or symbol, or any combination thereof.
- (ii) by omitting from the definition of "Coal" in the same section the words ", coke, and charcoal" and by inserting in lieu thereof the words "and coke";
- (iii) by inserting in the same section next before the definition of "Measuring instrument" the following new definition:—
  - "Mark" includes authorise, direct, cause, permit or suffer to be marked.
- (iv) by omitting from the same section the definition of "Package" and by inserting in lieu thereof the following definitions:—
  - "Pack" includes authorise, direct, cause, permit or suffer to be packed.
  - "Package" includes anything by means of which any article is packed for sale, or any articles are packed for sale as a single item, and in particular and without prejudice to the generality of the foregoing, includes a wrapper and a confining band.
- (v) by omitting from the definition of "Purchaser" in the same section the words "person purchasing" and by inserting in lieu thereof the words "a person who purchases an article";
- (vi) by inserting in the same section next after the definition of "Schedule" the following new definition:—

"Sell" includes—

- (a) offer or expose for sale;
- (b) keep or have in possession for sale;
- (c) barter or exchange;

- (d) deal in or agree to sell;
- (e) send, forward or deliver for sale or on sale; and
- (f) authorise, direct, cause, permit or suffer any of those acts or things,

and "sale" and "sold" have corresponding interpretations.

(vii) by omitting from the same section the definition of "Weighman" and by inserting in lieu thereof the following definition:—

> "Weighman" means a person carrying out or assisting in carrying out weighings by means of a public weighing instrument or issuing weight tickets in respect of weighings carried out by means of such an instrument.

Sec. 11.
(Superintendent or inspector not to derive profit from making, adjusting, or selling weights or measures.)
Further amendment of Act No. 10, 1915.

(d) by omitting from section eleven the words ", outside the metropolitan police district,".

3. (1) The Principal Act is further amended by omitting Part III and by inserting in lieu thereof the following Part:—

#### PART III.

SALE AND PACKAGING OF ARTICLES.

Interpretation.

Subst. Part III.

- 22. (1) For the purposes of this Part—
  - (a) an article shall be deemed to be pre-packed if it is packed in advance ready for sale; and

- (b) any article of any description, being an article contained in a package, that is found on premises where articles of that description are so packed, or are kept or stored for sale after being so packed, shall be deemed to be pre-packed within the meaning of this Part unless the contrary is proved, and it shall not be sufficient proof to the contrary to show that the package has not been marked in accordance with or has been marked in contravention of the provisions of this or any other Part of this Act or any other Act or the regulations made under this or any other Act with respect to the marking of packages containing articles of that description.
- (2) Except as otherwise prescribed, a reference in this Part or the regulations to the weight or measure or the true weight or measure of an article shall be construed as a reference to the weight or measure of the article excluding the weight or measure of the package in which the article is contained.
- (3) A reference in this Part to the weight or measure or the true weight or measure of an article shall, in the case of an article of a kind that is ordinarily packed or sold by number, be construed as a reference to a quantity of that article counted by number.
- (4) Where by or under this Part, any particulars or words are, or any statement or expression is, required, permitted or forbidden to be marked on a package containing an article, the particulars, words, statement or expression shall be deemed to be marked on the package if marked on a label attached to the package or to the article.
- (5) A reference in this Part, however expressed, to the marking of a package with a statement of the weight or measure of the article contained in the package shall be construed as including a reference to the marking with such a statement of a label attached to the package or the article.

- (6) A reference in this Part, however expressed, to-
- (a) a package containing an article, or a package in which an article is contained, shall be construed, where appropriate, as including a reference to a package to which an article is attached or around which an article is wound or wrapped; and
- (b) an article contained in a package, shall be construed, where appropriate, as including a reference to an article that is attached to, wound around, or wrapped around, a package.
- (7) For the purposes of this Part, an article shall be deemed not to be weighed or measured in the presence of a purchaser unless the weighing instrument or the measure or measuring instrument by which the article is weighed or measured is so constructed, placed in such a position, and so used as to enable the purchaser to have a clear and unobstructed view of and to see easily—
  - (a) the weight or measure, or indication of the weight or measure of the article; and
  - (b) the operation of the weighing or measuring of the article.

Exemptions. 23. (1) The provisions of this Part, sections twenty-four and twenty-seven excepted, do not apply to or in relation to coal or firewood.

(2) The provisions of this Part prohibiting a person from selling an article that is not packed or marked in accordance with the provisions of this Part do not apply where the article sold is packed and weighed or measured in the presence of the purchaser.

Sales to be by Commonwealth legal units. 24. An article sold by weight or measure shall be sold only by reference to a Commonwealth legal unit of measurement the use of which in respect of that article is permitted by the regulations.

- 25. In any contract for the sale by the bushel of any Weight articles mentioned in Schedule E, the bushel shall be deter- of bushel. mined by weighing, the weight equivalent to a bushel of any such articles being that stated in the said Schedule.
- 26. A person shall not, except as prescribed or as other-Sales to be by net wise provided by or under any other Act weight or measure.
  - (a) sell an article by weight or measure otherwise than by net weight or measure; or
  - (b) mark a package containing any article with the words "gross weight" or words to the like effect or sell an article in a package so marked.
- 27. (1) Where an article sold by weight or measure is Invoice or delivered to the purchaser at a place other than the premises delivery note to be of the seller, the seller shall deliver to the purchaser with supplied in the article an invoice or delivery note showing as the weight certain or measure of the article a weight or measure that is not more than its true weight or measure.

- (2) Subsection one of this section does not apply to-
  - (a) any article exempted from provisions of that subsection by the regulations;

  - (c) any article weighed or measured at the premises of the purchaser;
  - (d) any pre-packed article of a description to which section 29D of this Act applies; or
  - (e) any liquors, within the meaning of the Liquor Act, 1912, as subsequently amended, sold by measure in quantities of less than two fluid ounces or more than two gallons.

Provision for weighing or measuring. 28. Where any person sells by retail an article by weight or measure, he shall have at the place where the sale is made a suitable weighing instrument for weighing the article or, as the case may require, a suitable measure or measuring instrument for measuring the article and shall at the request of the purchaser weigh or measure the article in the presence of the purchaser.

False declaration as to measures, weight, &c.

### 29. (1) Any person who-

- (a) by means of words, description or other indication, direct or indirect, makes any false declaration or statement or misleads any person as to the true weight, measure or gauge of any article sold by him; or
- (b) sells an article, not being a pre-packed article, by weight, measure or gauge short of or smaller than the quantity or gauge ordered or purchased without informing the person ordering or purchasing the article of the true weight, measure or gauge of the article,

shall be guilty of an offence against this Act.

(2) Where an article is purchased by weight or measure, the weight or measure thereof is determined by the purchaser at or before the time of the sale and the purchaser, by means of words, description or other indication, direct or indirect, makes to the seller or to his agent a false declaration or statement or misleads the seller or his agent as to the true weight or measure of the article, the purchaser shall be guilty of an offence against this Act.

Sale at stated price per unit of weight or measure. 29A. Where any person sells any article by weight or measure at a stated price per unit of weight or measure and the price charged for the article exceeds the price correctly computed from the true weight or measure of the article and the stated price per unit of weight or measure, that person shall be guilty of an offence against this Act.

29B. (1) A person shall not, except as prescribed, on or Name, etc., after the appointed day, pack an article as a pre-packed of packer to be article, unless the package in which the article is contained marked on is marked—

packages.

- (a) where the person packing the article—
  - (i) is an individual and he packs the article otherwise than as an employee of another person or as a member of a firm trading under a registered business name-with his name;
  - (ii) is an individual and he packs the article as an employee of another person-with the name of that other person;
  - (iii) is a corporation—with the name of that corporation; or
  - (iv) is a member of a firm trading under a registered business name-with that business name.

and with the address of the place where the article was packed or, instead of that name and address, with an approved brand approved for use by that person or, where that person is an employee of another person, by that other person; and

- (b) where the article is packed for or on behalf of another person by a person who is not an employee of that other person, and that other person-
  - (i) is an individual—with the name and address of that individual;
  - (ii) is a corporation—with the name of that corporation and if it has a registered office in New South Wales, the address of that office or if it has no such office in New South Wales, the address of its sole or principal place of business; or

(iii) is a firm trading under a registered business name-with that business name and the address of its sole or principal place of business.

or, instead of that name and address, with an approved brand approved for use by that other person,

and, where the regulations prescribe the manner of marking any such name or address or approved brand on the package, the package is so marked in that manner.

- (2) A person shall not, on or after the appointed day, sell a pre-packed article unless the package containing the article is marked as mentioned in subsection one of this section.
- (3) Nothing in subsection two of this section prohibits the sale, pursuant to a permit under section 29F of this Act, of an article to which the permit relates.
- (4) In this section, "registered business name", in relation to a firm, means the business name of that firm registered under the law in force in the place where that firm has its sole or principal place of business.

Certain articles to be packed and sold only in certain de-

- 29c. (1) A person shall not, on or after the appointed day, pack, as a pre-packed article, an article of any description to which this section applies except in a weight or measure of such denomination as may be prescribed in relation nominations, to articles of that description.
  - (2) A person shall not, on or after the appointed day, sell a pre-packed article of any description to which this section applies unless the article is packed as mentioned in subsection one of this section.
  - (3) Nothing in subsection two of this section prohibits the sale, pursuant to a permit under section 29F of this Act, of an article to which the permit relates.

- (4) Notwithstanding the provisions contained in this or any other Act or in any regulation relating to the denominations of weight or measure in which an article of any description to which this section applies may be packed for sale, a person may, on and after the date of the commencement of this section and before the appointed day under subsection one of this section in relation to any such article, pack for sale or, on or after that date of commencement and before the appointed day under subsection two of this section in relation to any such article, sell, any such article in a weight or measure of a denomination prescribed for the purposes of this section in relation to articles of that description.
- (5) This section applies to articles of such description as may be prescribed.
- 29D. (1) A person shall not, on or after the appointed Packages, day, pack, as a pre-packed article, an article of any description be marked to which this section applies unless a statement of the pur-with ported weight or measure of the article is marked, as of the prescribed, on the package containing the article.

quantity of the articles contained

- (2) For the purposes of subsection one of this therein. section any statement of weight or measure marked on a package containing an article shall be deemed to be a statement of the purported weight or measure of the article unless the context in which the statement is made indicates the contrary.
- (3) A person shall not, on or after the appointed day, sell a pre-packed article of any description to which this section applies unless the package in which the article is contained is marked as mentioned in subsection one of this section.
- (4) Nothing in subsection three of this section prohibits the sale, pursuant to a permit under the provisions of section 29F of this Act, of an article to which the permit relates.

- (5) Notwithstanding the provisions contained in this or any other Act relating to the marking of a package containing an article with particulars of the weight or measure of the article, a person may, on and after the date of the commencement of this section and before the appointed day under subsection one of this section in relation to any such article, pack for sale, or, on or after that date of commencement and before the appointed day under subsection three of this section in relation to any such article, sell, any such article if the package in which the article is contained is marked in accordance with subsection one of this section.
- (6) This section applies to all articles other than articles of such descriptions as may be prescribed.

"Appointed day" for purposes of

- 29E. (1) In subsections one and two of section 29c of this Act, the appointed day in relation to articles of any particular description means such day as the Minister may, by order 29B (1), (2), published in the Gazette, declare, for the purposes of those and 29p (1), or either of those subsections, to be the appointed day in relation to articles of that description.
  - (2) An order made by the Minister under subsection one of this section may declare different days as the appointed days in relation to articles of different descriptions, but any day so declared shall be a day not earlier than one year after the date of commencement of the subsection for the purposes of which the day is appointed and not earlier than the day on which the order is published in the Gazette.
  - (3) In subsections one and two of section 29B, and in subsections one and three of section 29D, of this Act, the appointed day means such day as the Minister may, by order published in the Gazette, declare, for the purposes of those or any of those subsections, to be the appointed day, that day or any of those days being not earlier than one year after the date of the commencement of the subsection for the purposes of which the day is appointed and not earlier than the day on which the order is published in the Gazette.

29F. (1) Where any pre-packed articles were not packed, Permits for or the packages in which the articles are contained are not sale of marked, in the manner prescribed by or under this Act and that do not the Minister is satisfied that-

comply with the pre-

- (a) the articles were, when packed, intended to be quirements. exported from Australia and he considers that it is just or reasonable that the sale in New South Wales of the articles should be permitted;
- (b) the articles were packed outside Australia and were brought into New South Wales in such circumstances as, in the opinion of the Minister, render it just and reasonable that the sale in New South Wales of the articles should be permitted; or
- (c) the articles were packed within Australia and he considers that, having regard to the date when the articles were so packed or to any other relevant circumstances, it is just and reasonable that the sale in New South Wales of the articles should be permitted,

the Minister may, on an application in writing made to him by any person, grant to that person a permit in writing authorising the sale in New South Wales of the articles.

- (2) A permit under this section may be granted upon and subject to-
  - (a) such conditions as are specified in the permit with respect to-
    - (i) the number of individual articles the sale of which is authorised by the permit;
    - (ii) the form and manner in which the weight or measure of the articles contained in each package shall be indicated:
    - (iii) the weight or measure of the articles contained in each package: and

- (iv) the furnishing by the holder of the permit of returns relating to the sale of the articles; and
- (b) such other conditions as the Minister thinks fit and specifies in the permit.

## (3) A person—

- (a) being the holder of a permit under this section, shall not sell a pre-packed article the sale of which is authorised by a permit under this section otherwise than in accordance with the conditions specified in the permit;
- (b) shall not falsely represent that a permit has been granted under this section in relation to any particular article;
- (c) shall not, where a permit issued to him under this section has ceased to be in force, whether by reason of its cancellation or the effluxion of time, sell any article to which the permit related; or
- (d) shall not, where he has been authorised by a permit under this section to sell a specified number of articles of any description, sell any greater number of those articles.
- (4) Unless sooner cancelled pursuant to subsection five of this section a permit under this section shall be in force for such period as is specified in the permit, but may be renewed from time to time by the Minister for such further period or periods as the Minister may think fit.
- (5) The Minister may, at any time, by notice in writing to the holder of a permit under this section, cancel the permit if the Minister is satisfied that it is desirable in the public interest so to do.
- (6) Where a permit under this section is cancelled pursuant to subsection five of this section the holder thereof shall forthwith deliver up the permit to the superintendent.

29G. (1) Subject to this section, where the true weight short or measure of a pre-packed article is found by an inspector weight or measure of to be less than the weight or measure of the article marked pre-packed on the package containing the article, the person who packed articles. the article shall be guilty of an offence against this Act.

- (2) Subject to this section, a person who—
- (a) sells a pre-packed article the true weight or measure of which is found by an inspector to be less than the weight or measure of the article marked on the package containing the article; or
- (b) delivers or sends to a purchaser an invoice or delivery note relating to a pre-packed article sold to the purchaser which states as the weight or measure of the article a weight or measure that is found by an inspector to be greater than the true weight or measure of the article so sold,

shall be guilty of an offence against this Act.

- (3) Subsection one of this section and paragraph (a) of subsection two of this section shall have effect in relation to any pre-packed article whether or not the package containing the article is required, by or under this Act, to be marked with a statement of the weight or measure of the article.
- (4) Where a package is marked with two or more statements of weight or measure, each of those statements shall, for the purposes of this section, be deemed to be a statement of the weight or measure of the article contained in the package unless the context in which the statement is made indicates the contrary, and the true weight or measure of the article shall for the purposes of subsection one, and paragraph (a) of subsection two, of this section, be deemed to be less than the weight or measure of the article marked on the package if that true weight or measure is less than the weight or measure stated in any of those statements.
  - (5) Where—
  - (a) the stated price per unit of weight or measure of a pre-packed article is indicated in the manner prescribed by the regulations;

- (b) a statement of the price of the article is marked on the package containing the article; and
- (c) that statement exceeds the price correctly computed from the true weight or measure of the article and the indicated price per unit of weight or measure,

the person who marked the package with the statement of price and the person who sold the article, are each guilty of an offence against this Act.

(6) In proceedings in respect of an offence against this Act arising under paragraph (a) of subsection two of this section, it shall be a defence for the person charged—

## (a) to prove—

- (i) that he obtained the article from another person who packed the article or delivered it to him pursuant to a sale to him and that that other person furnished him with a written statement (in this section referred to as a "guarantee") that the weight or measure of the article stated on the package containing the article was correct; and
- (ii) that he sold the article in the same state as it was when delivered to him; or
- (b) to prove that, in the case of an article of any description to which section 29D of this Act applies,—
  - (i) he obtained the article from another person who delivered it to him pursuant to a sale to him and that when he so obtained the article it was in a package that was marked as required by section 29B and by section 29D of this Act; and
  - (ii) that he sold the article in the same state as it was when delivered to him.

- (7) Where a person gives a guarantee referred to in paragraph (a) of subsection six of this section and the true weight or measure of any pre-packed article in respect of which the guarantee was given is found by an inspector to be less than the weight or measure of the article as stated in the guarantee, that person shall, subject to this section, be guilty of an offence against this Act and be liable to a penalty not exceeding four hundred dollars.
- (8) In proceedings against a person in respect of an offence against this Act arising under subsection seven of this section, it shall be a defence for the person charged to prove that any deficiency in the true weight or measure of the article to which the proceedings relate—
  - (a) arose after the giving of the guarantee and was attributable wholly to factors for which reasonable allowance was made in stating the weight or measure of the article; or
  - (b) is due to the act or default of some other person after the article had passed from the control of the person charged.

#### (9) Where—

- (a) the true weight or measure of a pre-packed article is found by an inspector to be less than the weight or measure (in this subsection referred to as "the stated weight or measure") of the article as marked on the package containing the article, as stated in any invoice or delivery note referred to in paragraph (b) of subsection two of this section and relating to the article or as stated in any guarantee relating to the article;
- (b) the deficiency of weight or measure of the article (in this subsection referred to as "the deficient article")—
  - not being an article of a description to which section 29н of this Act applies, is found by that inspector not to exceed five parts per

centum

centum of the stated weight or measure of the article or, if the article is contained in a glass bottle and the stated weight or measure of the article does not exceed five ounces or five fluid ounces, seven and one-half parts per centum of the stated weight or measure of the article; or

- (ii) being an article of a description to which section 29H of this Act applies, is found by that inspector—
  - (a) at any time on the day on which the article was packed, not to exceed five parts per centum of the stated weight of the article; or
  - (b) at any other time, not to exceed the prescribed number, being more than five, of parts per centum of the stated weight of the article; and
- (c) at the place where the deficient article was obtained by the inspector or, if the deficient article was packed in New South Wales at the place where it was packed, there are, when an inspector enters any such place for the purpose of taking packages as referred to in paragraph (d) of this subsection, available five or more packages (in this subsection referred to as "similar packages")—
  - (i) that contain articles of the same kind as the deficient article;
  - (ii) that are marked with the name and address or the approved brand of the person whose name and address or approved brand are or is marked on the package containing the deficient article;
  - (iii) that are marked with the same weight or measure as the stated weight or measure of the deficient article; and

(iv) that, where the deficient article is of a description to which section 29H of this Act applies and the deficiency of weight of that article was found by the inspector at any time on the day on which that article was packed, were packed on that day,

no proceedings for an offence arising under subsection one, two or seven, as the case may be, of this section shall be commenced unless—

- (d) as soon as practicable after the deficiency in the deficient article was found an inspector enters the place where the deficient article was obtained or, if the deficient article was packed in New South Wales, the place where it was packed and there takes—
  - (i) where there are eleven or more similar packages available, eleven similar packages;
     or
  - (ii) where there are five or more but less than eleven similar packages, all of the similar packages; and
- (e) where the deficient article was deficient—
  - (i) in weight, that or any other inspector weighed the articles contained in the similar packages so taken and, where the deficient article is of a description to which section 29H of this Act applies and the deficiency of weight of that article was found by the inspector referred to in paragraph (a) of this subsection at any time on the day on which that article was packed, weighed those articles on that day; or
  - (ii) in measure, that or any other inspector measured the articles contained in the similar packages so taken.

- (10) Where an inspector referred to in paragraph (e) of subsection nine of this section finds that the average true weight or measure of the deficient article referred to in that subsection and of all the articles contained in the similar packages taken as referred to in that subsection is—
  - (a) where the articles are not of a description to which section 29H of this Act applies—not less than the weight or measure of any of the articles as marked on any of the packages containing the articles or as stated in the guarantee relating to the deficient article, as the case may be; or
  - (b) where the articles are of a description to which section 29H of this Act applies and the deficiency of weight of the deficient article—
    - (i) was found by the inspector at any time on the day on which the article was packed not less than the weight of any of the articles as marked on any of the packages containing the articles or as stated in the guarantee relating to the deficient article, as the case may be; or
    - (ii) was found by the inspector at any other time—less than the weight of any of the articles as so marked or as so stated but to an extent not exceeding the prescribed permissible average deficiency,

no proceedings for an offence arising under subsection one, two or seven, as the case may be, of this section shall be commenced against any person referred to in any such subsection.

(11) Subsections six and eight of this section do not apply unless the person charged has, not less than two days before the date set down for the hearing of the proceedings, by a notice in writing informed the informant that

he intends to rely on a defence provided by any of the provisions of those subsections of this section and of the particulars of that defence.

29H. (1) A person shall not mark the words "net weight Articles when packed" or words to the like effect on a package that may be marked containing an article unless-

'net weight when

- (a) the article is of a description to which this section packed". applies; and
- (b) where the regulations prescribe the manner of marking any such words on a package, the package is marked in that manner.
- (2) The regulations may require that in relation to any other particulars required by or under this Act to be marked on a package containing an article of a description to which this section applies, a package shall be marked in the prescribed manner with the date on which the article was packed or with an approved brand indicating that date.
- (3) This section applies to articles of such descriptions as may be prescribed.
- 291. (1) A person shall not mark the words "at standard Articles conditions" or words to the like effect on a package containing that may be marked an article unless-

weight at

- (a) the article is of a description to which this section standard conditions. applies; and
- (b) where the regulations prescribe the manner of marking any such words on a package, the package is marked in that manner.
- (2) In the application of section 29g of this Act to any article of a description to which this section applies a reference in that section to the true weight of an article shall be construed as a reference to the weight ascertained in the prescribed manner of the article if it were weighed at the prescribed standard conditions.

(3) This section applies to articles of such descriptions as may be prescribed.

Prohibition and restriction of use of certain expressions

- 29J. (1) Subject to this section, a person who, on or after the appointed day, packs a pre-packed article in a package on which is marked a prohibited expression or a restricted on packages. expression shall be guilty of an offence against this Act.
  - (2) Subject to this section, a person who, on or after the appointed day, sells a pre-packed article contained in a package on which a prohibited expression or a restricted expression is marked shall be guilty of an offence against this Act.
  - (3) The provisions of subsections one and two of this section relating to the marking on a package of a restricted expression shall not apply to or in relation to an article contained in a package on which a restricted expression appears if, in addition to that expression—
    - (a) there is marked on every part of the package on which the restricted expression appears such a statement as to the purported weight or measure of the article contained in the package as is referred to in subsection one of section 29D of this Act, whether or not the article is an article of a description to which that section applies;
    - (b) the restricted expression and that statement are so placed and so marked that both may be seen clearly at the same time: and
    - (c) each of the letters or figures contained in that statement-
      - (i) is of a size not less than the minimum size of print prescribed by the regulations in relation to the dimensions of the package;
      - (ii) is of a size not less than one-third of the size of the largest letter or figure contained in the restricted expression; and
      - (iii) is marked in a colour of a distinct contrast to the colour of its background.

#### (4) In this section—

"prohibited expression" means any expression, whether consisting of a single word or of more words than one and whether in an abbreviated form or not, that directly or indirectly relates to or qualifies a unit of measurement of a physical quantity and, without prejudice to the generality of the foregoing, includes any expression declared by the regulations to be a prohibited expression for the purposes of this section;

"restricted expression" means any expression, not being a prohibited expression, and whether consisting of a single word or of more words than one or of any word or words in combination with any figure or figures and whether in an abbreviated form or not, that directly or indirectly relates to the size of the package containing the article, not being such a statement as to the purported weight or measure of the article as is required by subsection one of section 29p of this Act, and, without prejudice to the generality of the foregoing, includes any expression that is declared by the regulations to be a restricted expression for the purposes of this section.

(5) In subsections one and two of this section the appointed day means such day or days as the Minister may, by order published in the Gazette, declare, for the purposes of those or either of those subsections, to be the appointed day, those days or that day being not earlier than one year after the date of the commencement of the subsections or subsection for the purposes of which the day is appointed and not earlier than the day on which the order is published in the Gazette.

29K. (1) Where any fraud is wilfully committed in the Fraud in using of any weight, measure, weighing instrument or using weights, measuring instrument, the person committing the fraud shall measures, be guilty of an offence against this Act.

(2) Where the weight, measure, weighing instrument or measuring instrument with which any such fraud was so committed was in the possession of the person by whom the fraud was committed, the weight, measure, weighing instrument or measuring instrument may be seized by an inspector.

Liability of principal for acts of agent.

- 29L. (1) Notwithstanding any other law or rule of law where any person, in this section referred to as "the agent", acting, otherwise than as an employee, for or on behalf of another person, in this section referred to as "the principal", contravenes this Part or is guilty of an offence against this Act arising under any of the provisions of this Part, the principal shall be guilty of an offence against this Act in like manner as the agent and may be proceeded against and convicted accordingly unless he proves that he had no knowledge of the commission of the offence and that he took all reasonable precautions and used all due diligence to avoid the commission of the offence.
- (2) The principal may be proceeded against and convicted pursuant to subsection one of this section whether or not the agent has been proceeded against or been convicted under this Act.
- (3) Nothing in subsection one of this section shall prejudice or affect any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.

Liability of employer for offence by employee. 29M. (1) Notwithstanding any other law or rule of law, where any person, as the employee of another person, who in this section is referred to as "the employer", contravenes this Part or is guilty of an offence against this Act arising under any of the provisions of this Part, the employer shall be guilty of an offence against this Act in like manner as the employee, whether or not the offence was committed without

the employer's authority or contrary to his orders or instructions, and may be proceeded against and convicted accordingly unless he proves that he had no knowledge of the commission of the offence and could not, by the exercise of due diligence, have prevented the commission of the offence.

- (2) The employer may be proceeded against and convicted pursuant to subsection one of this section whether or not the employee has been proceeded against or been convicted under this Act.
- (3) Nothing in subsection one of this section shall prejudice or affect any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.
- 29N. (1) Where a person, in this subsection referred to General as "the defendant", is convicted of an offence against this relating to Act arising under this Part and the court by which he is proceedings convicted is of the opinion that some other person was for offences. defrauded or suffered pecuniary loss by reason of the commission of the offence, the court may, in addition to imposing a penalty for the offence, order the defendant to pay to that other person, by way of recoupment of his loss, such sum as the court thinks fit and as may be specified in the order.

- (2) Any order made under subsection one of this section shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, as subsequently amended, and be enforceable as such under the provisions of that Act.
- (3) A prosecution for an offence against this Act arising under this Part may be instituted at any time within a period of twelve months after the commission of the offence or within a period of six months after the commission of the offence comes to the knowledge of an inspector, whichever period last expires.

(4) In any proceedings for an offence against this Act arising under this Part, a witness shall not be excused from answering any question or producing any document on the ground that the answer or production may criminate or tend to criminate him, but an answer made or a document produced by any such witness shall not be admissible in evidence against him in any proceedings for an offence against this Act arising under this Part.

Defences.

- 290. (1) In proceedings in respect of an offence against this Act arising under section 29B of this Part, it is a defence for the person charged to prove that the article to which the proceedings relate was packed on any premises for sale on those premises to a person for the purpose of consumption or use and not for the purpose of re-sale.
- (2) In proceedings in respect of an offence against this Act arising under section 29c or 29d of this Act, it is a defence for the person charged to prove that the article to which the proceedings relate was packed for export from Australia and that the marking on the package containing the article clearly so indicated and, in the case of an offence against this Act arising under subsection two of section 29c, or subsection three of section 29d, of this Act, that the article was sold for export from Australia.
- (3) In proceedings in respect of an offence against this Act arising under subsection two of section 29B, subsection two of section 29C, subsection three of section 29D, subsection two or subsection five of section 29G or subsection two of section 29J of this Act, it is a defence for the person charged to prove—
  - (a) that the commission of the offence was due to a cause or to causes beyond his control;
  - (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the article to which the proceedings relate; and

- (c) that he obtained the article from another person and sold or delivered it in the same state as it was when delivered to him.
- (4) In proceedings in respect of an offence against this Act arising under subsection one of section 29g of this Act, it is a defence for the person charged to prove—
  - (a) that—
    - (i) the deficiency arose after the packing of the article and the marking of the package and was attributable wholly to factors for which reasonable allowance was made in stating the weight or measure of the article; or
    - (ii) the commission of the offence was due to a cause or to causes beyond his control; and
  - (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the article to which the proceedings relate.
- (5) For the purposes of subsections three and four of this section a cause is not beyond the control of a person against whom proceedings referred to in either of those subsections are brought unless the court before which the proceedings are brought is satisfied that the cause was one that the person charged could not reasonably have foreseen or for which he could not reasonably have made allowance.
- (6) Subsections one, two, three and four of this section do not apply unless the person charged has, not less than two days before the date set down for the hearing of the proceedings, by a notice in writing, informed the informant that he intends to rely on a defence provided by any of the provisions of those subsections and of the particulars of that defence.

# Approval of brands.

- 29P. (1) On the application of a person by whom or for or on whose behalf an article is packed as mentioned in subsection one of section 29B of this Act, the superintendent may approve in writing of a brand for use by that person—
  - (a) for the purpose of marking on packages—
    - (i) the name and address required by paragraph (a) of subsection one of section 29B of this Act to be marked on packages;
    - (ii) the name and address required by paragraph(b) of that subsection to be marked on packages; or
  - (b) which, where the regulations require the dates when the articles contained in the packages were packed to be marked on the packages is, or incorporates, a device approved by the superintendent for the purpose of indicating those dates.
- (2) An approval under subsection one of this section may be granted subject to such conditions, if any, as the superintendent determines and specifies in the approval and may be cancelled by the superintendent at any time by notice in writing given to the person to whom the approval was granted.
- (3) A person to whom an approval under subsection one of this section has been granted subject to conditions shall not mark a package containing an article with the brand specified in the approval otherwise than in compliance in all respects with those conditions.
- (4) Where a brand has been approved under subsection one of this section for use by a person for the purposes of marking on packages the name and address referred to in subparagraph (i) or (ii) of paragraph (a) of that subsection, a person other than the person to whom that approval was granted or a person having his authority so to do shall not mark a package containing an article with the brand specified

in the approval or with any other brand so closely resembling the brand specified in the approval as to be likely to lead to the belief that it is the brand specified in the approval.

29Q. In proceedings in respect of an offence against this Evidentiary Act arising under this Part in relation to a pre-packed article—

- (a) the marking on the package in which the article is contained indicating the name of the person who packed the article shall be evidence that the article was packed by that person;
- (b) the marking on the package in which the article is contained indicating the name and address of a person for or on whose behalf the article was packed shall be evidence that the article was packed for or on behalf of that person;
- (c) the marking on the package in which the article is contained indicating the place where the article was packed shall be evidence that the article was packed at that place;
- (d) the marking on the package in which the article is contained indicating the date when the article was packed shall be evidence that the article was packed on that date;
- (e) a document purporting to be certified by the superintendent to be a copy of a permit granted by the Minister under section 29F of this Act shall be evidence of the granting of the permit and of the conditions, if any, specified in the permit;
- (f) a certificate purporting to be signed by the superintendent and stating—
  - (i) that a permit granted by the Minister under section 29F of this Act was cancelled on a date specified in the certificate:

(ii) that a permit cancelled under subsection five of section 29F of this Act has not been delivered up to him,

shall be evidence of the matters stated in the certificate;

- (g) a document purporting to be certified by the superintendent to be a copy of an approval granted by him under subsection one of section 29p of this Act shall be evidence of the approval and of the conditions, if any, subject to which the approval was granted, and the fact that such a brand is marked on a package containing an article shall be evidence—
  - (i) where the approval was granted to a person for the purpose referred to in subparagraph
     (i) of paragraph (a) of that subsection, that the article was packed by the person to whom the approval was granted and at the place the address of which is specified in the approval as the address indicated by the brand;
  - (ii) where the approval was granted to a person for the purpose referred to in subparagraph
     (ii) of paragraph (a) of that subsection, that the article was packed for or on behalf of the person whose name and address are indicated by the brand; or
  - (iii) where approval is of a brand which is, or incorporates, a device referred to in paragraph (b) of that subsection, that the article was packed on the date indicated by that device,

as the case requires; and

(h) a certificate purporting to be signed by the superintendent and stating that an approval granted by him under subsection one of section 29P of this Act was cancelled on a date specified in the certificate shall be evidence of the matters stated in the certificate.

29R. (1) The Governor may make regulations for or with Regulations. respect to—

- (a) the form and manner in which packages required or permitted by any provision of this Act to be marked with any particulars, statement, or approved brand, shall or may be so marked;
- (b) the denominations of weight or measure in which articles of any prescribed description shall or may be packed or sold;
- (c) specifying or describing the machines or classes of machines that shall be vending machines for the purposes of the regulations;
- (d) regulating, controlling, or restricting the sale or supply of articles by means of vending machines referred to in paragraph (c) of this subsection and prohibiting the sale or supply of articles by means of any such machine otherwise than in accordance with the regulations;
- (e) securing that articles that are sold by means of a vending machine referred to in paragraph (c) of this subsection are so sold only if there is displayed in or on the machine such particulars or statements, with respect to such matters, as may be prescribed, and the manner in which the particulars or statements so prescribed shall be so displayed;
- (f) the units of weight or measure to be used in marking or displaying on packages or vending machines referred to in paragraph (c) of this subsection any particulars or statements required to be marked or displayed thereon and the manner in which those units of weight or measure shall or may be expressed, whether in figures or words or figures and words, and the abbreviations that may or may not be used for the purposes of expressing those units;

- (g) the method by which, and the conditions under which, the weight or measure of articles is to be determined in connection with the marking or displaying on packages or on vending machines referred to in paragraph (c) of this subsection of any particulars or statements referred to in the foregoing provisions of this subsection;
- (h) permitting, in the case of such articles and in such circumstances as may be specified in the regulations, the weight or measure of any articles used in packing the first-mentioned articles for sale as may be so specified to be included, notwithstanding any other provision of this Part, in the net weight or measure of the first-mentioned articles;
- (i) exempting, either wholly or to such extent as may be prescribed, or authorising a prescribed person to exempt, either unconditionally or subject to such conditions and restrictions as that person may determine, from any of the provisions of this Part—
  - (i) articles of any description prescribed or referred to in the regulations and packages containing any such articles; and
  - (ii) prescribed transactions and classes of sales;
- (j) prescribing standard specifications of capacity for or in relation to packages used in the packing or sale of prescribed articles, prescribing distinctive marks for packages made to those specifications, and prohibiting or regulating the sale of any such articles, when packed, otherwise than in prescribed packages made to those specifications and bearing the prescribed distinctive marks;
- (k) requiring packages containing articles to be marked with a statement of the sale price per unit of weight or measure of the articles;

- (1) generally regulating and controlling the packing of articles and the marking of packages in which articles are contained; and
- (m) prescribing all matters which by this Part are required or permitted to be prescribed or which are necessary or convenient for giving effect to this Part.
- (2) The regulations made under this Part may impose a penalty not exceeding one hundred dollars for any offence against the regulations.
  - (3) The regulations made under this Part—
  - (a) may make different provision in respect of different descriptions of articles, packages, transactions and classes of sales;
  - (b) may be made so as to apply generally or only in respect of the packing or sale of articles of denominations of weight or measure greater than or less than some other prescribed multiple of a prescribed denomination;
  - (c) may be of general or specially limited application; and
  - (d) may differ according to differences in time, locality, place or circumstance.
- (2) Notwithstanding the repeal of Part III of the Principal Act by subsection one of this section, subsection three of section twenty-five of the Principal Act as in force immediately before the commencement of section 29D of the Principal Act (as inserted by subsection one of this section) shall after that commencement continue in force in relation to any article in a package, not being an article referred to in paragraph (a) or (b) of subsection four of the said section twenty-five, until the appointed day referred to in subsection three of section 29D of the Principal Act (as so inserted) and a person contravening the provisions of subsection three of the said section twenty-five may be proceeded against and shall be liable to the same penalty as if that subsection had not been repealed.

Further amendment of Act No. 10, 1915. (Part IV— Verification and Stamping.)

Sec. 30. (Verification and stamping.)

- 4. The Principal Act is further amended—
  - (a) by inserting next after subsection one of section thirty the following new subsections:—
    - (1A) Subsection one of this section does not operate to require any measure made entirely of glass to be stamped, if that measure—
      - (a) is of a class that the Minister, by order, specifies in a notification published in the Gazette as a class of measures to which subsection one of this section does not apply;
      - (b) was manufactured in New South Wales by a manufacturer who is the holder of an instrument of approval issued to him by the Minister;
      - (c) was manufactured in a batch, some of which were tested by sample in the prescribed manner by an inspector; and
      - (d) is marked by the manufacturer in the prescribed manner to show that it was part of a batch that was so tested.
    - (1B) An approval referred to in paragraph (b) of subsection (1A) of this section—
      - (a) may be given subject to such conditions as the Minister thinks fit and specifies in the instrument of approval, including conditions relating to the facilities and equipment to be made available by the manufacturer for use by any inspector making tests referred to in paragraph (c) of subsection (1A) of this section; and
      - (b) may be revoked by the Minister for any reason that to the Minister seems sufficient.

(1c)

- (1c) An application for an approval referred to in paragraph (b) of subsection (1A) of this section may be refused by the Minister if he is of the opinion that the number of measures to be manufactured by the applicant is insufficient to warrant his being granted the approval or for any other reason that to the Minister seems sufficient.
- (b) by inserting in subsection one of section thirty-one Sec. 31. after the word "glass," the words "or a weight, (Reverificameasure, weighing instrument or measuring tion and reinstrument of a prescribed class";
- (c) by inserting in section thirty-three after the word Sec. 33. "thereon" the words "and, unless the weight, (Using defective or repaired ment has been produced at the office of an inspection and reverified and stamped, notify the re-stamped.) superintendent in writing within twenty-one days after destroying the stamp that the stamp has been destroyed".

5. The Principal Act is further amended—

Further amendment of Act No. 10, 1915. (Part V— Sale of Coal and Firewood.)

(a) by omitting section thirty-seven;

Sec. 37.
(Application of last two preceding sections.)

(b) by omitting from paragraph (e) of section thirty- Sec. 39. nine the words "forty dollars" and by inserting (Regulain lieu thereof the words "one hundred dollars". tions.)

#### Further amendment of Act No. 10, 1915. (Part VI— General and Supplemental.)

6. The Principal Act is further amended—

Sec. 41. (Inspection of articles in packages.)

- (a) (i) by omitting paragraph (a) of subsection one of section forty-one and by inserting in lieu thereof the following paragraph:—
  - (a) enter any building or place where any article is packed for sale or sold or where he has reasonable cause to believe that any article is packed for sale or sold;
  - (ii) by inserting next after the same subsection the following new subsections:—
    - (1A) Where any article referred to in subsection one of this section is contained in a package, the inspector may, for the purpose of weighing or measuring it, break open and remove the article from the package.
    - (1B) An inspector may require the driver or person in charge of a vehicle by whom any invoice or delivery note relating to any articles being carried on the vehicle for delivery to a purchaser is held to produce that invoice or delivery note to the inspector.

Subst. sec. 42.

(b) by omitting section forty-two and by inserting in lieu thereof the following section:—

42. Any person who-

Obstruction of inspector.

(a) hinders or obstructs or attempts to hinder or obstruct in any manner an inspector in the execution of his duty under this Act;

- (b) does not, when requested to do so by an inspector, produce all weights, measures, weighing instruments or measuring instruments in his possession for examination or testing;
- (c) refuses when requested to do so by an inspector to state his name and address, or when so requested states a false name or address to an inspector;
- (d) refuses or fails to stop a vehicle of which he is the driver or person in charge when required to do so by an inspector;
- (e) does not comply with a requirement made by an inspector under subsection (1B) of section forty-one of this Act;
- (f) uses abusive language to or directly or indirectly threatens an inspector;
- (g) assaults an inspector while the inspector is executing his duties under this Act;
- (h) impersonates an inspector,

shall be guilty of an offence against this Act.

- (c) by omitting from section forty-four the words "one Sec. 44. hundred dollars" and by inserting in lieu thereof (Penalties.) the words "two hundred dollars for a first offence or four hundred dollars for a second or subsequent offence";
- (d) by inserting at the end of section fifty-four the Sec. 54. (Evidence of regulations.)
  - (2) A certificate purporting to be signed by the superintendent certifying—
    - (a) that any weight or measure specified in the certificate is a standard of measurement—
      - (i) that has been provided and maintained by the Minister under subsection one of section twelve of this Act; or

- (ii) that is or was at a time or during a period specified in the certificate a primary State standard, a secondary State standard, a tertiary State standard or an inspector's standard;
- (b) that a person specified in the certificate is or was at a time or during a period specified in the certificate an inspector,

shall be prima facie evidence of the particulars stated in the certificate.

Sec. 57.
(Regulations (Canada and Board of Trade).)

- (e) (i) by omitting paragraphs (o1) and (q) of subsection one of section fifty-seven;
  - (ii) by inserting next before paragraph (r) of the same subsection the following new paragraphs:—
    - (q1) The registration, examination and licensing of persons carrying on the business of repairing or adjusting weighing and measuring instruments and the regulation of persons carrying on any such business.
    - (q2) The manner of testing of glass measures for the purposes of paragraph (c) of subsection (1A) of section thirty of this Act, the manner of marking any such measures, requiring the manufacturer to produce to an inspector production records relating to the manufacture of any such measures and prohibiting the removal from the manufacturer's premises of any such measures bearing a mark of verification without approval of an inspector.

- (iii) by omitting from paragraph (s) of the same subsection the words "forty dollars" and by inserting in lieu thereof the words "one hundred dollars";
- (iv) by omitting subsection two of the same section.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,

Governor.

Government House, Sydney, 24th April, 1968. Net No. 11, 196%.

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