

TRADE MEASUREMENT ACT 1989 No. 233

NEW SOUTH WALES



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TRADE MEASUREMENT ACT 1989 No. 233

NEW SOUTH WALES



Act No. 233, 1989

An Act relating to trade measurement in New South Wales as part of the scheme for uniform trade measurement legislation throughout Australia. [Assented to 21 December 1989]

See also Trade Measurement Administration Act 1989.

The Legislature of New South Wales enacts:

PART I - PRELIMINARY

Short title

1. This Act may be cited as the Trade Measurement Act 1989.

Commencement

2. This Act commences on a day or days to be fixed by proclamation.

Definitions etc.

3. (1) In this Act, unless the contrary intention appears:
"administering authority" means the person who, under the Administration Act, is the administering authority for the purposes of this Act;

"Administration Act" means the Trade Measurement Administration Act 1989;

"approved pattern", in relation to a measuring instrument, means a pattern approved for the measuring instrument under section 19A of the National Measurement Act, being an approval that:

- (a) is currently in force under that provision; or
- (b) has expired or been cancelled (but not withdrawn) under the National Measurement Act and was in force when the measuring instrument was first verified or certified;

"article" includes substance;

"Australian legal unit of measurement" has the same meaning as in the National Measurement Act;

"certify" has the meaning given by section 12;

"corresponding law" means a law of another State or a Territory of the Commonwealth that corresponds to this Act;

"document" includes any record of information, whether or not the information is available only after the record is subjected to electronic or other process;

"**inspector**" has the same meaning as in the Administration Act;

"**inspector's mark**" means:

- (a) the mark approved by the administering authority for use by an inspector in verifying or re-verifying a measuring instrument; or
- (b) such a mark under a corresponding law;

"**licence**" means a servicing licence or a public weighbridge licence in force under Part VI;

"**licensee's mark**" means:

- (a) the mark approved by the licensing authority for use by or on behalf of the licensee in certifying a measuring instrument; or
- (b) such a mark under a corresponding law;

"**licensing authority**" means the person who, under the Administration Act, is the licensing authority for the purposes of this Act;

"**measurement**" means the determination of a physical quantity, including determination by number but not including determination of a physical quantity for descriptive purposes only;

"**measuring instrument**" has the same meaning as in the National Measurement Act;

"**National Measurement Act**" means the *National Measurement Act 1960* of the Commonwealth as amended and in force for the time being;

"**package**" includes:

- (a) a container, wrapper, confining band or other thing in which an article is packed, or 2 or more articles are packed, for sale as a single item; and
- (b) anything around which an article is wound or wrapped, or 2 or more articles are wound or wrapped, for sale as a single item;

"**pre-packed article**" means an article that is packed in advance ready for sale;

"**prescribed**" means prescribed by this Act;

"**public weighbridge**" means a weighbridge that is open for use by or on behalf of the public or for the use of which a charge is made;

"public weighbridge licence" means a public weighbridge licence in force under Part VI;

"purchaser" includes a person purchasing as agent for another person;

"record" includes any document;

"reference standard of measurement" has the same meaning as in the National Measurement Act;

"regulation" means a regulation in force under this Act;

"re-verify" has the meaning given by section 11;

"sell" includes:

- (a) agree to sell;
- (b) offer or expose for the purpose of selling;
- (c) have in possession for the purpose of selling;
- (d) barter or exchange; and
- (e) authorise, direct, cause or permit to be done any act referred to in paragraph (a), (b), (c) or (d);

"seller" includes a person who sells as agent for another person;

"servicing licence" means a servicing licence in force under Part VI;

"State primary standard of measurement" has the same meaning as in the National Measurement Act;

"this Act" includes the regulations;

"vehicle" includes vessel, aircraft and any other means of conveying persons or goods;

"verify" has the meaning given by section 11;

"weighbridge" means a measuring instrument that is of a capacity of 3 tonnes or more and has a platform by the use of which the measuring instrument is capable of determining the mass of a vehicle or of livestock.

(2) For the purposes of this Act, time interval not related to the calendar is a physical quantity and time interval so related is not a physical quantity.

(3) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Use of measuring instrument for trade - meaning

4. (1) For the purposes of this Act, a person uses a measuring instrument for trade if the person uses it, has it in possession for use, or makes it available for use, to make a measurement for the purpose of:

- (a) determining the consideration in respect of a transaction; or
- (b) determining the amount payable as a tax, rate, toll, duty, charge or other impost (however described).

(2) In addition, a person shall be regarded as using a measuring instrument for trade if:

- (a) the person makes the measuring instrument available on premises for use by a party to a transaction that takes place on those premises; and
- (b) the instrument makes a measurement of a kind that is used for the purpose of determining the consideration in respect of the transaction even though a measurement actually made with that instrument is not used for that purpose.

(3) If a party to a transaction makes a measuring instrument available for use in connection with the transaction, another party to the transaction who uses the instrument in that connection shall not, despite subsection (1), be regarded as using the instrument for trade.

Application of Act to Crown

5. (1) This Act binds the Crown in all its capacities, in so far as the legislative power of the Parliament permits.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

Exemptions from Act

6. (1) The regulations may exempt from the operation of this Act, or specified provisions of this Act, a specified person, matter, article or transaction or a specified class of persons, matters, articles or transactions.

(2) Except to the extent that regulations made under the Administration Act otherwise provide, this Act does not apply to a measurement, or an instrument used for the purposes of a measurement, to determine any of the following:

- (a) a quantity of reticulated electricity, reticulated gas or reticulated water;
- (b) charges relating to telephone calls;
- (c) the fare payable for use of a taxi;
- (d) the charge for the hire of a motor vehicle;
- (e) tyre pressures;
- (f) the expiration of the time for parking a motor vehicle.

(3) Nothing in this Act applies to or in respect of bread.

PART II - USE OF MEASURING INSTRUMENTS FOR TRADE

Measuring instruments used for trade must be marked

7. (1) A person who uses a measuring instrument for trade is guilty of an offence unless the instrument bears an inspector's mark or a licensee's mark.

Penalty:

- (a) if the measuring instrument is a weighbridge - \$10,000;
- (b) in any other case - \$5,000.

(2) A person who uses a weighbridge for trade is guilty of an offence if the weighbridge does not comply with the requirements of the regulations concerning weighbridges.

Penalty: \$10,000.

(3) This section does not apply to the use of a measuring instrument to determine a quantity of articles by number of the articles.

(4) The regulations may provide for the circumstances in which the use for trade of a measuring instrument that has been repaired or modified, or commissioned, is permitted even though it does not bear an inspector's mark or a licensee's mark, pending its verification or certification.

Unjust measurement

8. (1) A person who uses for trade a measuring instrument that is incorrect or unjust is guilty of an offence.

Penalty: \$20,000.

(2) A person who uses for trade a measuring instrument in a manner that is unjust is guilty of an offence.

Penalty: \$20,000.

(3) A person whose act or omission causes or is likely to cause a measuring instrument in use for trade to give a measurement or other information that is incorrect is guilty of an offence if the person acted or omitted to act with the intention of causing that result or with reckless indifference to whether that result would be caused.

Penalty: \$20,000.

(4) If a person commits an offence against this section, any contract to which the person is a party and which is made by reference to a measurement to which the offence relates is voidable at the option of another party to the contract.

Supplying incorrect etc. measuring instrument

9. (1) For the purposes of this section, a measuring instrument is unacceptable for trade use if it is incorrect or unjust or is not of an approved pattern.

(2) If a measuring instrument that is unacceptable for trade use is used for trade, a person who sold, leased, hired or lent it to the person who used it for trade is guilty of an offence.

Penalty: \$20,000.

(3) It is a defence in proceedings for an offence against this section if it is established:

- (a) that the measuring instrument was not unacceptable for trade use when the defendant parted with possession of it;
- (b) that the defendant did not know and had no reason to suspect that the measuring instrument would be used for trade; or
- (c) that the person who purchased the measuring instrument or took it on lease, hire or loan was informed in writing at the time that the measuring instrument was unacceptable for trade use.

PART III - VERIFICATION, RE-VERIFICATION AND CERTIFICATION OF MEASURING INSTRUMENTS

Provision and maintenance of standards

10. (1) It is the responsibility of the administering authority to arrange for the provision, custody and maintenance of such State primary standards of measurement and such classes of reference standards of measurement as may be necessary for the purposes of this Act.

(2) Each licensee under a servicing licence is responsible for providing such classes of reference standards of measurement as may be necessary for the exercise of the functions of the licensee under this Act.

Verification and re-verification by inspectors

11. (1) A measuring instrument is verified when it does not already bear an inspector's mark or a licensee's mark and an inspector:

- (a)** is satisfied that the instrument complies with the requirements for verification specified in section 13; and
- (b)** marks the instrument with the inspector's mark.

(2) A measuring instrument is re-verified when it already bears an inspector's mark or a licensee's mark and an inspector:

- (a)** is satisfied that the instrument complies with the requirements for re-verification specified in section 13;
- (b)** obliterates the inspector's mark or licensee's mark that the instrument already bears; and
- (c)** marks the instrument with the inspector's mark.

Certification by licensees

12. (1) A measuring instrument is certified when the licensee under a servicing licence or an employee of the licensee:

- (a)** is satisfied that the instrument complies with the requirements for certification specified in section 13 and issues a certificate to that effect;
- (b)** obliterates any inspector's mark or licensee's mark that the instrument already bears; and

- (c) marks the instrument with the licensee's mark.
- (2) Certification may be carried out whether or not the measuring instrument already bears an inspector's mark or a licensee's mark.

Requirements for measuring instruments

13. (1) The requirements for verification or certification of a measuring instrument are as follows:

- (a) the instrument must operate within the appropriate limits of error that may be tolerated under the National Measurement Act at verification;
 - (b) the instrument must be of an approved pattern; and
 - (c) the instrument must have no graduations in a unit of measurement other than a unit of measurement under the metric system of measurement within the meaning of the National Measurement Act (except in circumstances that are prescribed as exempt from this paragraph or in a case determined by the administering authority to be a special case).
- (2) The requirements for re-verification of a measuring instrument are the same as for verification under subsection (1) except that the instrument need not operate within the appropriate limits of error that may be tolerated under the National Measurement Act at verification but must operate within the appropriate limits of error that may be tolerated under that Act at re-verification.

Standards of measurement to be used

14. (1) The determination of whether the requirements of section 13 for verification, re-verification or certification are complied with shall be made by means of, by reference to, by comparison with or by derivation from:

- (a) an appropriate State primary standard of measurement;
 - (b) an appropriate reference standard of measurement; or
 - (c) 2 or more standards of measurement each of which is an appropriate State primary standard of measurement or an appropriate reference standard of measurement.
- (2) Subsection (1) does not apply if there is not an appropriate standard for the measurement in respect of which the measuring instrument is to be verified, re-verified or certified.

Responsibilities of administering authority concerning verification and re-verification

15. (1) It is the responsibility of the administering authority:

- (a) to provide the means by which measuring instruments may be verified; and
- (b) to arrange for the re-verification of measuring instruments that are in use for trade.

(2) Arrangements under subsection (1) (b) must provide for the re-verification of a measuring instrument as often as the administering authority determines is necessary or desirable in relation to the class of measuring instrument concerned but need not be made in any cases or circumstances for which the regulations provide re-verification is not required.

(3) This section does not affect the power of the administering authority to charge amounts in accordance with the regulations for or in connection with the verification and re-verification of measuring instruments.

(4) Even if a measuring instrument is not required by this Act to bear an inspector's mark or a licensee's mark, it may be examined and its calibration tested as if there were such a requirement but only:

- (a) for the purposes of another Act; or
- (b) if the administering authority so approves, at the request of the person in possession of the measuring instrument.

Prohibition on use if re-verification cannot be carried out

16. (1) An inspector may give reasonable directions to a person in possession of a measuring instrument for the purpose of facilitating re-verification of the instrument.

(2) Those directions may include (but are not limited to):

- (a) directions as to the time and place at which the instrument is to be made available to an inspector; and
- (b) any other directions authorised by the regulations.

(3) If the inspector's directions are not complied with, an inspector may, by notice in writing given to the person, prohibit the use of the measuring instrument for trade until it is re-verified.

(4) A person given a notice under subsection (3) is guilty of an offence if the instrument to which the notice refers is used for trade by the person before it is re-verified.

Penalty: \$5,000.

Rejection of instrument by inspector - obliteration of marks

17. If a measuring instrument that bears an inspector's mark or licensee's mark is examined or tested by an inspector and is found not to comply with the requirements for re-verification specified in section 13, the inspector shall obliterate any inspector's mark or licensee's mark that the instrument bears.

Duty of repairers etc. to obliterate marks

18. (1) A person must obliterate any inspector's mark or licensee's mark that a measuring instrument bears when the person does anything to the measuring instrument (including repair, modification and commissioning) that affects its metrological performance, unless that effect can be corrected by normal operational adjustment of the instrument.

(2) A person who fails to comply with subsection (1) is guilty of an offence.

Penalty: \$20,000.

(3) This section applies whether or not the person is a licensee.

Marks on labels affixed to measuring instruments

19. (1) An inspector's mark or a licensee's mark that is made on a label affixed to a measuring instrument shall be taken to have been made on the measuring instrument.

(2) Such a mark is obliterated by being removed or destroyed.

Making mark without authority

20. (1) A person who makes an inspector's mark or licensee's mark on a measuring instrument is guilty of an offence unless the person is authorised to do so as provided by this section.

Penalty: \$20,000.

(2) A person is authorised to make an inspector's mark on a measuring instrument if the mark is made in the course of verifying or re-verifying the instrument and the person:

- (a) is an inspector; or
- (b) is acting under the authority and direct supervision of an inspector.

(3) A person is authorised to make a licensee's mark on a measuring instrument if the mark is made in the course of certifying the instrument under the authority conferred by a servicing licence and the person:

- (a) is the licensee, or an employee of the licensee, in respect of whom the mark is approved by the administering authority; or
- (b) is acting under the authority and direct supervision of that licensee or such an employee.

(4) A person is authorised to make an inspector's mark or a licensee's mark on a measuring instrument if the person does so in accordance with the provisions of the regulations as to the batch testing and marking of measuring instruments.

Other offences concerning marks

21. A person is guilty of an offence if the person:

- (a) has possession, without authority, of an instrument for making an inspector's mark or a licensee's mark;
- (b) makes on a measuring instrument a mark resembling an inspector's mark or a licensee's mark intending to create a false impression that it is an inspector's mark or a licensee's mark;
- (c) makes or possesses, without lawful justification or excuse, an instrument designed to make a mark resembling an inspector's mark or a licensee's mark; or
- (d) sells, or uses for trade, a measuring instrument marked in contravention of paragraph (b) or section 20 knowing it to have been unlawfully marked.

Penalty: \$20,000.

PART IV - TRANSACTIONS BY MEASUREMENT

Measurement must be open to scrutiny in certain cases

22. (1) If an article is sold at a price determined by reference to measurement of the article, the party that determines the price of the article shall ensure:

- (a) that the measurement is made in the presence of the other party to the sale; or
- (b) that the other party is furnished at or before the time of delivery of the article with a written statement of the measurement of the article.

(2) If the article is to be delivered at the time and place of measurement, the party that determines the price of the article by reference to the measurement shall, if the other party to the sale requests it, measure the article in the presence of that other party.

(3) A person who fails to comply with subsection (1) or (2) is guilty of an offence.

Penalty: \$5,000.

(4) For the purposes of this section, an article is measured in the presence of a person if:

- (a) the measuring process is readily visible to the person; and
- (b) any reading or information displayed by the measuring instrument is readily visible to the person.

(5) Unless the regulations otherwise provide, this section does not apply to the sale of a pre-packed article.

Incorrect measurement or price calculation

23. If an article is sold at a price determined by reference to measurement of the article, the party who operates the measuring instrument is guilty of an offence if:

- (a) he or she directly or indirectly misleads the other party to the sale as to the measurement of the article or the calculation of the price, to that other party's detriment; or

- (b) the price paid or required to be paid is not the price correctly computed by reference to the measurement of the article and as a result the other party suffers or would suffer detriment.

Penalty: \$20,000.

Variation of quantity ordered

24. If the quantity of an article sold is less than the quantity stated in the offer to purchase, the seller is guilty of an offence unless the seller informs the purchaser of that fact before completion of the sale.

Penalty: \$20,000.

Special provisions for sale of meat

25. (1) A person who sells meat otherwise than at a price determined by reference to the mass of the meat is guilty of an offence.

Penalty: \$5,000.

(2) If the article sold as referred to in section 22 is meat consisting of more than one cut, a written statement of measurement is not sufficient to comply with section 22 (1) (b) unless it specifies the mass of each cut.

(3) A person who offers or exposes a quantity of meat for sale at a marked price for that quantity is guilty of an offence unless:

- (a) the mass of the meat is also marked in the same manner as, and as prominently as, the price marking; and
- (b) the price per kilogram of the meat is also indicated as prominently as the price marking by a marking on the meat or by another statement in letters and figures not less than 10 mm high that clearly refers to the meat.

Penalty: \$5,000.

(4) In this section:

"**meat**" means so much of a slaughtered animal as is ordinarily sold for human consumption (whether or not after being subjected to a process of any kind) but does not include:

- (a) the whole or any part of rabbit or shellfish;
 - (b) heads, feet, hearts, lights, kidneys, brains or sweetbread;
- or

(c) meat packed as a pre-packed article.

(5) This section does not apply to the sale (other than for the purpose of resale) of cooked meat sold on the premises on which it is cooked.

Articles required to be sold by specific measurement

26. (1) This section applies to an article, or an article of a class, prescribed for the purposes of this section.

(2) A person who sells a quantity of an article to which this section applies is guilty of an offence unless the sale is at a price determined by reference to a measurement of quantity in the unit of measurement required by the regulations.

Penalty: \$5,000 (or such lesser penalty as may be provided by the regulations in respect of the article concerned).

(3) This section does not apply to the sale of a pre-packed article.

Presumptions concerning mass of vehicles

27. (1) For the purpose of:

- (a) determining the consideration in respect of a transaction; or
- (b) determining the amount payable as a tax, rate, toll, duty, charge or other impost (however described);

it shall be conclusively presumed that:

- (c) the mass of a vehicle determined by direct measurement of the mass of the vehicle is more accurate than the mass determined by end-and-end measurement of that mass; and
- (d) the mass of a railway vehicle determined when the vehicle is stationary is more accurate than the mass determined when the vehicle is in motion.

(2) In this section, "**end-and-end measurement**" means the determination of a measurement relating to a vehicle (whether loaded or not) by adding together separate measurements of the mass supported singly or in combination by the different axles of the vehicle, those separate measurements having been determined by separate operations of a weighbridge.

PART V - PRE-PACKED ARTICLES

Division 1 - Requirements for Packaging and Sale of Pre-packed Articles

Requirements as to packaging of pre-packed articles

28. (1) A person who packs an article as a pre-packed article is guilty of an offence unless the package complies with the provisions of the regulations made for the purposes of this section as to the packaging of such an article when it is packed.

Penalty: \$10,000.

(2) A person who sells a pre-packed article is guilty of an offence unless the package complies with the provisions of the regulations made for the purposes of this section as to the packaging of such an article when it is sold.

Penalty: \$10,000.

(3) The regulations may make provision:

- (a) restricting the quantities in which articles may be packed or sold as pre-packed articles; and
- (b) requiring the marking on the package containing a pre-packed article when it is packed or sold of:
 - (i) the name and address of the person who packed the article or on whose behalf it was packed;
 - (ii) the measurement of the article and other information concerning the measurement of the article; and
 - (iii) the price of the article and other information concerning the price of the article.

(4) This section does not apply to the sale of a pre-packed article by a person if the sale is authorised under Division 2.

Defences concerning packaging of pre-packed articles

29. (1) It is a defence in proceedings under section 28 against a person who packs an article if it is established:

- (a) (to the extent that the proceedings concern the requirement that a name or address be marked on the package) that the article was packed on premises for sale on those premises to a person for consumption or use and not for resale; or

- (b) (to the extent that the proceedings are not so concerned) that the article was packed with the intention that it be exported from Australia and the package was marked to give a clear indication to that effect.

(2) It is a defence in proceedings under section 28 against a person who sells a pre-packed article (to the extent that the proceedings concern the requirement that a name or address be marked on the package) if it is established:

- (a) that the pre-packed article was packed outside Australia; or
- (b) that the pre-packed article was sold on the premises on which it was packed and was so sold for consumption or use and not for resale.

(3) It is a defence in proceedings under section 28 against a person who sells a pre-packed article if it is established that the seller's general defence under this Division applies.

Restrictions on use of certain expressions on packages

30. (1) A person who packs an article as a pre-packed article or sells a pre-packed article is guilty of an offence if, except as authorised by the regulations, there is marked on the package:

- (a) the expression "net mass when packed" or "net mass at standard condition", or any other words that have a similar meaning to those words; or
- (b) any other expression directly or indirectly relating to the measurement of the article or the size of the package that is prescribed by the regulations (including by being specified or described by reference to its meaning or effect) as a prohibited or restricted expression.

Penalty: \$5,000.

(2) It is a defence in proceedings under this section against a person who sells a pre-packed article if it is established that the seller's general defence under this Division applies.

(3) This section does not apply to the sale of a pre-packed article by a person if the sale is authorised under Division 2.

Incorrect pricing of pre-packed article

31. (1) A person who sells a pre-packed article at a specified price for each unit of measurement of the article is guilty of an offence if the

price of the pre-packed article exceeds the price correctly computed by reference to the measurement of the article and the stated price for each unit of measurement.

Penalty: \$20,000.

(2) If the measurement of a pre-packed article is stated by reference to a minimum measurement, any amount by which the actual measurement exceeds that stated minimum measurement shall be disregarded in calculating the correct price for the purposes of subsection (1).

(3) This section applies whether or not the price of the article and the price for each unit of measurement of the article:

- (a) is required by this Act to be marked on the package containing the article; or
- (b) is in fact so marked.

(4) It is a defence in proceedings under this section if it is established that the seller's general defence under this Division applies.

Offence of packing or selling short measure

32. (1) If the actual measurement of the quantity of a pre-packed article is less than the measurement or minimum measurement marked on the package (whether or not marked for the purpose of complying with this Act):

- (a) the person who packed the article is guilty of an offence; and
- (b) a person who sells the article is guilty of an offence.

Penalty: \$20,000.

(2) If more than one measurement is marked on a package, the prosecution is entitled to rely on any of those measurements to establish an offence against this section unless the context in which the measurement appears indicates that it is not to be taken to be a representation as to the measurement of the quantity of the article.

(3) The marking of a measurement on a package must make such allowance for any likely reduction over time in the actual measurement of the article as may be necessary to prevent the commission of an offence under this section in relation to the article.

(4) A measurement or minimum measurement marked on or near a receptacle containing a pre-packed article so as to constitute a representation as to the measurement or minimum measurement of

the quantity of the article shall, for the purposes of this section, be regarded as being marked on the package.

Extent of deficiency necessary to constitute short measure

33. (1) For the purposes of section 32, the actual measurement of a pre-packed article ("the offending article") shall not be regarded as being less than a marked measurement unless:

- (a) the deficiency in actual measurement of the offending article is greater than the deficiency permitted by the regulations for the article concerned; or
- (b) the deficiency in the average of the actual measurements of a number of like articles (found in the same place and at the same time as the offending article is found) is greater than the deficiency permitted by the regulations for the article concerned.

(2) The regulations may:

- (a) make provision with respect to the method to be used in determining the average measurement under subsection (1) (b) and the number of like articles to be measured for that purpose;
- (b) provide that the deficiency permitted in the average of measurements determined under subsection (1) (b) is nil; and
- (c) make different provision according to how long after packaging of the article the measurements concerned are made.

(3) This section does not apply in a case where the number of like articles (found in the same place and at the same time as the offending article is found and available for measurement by an inspector) is not sufficient for the purposes of a determination under subsection (1) (b) in accordance with the regulations.

Defences concerning short measure

34. (1) It is a defence in proceedings under section 32 against a person who packs a pre-packed article if it is established that the deficiency in measurement:

- (a) 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 measurement marked on the package; or

- (b) resulted from something that the defendant could not reasonably have foreseen or for which the defendant could not reasonably have made allowance.

(2) It is a defence in proceedings under section 32 against a person who sells a pre-packed article if it is established:

- (a) that the defendant obtained the article from another person within Australia who packed the article or sold it to the defendant and the defendant identified that other person to an inspector;
- (b) that the package containing the article was marked apparently as required by this Act when the defendant received it; and
- (c) that the defendant sold the article in the same state as it was in when the defendant obtained it.

(3) The defence under subsection (2) is not available to a defendant in relation to the sale of a pre-packed article ("the offending article") if:

- (a) a finding by an inspector in relation to another pre-packed article sold by the defendant indicated that its sale would have been an offence under section 32 had that defence not been available;
- (b) that other pre-packed article was of the same kind, and had the same measurement marked on the package, as the offending article; and
- (c) the inspector informed the defendant of that finding before the sale of the offending article;

unless the defendant establishes that the offending article was not in the defendant's possession when the defendant was informed of the inspector's finding.

(4) It is not a defence in proceedings under section 32 merely to establish that the deficiency in measurement did not exist when the article was packed or when the package was marked.

Seller's general defence

35. If a provision of this Division provides that it is a defence to specified proceedings if it is established that the seller's general defence under this Division applies, it is a defence to those proceedings if it is established that:

- (a) the defendant did not pack or alter the packaging of the article; and
- (b) the offence resulted from something that the defendant could not reasonably have foreseen or for which the defendant could not reasonably have made allowance.

Employee's general defence

36. It is a defence in proceedings against a person for an offence under this Division for packing an article as a pre-packed article if the person establishes that the person packed the article as an employee only.

Regulations concerning methods of measurement

37. For the purposes of this Division:
- (a) the measurement of a pre-packed article shall be determined in accordance with any applicable methods and procedures provided for in the regulations; and
 - (b) a measurement so determined shall be regarded as the measurement of the article.

Division 2 - Permit to Sell Certain Pre-packed Articles

Administering authority may issue permits

38. (1) The administering authority may issue to a person a permit authorising the sale of a pre-packed article the sale of which would otherwise be an offence under section 28 or 30.

(2) The issue of a permit operates to authorise such a sale, in the circumstances and subject to any conditions specified in the permit, by:

- (a) the permit holder, but only while the permit is in force; and
- (b) any other person, whether or not the permit is in force, if the permit holder sells the article while the permit is in force;

so long as, at the time of sale, the seller gives to the purchaser a copy of the permit concerned.

(3) The requirement under subsection (2) that the seller give the purchaser a copy of the permit does not apply if the sale to the purchaser is not for the purposes of resale.

Requirements for issue

39. The administering authority may issue a permit in relation to an article only if it is satisfied that:

- (a) when packed, the article was intended for export from Australia and that it would be reasonable for its sale to be permitted;
- (b) the article was packed outside Australia and was imported in such circumstances that it would be reasonable for its sale to be permitted; or
- (c) the article was packed in Australia and that, having regard to the date of its packing and any other circumstances considered by the administering authority to be relevant, it would be reasonable for its sale to be permitted.

Cancellation of permits

40. The administering authority may, at any time, cancel a permit by notice in writing served on the holder.

Recognition of permits under corresponding laws

41. Except where the Minister by notice published in the Gazette otherwise provides in a particular case or class of cases, a permit that is the equivalent of a permit under this Division and is in force under a corresponding law has effect within the State as if it were a permit under this Division.

PART VI - LICENSING

Division 1 - Requirements for Licences

Requirement for servicing licence

42. (1) A person who certifies or purports to certify a measuring instrument is guilty of an offence unless the person:

- (a) is the holder, or an employee of the holder, of a servicing licence; and
- (b) does so in accordance with the conditions of the licence and the requirements of this Act.

Penalty: \$20,000.

(2) It is a defence in proceedings against an employee of a licensee in respect of a failure to comply with a condition of a servicing licence

if the employee establishes that the licensee failed to make the employee aware of the condition.

Requirement for public weighbridge licence

43. (1) A person who makes a weighbridge available as a public weighbridge is guilty of an offence unless the person:

- (a) is the holder, or an employee of the holder, of a public weighbridge licence; and
- (b) does so in accordance with the conditions of the licence and the requirements of this Act.

Penalty: \$20,000.

(2) It is a defence in proceedings against an employee of a licensee in respect of a failure to comply with a condition of a public weighbridge licence if the employee establishes that the licensee failed to make the employee aware of the condition.

(3) The regulations may provide that the use of a weighbridge in a specified manner that would otherwise be considered to be use as a public weighbridge is not to be considered to be use as a public weighbridge for the purposes of this section.

Division 2 - Granting of Licences

Application for licence

44. (1) On application made in a form approved by the administering authority, the licensing authority may grant:

- (a) a servicing licence; or
- (b) a public weighbridge licence.

(2) The application must be accompanied by the application fee prescribed under the Administration Act.

(3) The licensing authority may require an applicant to provide specified particulars (in writing) and documents relating to the application, and may refuse the application if they are not provided.

Grounds for refusal

45. (1) An application for a licence must be refused if the applicant:

- (a) is a natural person who has not reached the age of 18 years;
- (b) is a person whose licence under this Act or a corresponding law is suspended;
- (c) is a person disqualified under this Act or a corresponding law from holding a licence;
- (d) is not a person likely to carry on the activities of a licensee honestly and fairly; or
- (e) is in any other way not a fit and proper person to be a licensee.

(2) Without limiting the generality of subsection (1) (e), the licensing authority may, in determining whether the applicant is not a fit and proper person to be a licensee, have regard to whether the applicant or, if the applicant is a body corporate, any person concerned in the management of the applicant:

- (a) has, during the period of 10 years that preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence in the State or elsewhere involving fraud or dishonesty;
- (b) was, when the application was made, the subject of a charge pending in relation to such an offence;
- (c) has, at any time, been convicted of an offence against this Act or a corresponding law; or
- (d) has been refused a licence under a corresponding law.

(3) If an application for a licence is refused, the licensing authority must notify the applicant of the grounds for the refusal.

Licensee to be allotted a mark

46. When it issues a servicing licence, the licensing authority shall approve a mark for use by the licensee and employees of the licensee when certifying measuring instruments.

Register of licences

47. The licensing authority shall keep a register of the prescribed particulars relating to licences in the form and manner it thinks fit.

Conditions may be imposed on licences

48. (1) The licensing authority may impose conditions when it grants a licence or at any time after granting a licence and may vary or revoke any such condition.

(2) Without limiting the generality of subsection (1), such a condition may restrict to a specified class or classes the measuring instruments that may be certified under the authority of a servicing licence.

(3) After granting a licence, the licensing authority shall not impose or vary a condition of the licence unless the licensee has first been given an opportunity to make oral or written submissions concerning the imposition or variation of the condition.

(4) The imposition or variation of a condition under this section does not take effect until notice of it has been served on the licensee.

Conditions on all servicing licences

49. A servicing licence is subject to the following conditions:

- (a) (if the licensee is a natural person) a condition that the licensee must not personally certify a measuring instrument unless the licensee is competent to do so;
- (b) a condition that the licensee must not employ a person to certify a measuring instrument unless the person is competent to do so;
- (c) a condition that the licensee or an employee of the licensee must not mark a measuring instrument with the licensee's mark without first obliterating any inspector's mark or licensee's mark that the instrument already bears;
- (d) a condition that any obliteration by the licensee or an employee of the licensee of an inspector's mark or a licensee's mark without certification of the measuring instrument must be reported in writing to the administering authority within 14 days;
- (e) a condition that if the licensee or an employee of the licensee determines, when examining or testing a measuring instrument, that the instrument could not then be certified, the licensee must report the fact in writing to the administering authority within 14 days unless a report of the matter is also required under paragraph (d);
- (f) a condition that the licensee or an employee of the licensee must not certify a measuring instrument without using such

equipment as is specified by the licensing authority when granting the licence;

- (g) a condition that if the licensee's mark is made by an employee of the licensee, the licensee must at all times be able from that mark to identify the employee to the administering authority;
- (h) such other conditions as may be prescribed.

Conditions on all public weighbridge licences

50. (1) A public weighbridge licence is subject to the following conditions:

- (a) a condition that a weighbridge must not be operated pursuant to the licence unless it is the subject of a current certificate (issued by the administering authority in accordance with the regulations) to the effect that the weighbridge is suitable for use as a public weighbridge;
- (b) a condition that the licensee must ensure that a weighbridge operated pursuant to the licence is not operated by any person other than the licensee or an employee of the licensee;
- (c) (if the licensee is a natural person) a condition that the licensee must not personally operate a public weighbridge unless the licensee is competent to do so;
- (d) a condition that the licensee must not employ a person to operate a public weighbridge unless the person is competent to do so;
- (e) such other conditions as may be prescribed.

(2) The condition specified in subsection (1)(b) does not apply to the operation of a weighbridge if:

- (a) the weighbridge is approved by the administering authority for direct operation by the public; and
- (b) the licensee ensures that the weighbridge is operated otherwise than in accordance with that condition only during such periods and in accordance with such conditions as may be specified in the approval.

Conditions need not be endorsed on licence

51. A condition of a licence has effect whether or not it is endorsed on the licence.

Periodic licence fee

52. (1) The fee prescribed under the Administration Act for a licence is payable to the licensing authority:

- (a) with the application for the licence; and
- (b) while the licence is in force or is under suspension - not later than one month after the commencement of each period for which the regulations under the Administration Act require the fee to be paid.

(2) The licensing authority may extend and further extend the time for payment of the licence fee.

Cancellation for non-payment of licence fee

53. (1) If the licence fee is not paid, the licensing authority may serve on the licensee a notice in writing to the effect that the licence will be cancelled if the fee is not paid within 14 days after the notice is served.

(2) The licensing authority may cancel the licence if the fee is not paid within that time.

Surrender etc. of licence

54. (1) A licensee may surrender the licence by notice in writing given to the licensing authority.

(2) A licence is not transferable.

Order preventing employment of certain persons

55. (1) The licensing authority may by order in writing direct that a specified person:

- (a) is not to be employed to certify any measuring instrument or is not to be employed to certify a specified class or classes of measuring instruments, or is to be employed to do so only in compliance with specified conditions; or
- (b) is not to be employed to perform duties relating to the operation of any public weighbridge or is not to be employed to perform duties relating to the operation of a specified class or classes of public weighbridges, or is to be employed to do so only in compliance with specified conditions.

(2) The licensing authority must not make such an order unless satisfied that it is necessary or desirable because of the person's lack of competency, or lack of fitness in any other respect, to exercise the functions concerned.

(3) If the licensing authority makes an order under this section, it shall:

- (a) serve a copy of the order, together with a statement of its reasons for making the order, on the person to whom it relates (if the person's whereabouts are known to the licensing authority); and
- (b) serve a copy of the order on any licensee that the licensing authority knows is employing that person when the order is made.

(4) It is a condition of a licence that the licensee shall not employ a person in contravention of an order in force under this section.

(5) It is the responsibility of a licensee to make due inquiry of the licensing authority before employing a person to establish whether there is an order in force under this section in respect of the person.

Division 3 - Disciplinary Action Against Licensees

Grounds for disciplinary action

56. Each of the following constitutes grounds for disciplinary action against a licensee:

- (a) the licensee has failed to comply with a provision of this Act or a corresponding law or with a condition of the licence;
- (b) the licensee has been found guilty of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more;
- (c) the activities to which the licence relates are being carried on in a dishonest or unfair manner;
- (d) the licensing authority would be required by section 45 to refuse an application for a licence by the licensee (if the licensee were not already a licensee);
- (e) the licensee has been refused a licence under a corresponding law or is the subject of disciplinary action under the provision of a corresponding law that corresponds to section 58;

- (f) the licensee is not, for any other reason, a fit and proper person to continue to hold a licence.

Notice to licensee of grounds for disciplinary action

57. (1) If the licensing authority reasonably suspects that there are grounds for disciplinary action against a licensee, the licensing authority may serve a written notice on the licensee:

- (a) giving full particulars of those grounds, including particulars of the reasons for any general ground; and
- (b) calling on the licensee to show cause within a reasonable period specified in the notice why the licensing authority should not take disciplinary action on those grounds against the licensee under section 58.

(2) A licensee on whom such a notice is served may, within the period allowed by the notice, make written or oral submissions to the licensing authority on the matters concerned.

Taking of disciplinary action

58. (1) If, after consideration of any submissions made by the licensee within the period allowed, the licensing authority is satisfied that grounds for disciplinary action against a licensee have been established, the licensing authority may:

- (a) reprimand the licensee;
- (b) impose a condition on the licence;
- (c) suspend the licence for up to 12 months;
- (d) act under any combination of 2 or more of paragraphs (a), (b) and (c); or
- (e) cancel the licence and disqualify the former licensee permanently or for a specified period from holding a licence.

(2) The licensing authority takes any such action by serving written notice of it on the licensee but any action taken is stayed:

- (a) until the end of the time for lodging an appeal against the decision to take the action; and
- (b) if such an appeal has been duly lodged - until determination or abandonment of the appeal, unless the appeals tribunal otherwise orders.

Division 4 - Appeals

Rights of appeal

59. (1) A person may appeal to the appeals tribunal under the Administration Act against a decision of the licensing authority:

- (a) to refuse the person's application for a licence;
- (b) to make an order under section 55 in respect of the person;
- (c) to impose or vary a condition to which the person's licence is to be subject;
- (d) to reprimand the person as a licensee;
- (e) to suspend the person's licence; or
- (f) to cancel the person's licence and disqualify the former licensee from holding a licence.

(2) An appeal must be commenced within 28 days after notice of the decision appealed against is given to the person.

PART VII - INSPECTORS

Powers of entry etc.

60. (1) For the purpose of investigating an offence against this Act that the inspector reasonably believes has been committed, or for the purpose of exercising any function of an inspector under this Act, an inspector may at any reasonable time:

- (a) enter and search a building, place or vehicle, apparently in use for the carrying on of a business;
- (b) require a person in charge of such a vehicle to stop it, or move it a reasonable distance to a place specified by the inspector, to enable the inspector to enter and search it; and
- (c) require a person in possession of a pack, basket or other receptacle containing articles that are apparently for sale to permit the inspector to examine its contents.

(2) An inspector is not entitled to enter a part of premises used for residential purposes, except:

- (a) with the consent of the occupier; or
- (b) under the authority of a search warrant.

Powers in relation to measuring instruments

61. If an inspector reasonably believes that a measuring instrument is used for trade, the inspector may:

- (a) examine and test the instrument;
- (b) require a person in the building, place or vehicle where the instrument is found to answer questions, or produce records under the person's control, concerning the instrument or its use; and

(c) make copies of or take extracts from records so produced; and, if the inspector reasonably believes that an offence against this Act has been committed involving the measuring instrument, may seize and retain the instrument and any records so produced.

Powers in relation to articles

62. (1) If an inspector reasonably believes that an article is for sale by reference to the measurement of the article, or is a pre-packed article, the inspector may:

- (a) examine the article or a package containing the article;
- (b) break open a package containing the article and remove the article from it;
- (c) require a person in the building, place or vehicle where the article is found to answer questions, or produce records under the person's control, concerning the article; and
- (d) make copies of or take extracts from records so produced.

(2) If an inspector reasonably believes that an offence against this Act has been committed involving an article, the inspector may:

- (a) seize and retain the article, samples of the article, any package containing the article and any records concerning the article or package;
- (b) seize and retain any number of packages required to follow the prescribed procedures and make the prescribed determinations as a condition precedent to the bringing of proceedings for any offence concerned; and

- (c) measure anything seized, whether at the time and place of seizure or later and elsewhere.

(3) Measurement of an article or sample may be carried out even though it results in the destruction of the article or sample.

Pre-packed articles - special powers

63. (1) If a name is marked on the package containing a pre-packed article, an inspector may require the person named to state in writing, within a reasonable time specified by the inspector:

- (a) the name and address of the person who packed the article; and
- (b) the address of the premises at which the article was packed.

(2) If a person sells a pre-packed article, an inspector may require the person to state in writing, within a reasonable time specified by the inspector, the name and address of the person who supplied the pre-packed article to that person.

Return etc. of seized property

64. (1) If an inspector seizes a measuring instrument, article or package and:

- (a) proceedings for an offence against this Act in connection with the instrument, article or package are not instituted within 6 months after seizure; or
- (b) proceedings for such an offence are instituted within that period but the defendant is not (on the determination of those proceedings, whether or not within that period) convicted of an offence;

the person from whom it was seized is, on application to the administering authority, entitled to its return.

(2) If an application for return of the measuring instrument, article or package is not made within 3 months after the entitlement to its return arises, the administering authority may dispose of it as it thinks fit.

(3) If, in proceedings for an offence against this Act, the court:

- (a) finds the offence proved; and
- (b) finds that the offence concerned a measuring instrument, article or package seized and retained by an inspector;

the court may order that the measuring instrument, article or package be forfeited to the Crown.

Obstruction etc. of inspector

65. A person is guilty of an offence if the person:

- (a) hinders or obstructs an inspector when the inspector is exercising any function of an inspector under this Act;
- (b) does not, when required to do so by an inspector exercising a function under this Act, produce for examination and testing any measuring instrument in the possession, or under the control, of the person;
- (c) fails to comply with a requirement of an inspector made under the authority of this Act;
- (d) is reasonably suspected by the inspector of having committed, or of having been involved in the commission of, an offence against this Act and fails to state his or her true name and residential address on being required to do so by an inspector (so long as the inspector warns the person that it is an offence to fail to do so);
- (e) assaults or directly or indirectly threatens an inspector while the inspector is exercising the functions of an inspector; or
- (f) impersonates an inspector or otherwise falsely pretends to be engaged in or associated with the administration of this Act.

Penalty: \$10,000.

Self-incrimination

66. (1) A person is not excused from answering any question or producing any record, if required to do so under this Part, on the ground that the answer or record might tend to incriminate the person or make the person liable to a penalty.

(2) An answer given or document produced by a person in compliance with a requirement of this Part is not admissible against the person in any criminal proceedings other than proceedings for an offence under section 73.

Inspector's certificate of authority to be produced

67. An inspector exercising or proposing to exercise a function under this Act shall, on request, produce the inspector's certificate of authority issued under the Administration Act.

PART VIII - MISCELLANEOUS

Penalties in provisions

68. If:

- (a) a provision of this Act provides that a person is guilty of an offence under specified circumstances; and
- (b) a penalty is specified at the end of the provision and expressed in such a way as to indicate that it applies to the provision;

a person who is guilty of such an offence is liable, on conviction, to a penalty not exceeding the penalty so specified.

Increased penalty for body corporate

69. The maximum penalty for an offence under a provision of this Act committed by a body corporate is a fine that is 5 times the fine provided for in the provision as the penalty.

Compensation for loss caused by offence

70. (1) If a person is convicted of an offence under this Act and the court considers that the commission of the offence caused another person to suffer pecuniary loss, the court may order the convicted person to pay to the other person a specified amount of compensation for the loss.

(2) The court may make such an order whether or not it imposes a penalty for the offence.

(3) The amount ordered to be paid may be recovered in a court of competent jurisdiction as a debt due by the convicted person to the other person.

Offence by employee - liability of employer

71. (1) If an employee contravenes any provision of this Act, the employer shall be deemed to have contravened the same provision (whether or not the employee contravened the provision without the

employer's authority or contrary to the employer's orders or instructions).

(2) It is a defence in proceedings against an employer for such a contravention if it is established:

- (a) that the employer had no knowledge of the contravention; and
- (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.

(3) An employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or convicted under that provision.

Offence by body corporate - liability of directors etc.

72. (1) If a body corporate contravenes any provision of this Act, each person who is a director of the body corporate or who is concerned in its management shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the body corporate has been proceeded against or convicted under that provision.

False or misleading statements

73. (1) A person is guilty of an offence if the person makes a statement that is false or misleading in a material particular in:

- (a) an application under Division 2 of Part V for a permit to sell a pre-packed article;
- (b) an application under Part VI for a licence;
- (c) an answer to a question asked by an inspector under Part VII; or
- (d) a statement of a name or address to an inspector under Part VII.

Penalty: \$2,000.

(2) It is a defence in proceedings for such an offence if it is established that, when the statement was made, the defendant believed on reasonable grounds that the statement was true and not misleading.

Evidence - signature of Minister, administering authority

74. A signature purporting to be the signature of the Minister or the administering authority, or of a delegate of the Minister or the administering authority, shall, unless the contrary is established, be presumed to be the signature it purports to be.

Certificate evidence

75. (1) The following certificates are prima facie evidence of the matters they certify:

- (a) a certificate purporting to have been issued by the Minister to the effect that a person specified in the certificate is or was the administering authority at a time, or during a period, specified in the certificate;
- (b) a certificate purporting to have been issued by the administering authority to the effect that a person specified in the certificate was or was not an inspector, or was or was not the holder of a specified class of licence, at a time, or during a period, specified in the certificate;
- (c) a certificate purporting to have been issued by the administering authority as to the result of the examination of a measuring instrument, and the testing of its calibration, under section 15 (4).

(2) A document purporting to be certified by the administering authority as a copy of a permit under Division 2 of Part V in force on a specified date or during a specified period and the conditions to which the permit was then subject is prima facie evidence of the matters certified.

Evidence - pre-packed articles

76. (1) A marking on the package containing a pre-packed article of the name of a person is prima facie evidence:

- (a) that the article was packed by the person; or
- (b) where the name is or was registered under the law relating to business names, that the article was packed jointly and severally by the persons in relation to whom the business name is or was registered.

(2) A marking on the package containing a pre-packed article of the address of a place is prima facie evidence that the article was packed at that place.

(3) A marking on the package containing a pre-packed article purporting to be the date on which the article was packed is prima facie evidence that the article was packed on that date.

(4) The fact that an article contained in a package is found exposed for sale or in the possession of a person for sale is prima facie evidence that the article is a pre-packed article.

Packaged article presumed to be pre-packed in certain circumstances

77. (1) Unless the contrary is established, a packaged article is to be presumed to be a pre-packed article for the purposes of this Act if it is found in premises where articles of the same kind are packed for sale or are kept after being packed for sale.

(2) The fact that the package is not marked as required by this Act is not sufficient to establish that the article is not a pre-packed article.

Evidence - use of measuring instrument for trade

78. The possession of a measuring instrument by a person carrying on trade or the presence of a measuring instrument on premises or in a place used by a person for trade is prima facie evidence that the person uses the instrument for trade.

Records - English language

79. A requirement under this Act to produce a record includes, where the record is not written at all or not written wholly in the English language, a requirement to produce a statement, written in the English language, setting out such of the particulars in the record as are not written in the English language.

Regulations

80. (1) The Governor may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision with respect to the following:

- (a) the provision, maintenance, custody and care of standards of measurement;
- (b) regulating, prohibiting or restricting the use of measuring instruments for trade;
- (c) limiting the purposes for which specified measuring instruments may lawfully be used or specifying the measuring instruments required to be used for specified purposes;
- (d) the verification, re-verification or certification of measuring instruments;
- (e) the positioning of, and access to, measuring instruments in order to facilitate their use for trade, their examination by an inspector or licensee and their verification, re-verification or certification;
- (f) the provision of, and payment and recovery of the costs of, labour, materials, equipment and transportation necessary for the purpose of examining, testing, verifying or re-verifying a measuring instrument;
- (g) the sealing of a verified or re-verified measuring instrument;
- (h) batch testing and quality assurance in relation to measuring instruments and the provision of labour, facilities and equipment for those purposes;
- (i) the provision or taking of samples of measuring instruments and the testing of the samples;
- (j) conditionally or unconditionally conferring specified functions of an inspector on a person who has similar functions under a corresponding law;
- (k) providing that the measurement of a specified article, or an article in a specified state or condition, is the measurement of the article for the purposes of this Act if it is carried out in a specified manner;
- (l) matters applicable to weighbridges, whether or not public weighbridges, including their installation, functioning, operation, examination, testing, suitability and use;
- (m) the functions of operators of public weighbridges;
- (n) certificates of suitability for public weighbridges, including their issue, duration, suspension and cancellation and the keeping of

a register of current certificates of suitability by the administering authority;

- (o) prohibiting, regulating or restricting the sale of specified articles, or articles of a specified class, by reference to measurement or a specified kind or unit of measurement;
- (p) the manner of and procedure for determining specified measurements or specified proportions of pre-packed articles;
- (q) standard specifications of capacity in relation to packages containing specified pre-packed articles and the packing and sale of articles in those packages;
- (r) the circumstances in which the mass of the package containing a specified article may be included in determining the net mass of the article;
- (s) regulating the advertising of articles (including pre-packed articles) in so far as the advertising relates to measurement;
- (t) prohibiting, regulating or restricting the sale of articles in relation to which an offence has been committed under this Act or the regulations;
- (u) the keeping of records relating to measuring instruments.

(3) The regulations may prescribe a penalty not exceeding \$2,000 for any offence against the regulations.

(4) A provision of a regulation may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently, according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by the administering authority or the licensing authority.

Special provisions - application of Act in the State

81. (1) Nothing in this Act affects the operation of the Fair Trading Act 1987.

(2) For the purposes of the application of section 13 to a weighbridge that has a capacity of 9 tonnes or more, an additional requirement of that section for the first verification or certification of the weighbridge is that the weighbridge be the subject of a certificate

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under section 317AE of the Local Government Act 1919 issued not more than 12 months before that first verification or certification.

*[Minister's second reading speech made in -
Legislative Assembly on 15 November 1989
Legislative Council on 23 November 1989]*

BY AUTHORITY
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TRADE MEASUREMENT BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Trade Measurement Administration Bill 1989 is cognate with this Bill.

The object of this Bill is to make provision for the following matters as part of proposed uniform trade measurement legislation throughout Australia:

- (a) regulation of the use of measuring instruments for trade;
- (b) regulation of sales and other transactions based on measure;
- (c) the verification, re-verification and certification of measuring instruments used for trade;
- (d) imposing requirements on the packaging of articles sold as pre-packed articles;
- (e) the licensing of persons to service and certify the accuracy of measuring instruments used for trade;
- (f) other miscellaneous matters.

PART I - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 contains definitions used in the proposed Act.

Clause 4 explains what is meant by use of a measuring instrument "for trade". It includes use in determining the consideration for a transaction or the amount payable as a tax, rate or other charge.

Clause 5 provides that the proposed Act is to bind the Crown.

Clause 6 lists exemptions from the operation of the proposed Act, including electricity, gas and water meters, telephone call metering and taxi meters. The

regulations can provide further exemptions. The proposed Act will not apply to bread.

PART II - USE OF MEASURING INSTRUMENTS FOR TRADE

Clause 7 prohibits the use of a measuring instrument for trade unless it bears an inspector's mark or a licensee's mark. In addition, if the measuring instrument is a weighbridge, it must not be used for trade unless it complies with the requirements of the regulations.

Clause 8 creates the following offences:

- . using for trade a measuring instrument that is incorrect or unjust;
- . using a measuring instrument for trade in a manner that is unjust;
- . causing a measuring instrument in use for trade to give an incorrect reading.

Clause 9 creates the offence of supplying a measuring instrument that is incorrect, unjust or not of an approved pattern (approved under the National Measurement Act 1960 of the Commonwealth).

PART III - VERIFICATION, RE-VERIFICATION AND CERTIFICATION OF MEASURING INSTRUMENTS

Clause 10 makes it the responsibility of the administering authority to arrange for the standards of measurement necessary for the purposes of the proposed Act. Each licensee is made responsible for providing the standards of measurement necessary for the exercise of the licensee's functions under the proposed Act.

Clause 11 explains "verification" and "re-verification" of measuring instruments. Each is carried out by an inspector who has to be satisfied that the instrument complies with certain requirements and who marks the instrument with the inspector's mark. Verification is carried out when the instrument does not already bear a mark. The requirements at verification are stricter than at re-verification which is carried out if the instrument already bears a mark (as a result of a prior verification, re-verification or certification). When re-verification takes place, any existing mark is removed.

Clause 12 explains "certification" of measuring instruments. It is carried out by the holder of a servicing licence issued under the proposed Act. The licensee must be satisfied that the instrument complies with the same requirements as for verification by an inspector. The licensee marks the instrument with the licensee's mark and removes any existing mark.

Clause 13 sets out the various requirements that have to be satisfied for verification or certification and for re-verification. These relate to permissible limits of error, pattern approval under the National Measurement Act and requirements for metric graduations.

Clause 14 imposes requirements as to the types of standards of measurement that must be used in assessing compliance with the requirements of clause 13.

Clause 15 makes the administering authority responsible for providing the means for verifying measuring instruments used for trade and making arrangements for their periodic re-verification.

Clause 16 allows an inspector to prohibit the use for trade of a measuring instrument if directions intended to permit its re-verification are not complied with.

Clause 17 requires an inspector who rejects a measuring instrument to obliterate any inspector's mark or licensee's mark on it.

Clause 18 requires a person who repairs or modifies a measuring instrument to obliterate any inspector's mark or licensee's mark on it.

Clause 19 makes provision for marks to be put on measuring instruments by means of a label affixed to the instrument.

Clause 20 creates the offence of making an inspector's mark or licensee's mark without proper authority.

Clause 21 creates related offences of unlawful possession of marks and marking implements and of making counterfeit marks.

PART IV - TRANSACTIONS BY MEASUREMENT

Clause 22 requires that when an article is sold at a price determined by reference to measurement the measurement must be done in the consumer's presence or the consumer must be given a written statement of the measurement. The consumer can demand measurement in his or her presence if delivery takes place at the time and place of measurement. Pre-packed articles are not affected.

Clause 23 creates the offence of misleading the consumer as to measurement or price calculation based on measurement and of incorrect payment that is to the detriment of the consumer.

Clause 24 makes the seller of an article guilty of an offence if the quantity sold is less than the quantity ordered unless the seller tells the buyer before completion of the sale.

Clause 25 makes special provisions for the sale of meat. The written statement required for the purposes of clause 22 must specify the mass of each cut. When exposing meat for sale at a marked price for a given quantity, its mass and price per kilogram must also be marked.

Clause 26 requires articles that are prescribed by the regulations for the purposes of the clause to be sold at a price determined by reference to a measurement of quantity in the unit of measurement required by the regulations.

Clause 27 creates a presumption that measurement determined by direct measurement of certain vehicles is more accurate than the same measurement determined by the method known as "end-and-end measurement".

PART V - PRE-PACKED ARTICLES

**Division 1 - Requirements for Packaging and Sale of
Pre-packed Articles**

Clause 28 requires the packaging of pre-packed articles to comply with the requirements of the regulations as to the quantities in which articles may be packed and the marking on the package of the name and address of the packer, the measurement of the article and its price.

Clause 29 creates exceptions to the requirements of clause 28. The exceptions relate to packages for retail sale that are sold where they are packed, packages for export and sale of imported packages.

Clause 30 restricts the use on packages of "net mass when packed", "net mass at standard condition" and other expressions that are prohibited or restricted by the regulations.

Clause 31 makes it an offence to sell a pre-packed article at a specified price per unit of measurement where the price charged exceeds the correct price.

Clause 32 creates the offence of packing or selling a short measure (where the quantity in the package is less than the quantity indicated).

Clause 33 requires that where sufficient packages are available for testing, an average deficiency of the extent required by the regulations is necessary before a short measure offence is committed under clause 32.

Clause 34 creates defences to the offence in clause 32 of packing or selling a short measure. The defences relate to deficiencies which arise after packaging and for which reasonable allowance could not be made and deficiencies in packages obtained from a supplier and sold unaltered.

Clause 35 creates a general defence for sellers to the offences under clauses 28, 30 and 31 where the seller did not pack or alter the packaging of the package and the offence resulted from something the defendant could not reasonably have foreseen.

Clause 36 gives a general defence to persons who pack articles solely as employees.

Clause 37 enables the regulations to prescribe procedures for determining the measurement of pre-packed articles.

Division 2 - Permit to Sell Certain Pre-packed Articles

Clause 38 authorises the administering authority to issue permits enabling persons to sell pre-packed articles where the sale would otherwise be an offence under clause 28 or 30.

Clause 39 imposes restrictions on the circumstances in which such a permit can be issued.

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Clause 40 authorises the cancellation of a permit at any time.

Clause 41 recognises permits issued under a law of another jurisdiction that corresponds to the proposed Act.

PART VI - LICENSING

Division 1 - Requirements for Licences

Clause 42 requires a person who certifies a measuring instrument to hold a servicing licence or to be an employee of a licensee.

Clause 43 requires a person who makes a weighbridge available for public use to be the holder of a public weighbridge licence or to be an employee of a licensee.

Division 2 - Granting of Licences

Clause 44 provides for the making of applications to the licensing authority for servicing licences and public weighbridge licences.

Clause 45 provides the grounds on which an application for a licence may, and in some cases must, be refused.

Clause 46 requires the licensing authority to approve a particular mark for use by each licensee.

Clause 47 requires the licensing authority to keep a register of licences.

Clause 48 gives the licensing authority power to impose and vary conditions on licences.

Clause 49 sets out the conditions that apply to all servicing licences.

Clause 50 sets out the conditions that apply to all public weighbridge licences.

Clause 51 states that conditions of a licence need not be endorsed on the licence.

Clause 52 requires payment by a licensee of a periodic licence fee.

Clause 53 authorises cancellation of a licence if the periodic licence fee is not paid.

Clause 54 authorises surrender of a licence and provides that a licence is not transferable.

Clause 55 empowers the licensing authority to order that specified persons not be employed to certify measuring instruments, or not be employed to operate a public weighbridge, on the grounds of the person's lack of competency or fitness.

Division 3 - Disciplinary Action Against Licensees

Clause 56 lists the grounds for disciplinary action against a licensee.

Clause 57 provides for the licensing authority to give notice to a licensee of suspected grounds for disciplinary action against the licensee and calling on the licensee to show cause why disciplinary action should not be taken.

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Clause 58 provides for the disciplinary action that the licensing authority can take against a licensee.

Division 4 - Appeals

Clause 59 provides for an appeal against various decisions of the licensing authority.

PART VII - INSPECTORS

Clause 60 provides for the general powers of entry and inspection by inspectors under the proposed Act.

Clause 61 provides for the powers of inspectors in relation to the examination and testing of measuring instruments.

Clause 62 provides for the powers of inspectors in relation to pre-packed articles and articles that are for sale by measurement.

Clause 63 gives an inspector special powers to demand information from a person whose name appears on a pre-packed article.

Clause 64 entitles a person from whom anything is seized under the proposed Act to return of the thing if proceedings for an offence are not instituted within 6 months or if no conviction is obtained.

Clause 65 creates offences of hindering, assaulting, impersonating, or failing to comply with a lawful requirement made by, an inspector.

Clause 66 relates to self-incrimination.

Clause 67 requires an inspector to produce his or her certificate of authority on request.

PART VIII - MISCELLANEOUS

Clause 68 provides that a penalty appearing at the end of a provision of the proposed Act indicates the creation of an offence for which the maximum penalty is the penalty specified.

Clause 69 increases by 5 times the maximum penalty for any offence committed by a body corporate.

Clause 70 empowers the court which convicts a person of an offence under the proposed Act to award compensation to a person who has suffered pecuniary loss.

Clause 71 makes the employer guilty of the same offence committed by an employee unless the employer had no knowledge of the contravention and could not have prevented the contravention.

Clause 72 makes the director of a body corporate guilty of the same offence committed by the body corporate if the director knowingly authorised or permitted the offence.

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Clause 73 creates the offence of making a false or misleading statement.

Clause 74 requires certain official signatures to be presumed to be authentic.

Clause 75 provides for the giving of certificates and for those certificates to be evidence of certain things.

Clause 76 creates certain presumptions as to the authenticity of names, addresses and dates marked on pre-packed articles.

Clause 77 creates the presumption that certain articles are packed for sale (and hence are pre-packed articles).

Clause 78 creates the presumption that a measuring instrument present on premises used for trade is itself used for trade.

Clause 79 requires records to be kept or produced in the English language.

Clause 80 lists the matters for which regulations can be made.

Clause 81 makes special provision for the application of the proposed Act in New South Wales.

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TRADE MEASUREMENT BILL 1989

NEW SOUTH WALES



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TRADE MEASUREMENT BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act relating to trade measurement in New South Wales as part of the scheme for uniform trade measurement legislation throughout Australia.

See also Trade Measurement Administration Bill 1989.

The Legislature of New South Wales enacts:

PART I - PRELIMINARY

Short title

1. This Act may be cited as the Trade Measurement Act 1989.

Commencement

2. This Act commences on a day or days to be fixed by proclamation.

Definitions etc.

3. (1) In this Act, unless the contrary intention appears:
"administering authority" means the person who, under the Administration Act, is the administering authority for the purposes of this Act;
"Administration Act" means the Trade Measurement Administration Act 1989;
"approved pattern", in relation to a measuring instrument, means a pattern approved for the measuring instrument under section 19A of the National Measurement Act, being an approval that:
 (a) is currently in force under that provision; or
 (b) has expired or been cancelled (but not withdrawn) under the National Measurement Act and was in force when the measuring instrument was first verified or certified;
"article" includes substance;
"Australian legal unit of measurement" has the same meaning as in the National Measurement Act;
"certify" has the meaning given by section 12;
"corresponding law" means a law of another State or a Territory of the Commonwealth that corresponds to this Act;
"document" includes any record of information, whether or not the information is available only after the record is subjected to electronic or other process;

"**inspector**" has the same meaning as in the Administration Act;

"**inspector's mark**" means:

- (a) the mark approved by the administering authority for use by an inspector in verifying or re-verifying a measuring instrument; or
- (b) such a mark under a corresponding law;

"**licence**" means a servicing licence or a public weighbridge licence in force under Part VI;

"**licensee's mark**" means:

- (a) the mark approved by the licensing authority for use by or on behalf of the licensee in certifying a measuring instrument; or
- (b) such a mark under a corresponding law;

"**licensing authority**" means the person who, under the Administration Act, is the licensing authority for the purposes of this Act;

"**measurement**" means the determination of a physical quantity, including determination by number but not including determination of a physical quantity for descriptive purposes only;

"**measuring instrument**" has the same meaning as in the National Measurement Act;

"**National Measurement Act**" means the *National Measurement Act 1960* of the Commonwealth as amended and in force for the time being;

"**package**" includes:

- (a) a container, wrapper, confining band or other thing in which an article is packed, or 2 or more articles are packed, for sale as a single item; and
- (b) anything around which an article is wound or wrapped, or 2 or more articles are wound or wrapped, for sale as a single item;

"**pre-packed article**" means an article that is packed in advance ready for sale;

"**prescribed**" means prescribed by this Act;

"**public weighbridge**" means a weighbridge that is open for use by or on behalf of the public or for the use of which a charge is made;

"public weighbridge licence" means a public weighbridge licence in force under Part VI;

"purchaser" includes a person purchasing as agent for another person;

"record" includes any document;

"reference standard of measurement" has the same meaning as in the National Measurement Act;

"regulation" means a regulation in force under this Act;

"re-verify" has the meaning given by section 11;

"sell" includes:

- (a) agree to sell;
- (b) offer or expose for the purpose of selling;
- (c) have in possession for the purpose of selling;
- (d) barter or exchange; and
- (e) authorise, direct, cause or permit to be done any act referred to in paragraph (a), (b), (c) or (d);

"seller" includes a person who sells as agent for another person;

"servicing licence" means a servicing licence in force under Part VI;

"State primary standard of measurement" has the same meaning as in the National Measurement Act;

"this Act" includes the regulations;

"vehicle" includes vessel, aircraft and any other means of conveying persons or goods;

"verify" has the meaning given by section 11;

"weighbridge" means a measuring instrument that is of a capacity of 3 tonnes or more and has a platform by the use of which the measuring instrument is capable of determining the mass of a vehicle or of livestock.

(2) For the purposes of this Act, time interval not related to the calendar is a physical quantity and time interval so related is not a physical quantity.

(3) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Use of measuring instrument for trade - meaning

4. (1) For the purposes of this Act, a person uses a measuring instrument for trade if the person uses it, has it in possession for use, or makes it available for use, to make a measurement for the purpose of:

- (a) determining the consideration in respect of a transaction; or
- (b) determining the amount payable as a tax, rate, toll, duty, charge or other impost (however described).

(2) In addition, a person shall be regarded as using a measuring instrument for trade if:

- (a) the person makes the measuring instrument available on premises for use by a party to a transaction that takes place on those premises; and
- (b) the instrument makes a measurement of a kind that is used for the purpose of determining the consideration in respect of the transaction even though a measurement actually made with that instrument is not used for that purpose.

(3) If a party to a transaction makes a measuring instrument available for use in connection with the transaction, another party to the transaction who uses the instrument in that connection shall not, despite subsection (1), be regarded as using the instrument for trade.

Application of Act to Crown

5. (1) This Act binds the Crown in all its capacities, in so far as the legislative power of the Parliament permits.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

Exemptions from Act

6. (1) The regulations may exempt from the operation of this Act, or specified provisions of this Act, a specified person, matter, article or transaction or a specified class of persons, matters, articles or transactions.

(2) Except to the extent that regulations made under the Administration Act otherwise provide, this Act does not apply to a measurement, or an instrument used for the purposes of a measurement, to determine any of the following:

- (a) a quantity of reticulated electricity, reticulated gas or reticulated water;
 - (b) charges relating to telephone calls;
 - (c) the fare payable for use of a taxi;
 - (d) the charge for the hire of a motor vehicle;
 - (e) tyre pressures;
 - (f) the expiration of the time for parking a motor vehicle.
- (3) Nothing in this Act applies to or in respect of bread.

PART II - USE OF MEASURING INSTRUMENTS FOR TRADE

Measuring instruments used for trade must be marked

7. (1) A person who uses a measuring instrument for trade is guilty of an offence unless the instrument bears an inspector's mark or a licensee's mark.

Penalty:

- (a) if the measuring instrument is a weighbridge - \$10,000;
- (b) in any other case - \$5,000.

(2) A person who uses a weighbridge for trade is guilty of an offence if the weighbridge does not comply with the requirements of the regulations concerning weighbridges.

Penalty: \$10,000.

(3) This section does not apply to the use of a measuring instrument to determine a quantity of articles by number of the articles.

(4) The regulations may provide for the circumstances in which the use for trade of a measuring instrument that has been repaired or modified, or commissioned, is permitted even though it does not bear an inspector's mark or a licensee's mark, pending its verification or certification.

Unjust measurement

8. (1) A person who uses for trade a measuring instrument that is incorrect or unjust is guilty of an offence.

Penalty: \$20,000.

(2) A person who uses for trade a measuring instrument in a manner that is unjust is guilty of an offence.

Penalty: \$20,000.

(3) A person whose act or omission causes or is likely to cause a measuring instrument in use for trade to give a measurement or other information that is incorrect is guilty of an offence if the person acted or omitted to act with the intention of causing that result or with reckless indifference to whether that result would be caused.

Penalty: \$20,000.

(4) If a person commits an offence against this section, any contract to which the person is a party and which is made by reference to a measurement to which the offence relates is voidable at the option of another party to the contract.

Supplying incorrect etc. measuring instrument

9. (1) For the purposes of this section, a measuring instrument is unacceptable for trade use if it is incorrect or unjust or is not of an approved pattern.

(2) If a measuring instrument that is unacceptable for trade use is used for trade, a person who sold, leased, hired or lent it to the person who used it for trade is guilty of an offence.

Penalty: \$20,000.

(3) It is a defence in proceedings for an offence against this section if it is established:

- (a) that the measuring instrument was not unacceptable for trade use when the defendant parted with possession of it;
- (b) that the defendant did not know and had no reason to suspect that the measuring instrument would be used for trade; or
- (c) that the person who purchased the measuring instrument or took it on lease, hire or loan was informed in writing at the time that the measuring instrument was unacceptable for trade use.

**PART III - VERIFICATION, RE-VERIFICATION AND
CERTIFICATION OF MEASURING INSTRUMENTS**

Provision and maintenance of standards

10. (1) It is the responsibility of the administering authority to arrange for the provision, custody and maintenance of such State primary standards of measurement and such classes of reference standards of measurement as may be necessary for the purposes of this Act.

(2) Each licensee under a servicing licence is responsible for providing such classes of reference standards of measurement as may be necessary for the exercise of the functions of the licensee under this Act.

Verification and re-verification by inspectors

11. (1) A measuring instrument is verified when it does not already bear an inspector's mark or a licensee's mark and an inspector:

- (a) is satisfied that the instrument complies with the requirements for verification specified in section 13; and
- (b) marks the instrument with the inspector's mark.

(2) A measuring instrument is re-verified when it already bears an inspector's mark or a licensee's mark and an inspector:

- (a) is satisfied that the instrument complies with the requirements for re-verification specified in section 13;
- (b) obliterates the inspector's mark or licensee's mark that the instrument already bears; and
- (c) marks the instrument with the inspector's mark.

Certification by licensees

12. (1) A measuring instrument is certified when the licensee under a servicing licence or an employee of the licensee:

- (a) is satisfied that the instrument complies with the requirements for certification specified in section 13 and issues a certificate to that effect;
- (b) obliterates any inspector's mark or licensee's mark that the instrument already bears; and

- (c) marks the instrument with the licensee's mark.
- (2) Certification may be carried out whether or not the measuring instrument already bears an inspector's mark or a licensee's mark.

Requirements for measuring instruments

13. (1) The requirements for verification or certification of a measuring instrument are as follows:

- (a) the instrument must operate within the appropriate limits of error that may be tolerated under the National Measurement Act at verification;
- (b) the instrument must be of an approved pattern; and
- (c) the instrument must have no graduations in a unit of measurement other than a unit of measurement under the metric system of measurement within the meaning of the National Measurement Act (except in circumstances that are prescribed as exempt from this paragraph or in a case determined by the administering authority to be a special case).

(2) The requirements for re-verification of a measuring instrument are the same as for verification under subsection (1) except that the instrument need not operate within the appropriate limits of error that may be tolerated under the National Measurement Act at verification but must operate within the appropriate limits of error that may be tolerated under that Act at re-verification.

Standards of measurement to be used

14. (1) The determination of whether the requirements of section 13 for verification, re-verification or certification are complied with shall be made by means of, by reference to, by comparison with or by derivation from:

- (a) an appropriate State primary standard of measurement;
- (b) an appropriate reference standard of measurement; or
- (c) 2 or more standards of measurement each of which is an appropriate State primary standard of measurement or an appropriate reference standard of measurement.

(2) Subsection (1) does not apply if there is not an appropriate standard for the measurement in respect of which the measuring instrument is to be verified, re-verified or certified.

Responsibilities of administering authority concerning verification and re-verification

15. (1) It is the responsibility of the administering authority:

- (a) to provide the means by which measuring instruments may be verified; and
- (b) to arrange for the re-verification of measuring instruments that are in use for trade.

(2) Arrangements under subsection (1) (b) must provide for the re-verification of a measuring instrument as often as the administering authority determines is necessary or desirable in relation to the class of measuring instrument concerned but need not be made in any cases or circumstances for which the regulations provide re-verification is not required.

(3) This section does not affect the power of the administering authority to charge amounts in accordance with the regulations for or in connection with the verification and re-verification of measuring instruments.

(4) Even if a measuring instrument is not required by this Act to bear an inspector's mark or a licensee's mark, it may be examined and its calibration tested as if there were such a requirement but only:

- (a) for the purposes of another Act; or
- (b) if the administering authority so approves, at the request of the person in possession of the measuring instrument.

Prohibition on use if re-verification cannot be carried out

16. (1) An inspector may give reasonable directions to a person in possession of a measuring instrument for the purpose of facilitating re-verification of the instrument.

(2) Those directions may include (but are not limited to):

- (a) directions as to the time and place at which the instrument is to be made available to an inspector; and
- (b) any other directions authorised by the regulations.

(3) If the inspector's directions are not complied with, an inspector may, by notice in writing given to the person, prohibit the use of the measuring instrument for trade until it is re-verified.

(4) A person given a notice under subsection (3) is guilty of an offence if the instrument to which the notice refers is used for trade by the person before it is re-verified.

Penalty: \$5,000.

Rejection of instrument by inspector - obliteration of marks

17. If a measuring instrument that bears an inspector's mark or licensee's mark is examined or tested by an inspector and is found not to comply with the requirements for re-verification specified in section 13, the inspector shall obliterate any inspector's mark or licensee's mark that the instrument bears.

Duty of repairers etc. to obliterate marks

18. (1) A person must obliterate any inspector's mark or licensee's mark that a measuring instrument bears when the person does anything to the measuring instrument (including repair, modification and commissioning) that affects its metrological performance, unless that effect can be corrected by normal operational adjustment of the instrument.

(2) A person who fails to comply with subsection (1) is guilty of an offence.

Penalty: \$20,000.

(3) This section applies whether or not the person is a licensee.

Marks on labels affixed to measuring instruments

19. (1) An inspector's mark or a licensee's mark that is made on a label affixed to a measuring instrument shall be taken to have been made on the measuring instrument.

(2) Such a mark is obliterated by being removed or destroyed.

Making mark without authority

20. (1) A person who makes an inspector's mark or licensee's mark on a measuring instrument is guilty of an offence unless the person is authorised to do so as provided by this section.

Penalty: \$20,000.

(2) A person is authorised to make an inspector's mark on a measuring instrument if the mark is made in the course of verifying or re-verifying the instrument and the person:

- (a) is an inspector; or
- (b) is acting under the authority and direct supervision of an inspector.

(3) A person is authorised to make a licensee's mark on a measuring instrument if the mark is made in the course of certifying the instrument under the authority conferred by a servicing licence and the person:

- (a) is the licensee, or an employee of the licensee, in respect of whom the mark is approved by the administering authority; or
- (b) is acting under the authority and direct supervision of that licensee or such an employee.

(4) A person is authorised to make an inspector's mark or a licensee's mark on a measuring instrument if the person does so in accordance with the provisions of the regulations as to the batch testing and marking of measuring instruments.

Other offences concerning marks

21. A person is guilty of an offence if the person:

- (a) has possession, without authority, of an instrument for making an inspector's mark or a licensee's mark;
- (b) makes on a measuring instrument a mark resembling an inspector's mark or a licensee's mark intending to create a false impression that it is an inspector's mark or a licensee's mark;
- (c) makes or possesses, without lawful justification or excuse, an instrument designed to make a mark resembling an inspector's mark or a licensee's mark; or
- (d) sells, or uses for trade, a measuring instrument marked in contravention of paragraph (b) or section 20 knowing it to have been unlawfully marked.

Penalty: \$20,000.

PART IV - TRANSACTIONS BY MEASUREMENT

Measurement must be open to scrutiny in certain cases

22. (1) If an article is sold at a price determined by reference to measurement of the article, the party that determines the price of the article shall ensure:

- (a) that the measurement is made in the presence of the other party to the sale; or
- (b) that the other party is furnished at or before the time of delivery of the article with a written statement of the measurement of the article.

(2) If the article is to be delivered at the time and place of measurement, the party that determines the price of the article by reference to the measurement shall, if the other party to the sale requests it, measure the article in the presence of that other party.

(3) A person who fails to comply with subsection (1) or (2) is guilty of an offence.

Penalty: \$5,000.

(4) For the purposes of this section, an article is measured in the presence of a person if:

- (a) the measuring process is readily visible to the person; and
- (b) any reading or information displayed by the measuring instrument is readily visible to the person.

(5) Unless the regulations otherwise provide, this section does not apply to the sale of a pre-packed article.

Incorrect measurement or price calculation

23. If an article is sold at a price determined by reference to measurement of the article, the party who operates the measuring instrument is guilty of an offence if:

- (a) he or she directly or indirectly misleads the other party to the sale as to the measurement of the article or the calculation of the price, to that other party's detriment; or

- (b) the price paid or required to be paid is not the price correctly computed by reference to the measurement of the article and as a result the other party suffers or would suffer detriment.

Penalty: \$20,000.

Variation of quantity ordered

24. If the quantity of an article sold is less than the quantity stated in the offer to purchase, the seller is guilty of an offence unless the seller informs the purchaser of that fact before completion of the sale.

Penalty: \$20,000.

Special provisions for sale of meat

25. (1) A person who sells meat otherwise than at a price determined by reference to the mass of the meat is guilty of an offence.

Penalty: \$5,000.

(2) If the article sold as referred to in section 22 is meat consisting of more than one cut, a written statement of measurement is not sufficient to comply with section 22 (1) (b) unless it specifies the mass of each cut.

(3) A person who offers or exposes a quantity of meat for sale at a marked price for that quantity is guilty of an offence unless:

- (a) the mass of the meat is also marked in the same manner as, and as prominently as, the price marking; and
- (b) the price per kilogram of the meat is also indicated as prominently as the price marking by a marking on the meat or by another statement in letters and figures not less than 10 mm high that clearly refers to the meat.

Penalty: \$5,000.

(4) In this section:

"meat" means so much of a slaughtered animal as is ordinarily sold for human consumption (whether or not after being subjected to a process of any kind) but does not include:

- (a) the whole or any part of rabbit or shellfish;
 - (b) heads, feet, hearts, lights, kidneys, brains or sweetbread;
- or

(c) meat packed as a pre-packed article.

(5) This section does not apply to the sale (other than for the purpose of resale) of cooked meat sold on the premises on which it is cooked.

Articles required to be sold by specific measurement

26. (1) This section applies to an article, or an article of a class, prescribed for the purposes of this section.

(2) A person who sells a quantity of an article to which this section applies is guilty of an offence unless the sale is at a price determined by reference to a measurement of quantity in the unit of measurement required by the regulations.

Penalty: \$5,000 (or such lesser penalty as may be provided by the regulations in respect of the article concerned).

(3) This section does not apply to the sale of a pre-packed article.

Presumptions concerning mass of vehicles

27. (1) For the purpose of:

- (a) determining the consideration in respect of a transaction; or
- (b) determining the amount payable as a tax, rate, toll, duty, charge or other impost (however described);

it shall be conclusively presumed that:

- (c) the mass of a vehicle determined by direct measurement of the mass of the vehicle is more accurate than the mass determined by end-and-end measurement of that mass; and
- (d) the mass of a railway vehicle determined when the vehicle is stationary is more accurate than the mass determined when the vehicle is in motion.

(2) In this section, "end-and-end measurement" means the determination of a measurement relating to a vehicle (whether loaded or not) by adding together separate measurements of the mass supported singly or in combination by the different axles of the vehicle, those separate measurements having been determined by separate operations of a weighbridge.

PART V - PRE-PACKED ARTICLES

**Division 1 - Requirements for Packaging and Sale
of Pre-packed Articles**

Requirements as to packaging of pre-packed articles

28. (1) A person who packs an article as a pre-packed article is guilty of an offence unless the package complies with the provisions of the regulations made for the purposes of this section as to the packaging of such an article when it is packed.

Penalty: \$10,000.

(2) A person who sells a pre-packed article is guilty of an offence unless the package complies with the provisions of the regulations made for the purposes of this section as to the packaging of such an article when it is sold.

Penalty: \$10,000.

(3) The regulations may make provision:

- (a) restricting the quantities in which articles may be packed or sold as pre-packed articles; and
- (b) requiring the marking on the package containing a pre-packed article when it is packed or sold of:
 - (i) the name and address of the person who packed the article or on whose behalf it was packed;
 - (ii) the measurement of the article and other information concerning the measurement of the article; and
 - (iii) the price of the article and other information concerning the price of the article.

(4) This section does not apply to the sale of a pre-packed article by a person if the sale is authorised under Division 2.

Defences concerning packaging of pre-packed articles

29. (1) It is a defence in proceedings under section 28 against a person who packs an article if it is established:

- (a) (to the extent that the proceedings concern the requirement that a name or address be marked on the package) that the article was packed on premises for sale on those premises to a person for consumption or use and not for resale; or

- (b) (to the extent that the proceedings are not so concerned) that the article was packed with the intention that it be exported from Australia and the package was marked to give a clear indication to that effect.

(2) It is a defence in proceedings under section 28 against a person who sells a pre-packed article (to the extent that the proceedings concern the requirement that a name or address be marked on the package) if it is established:

- (a) that the pre-packed article was packed outside Australia; or
- (b) that the pre-packed article was sold on the premises on which it was packed and was so sold for consumption or use and not for resale.

(3) It is a defence in proceedings under section 28 against a person who sells a pre-packed article if it is established that the seller's general defence under this Division applies.

Restrictions on use of certain expressions on packages

30. (1) A person who packs an article as a pre-packed article or sells a pre-packed article is guilty of an offence if, except as authorised by the regulations, there is marked on the package:

- (a) the expression "net mass when packed" or "net mass at standard condition", or any other words that have a similar meaning to those words; or
- (b) any other expression directly or indirectly relating to the measurement of the article or the size of the package that is prescribed by the regulations (including by being specified or described by reference to its meaning or effect) as a prohibited or restricted expression.

Penalty: \$5,000.

(2) It is a defence in proceedings under this section against a person who sells a pre-packed article if it is established that the seller's general defence under this Division applies.

(3) This section does not apply to the sale of a pre-packed article by a person if the sale is authorised under Division 2.

Incorrect pricing of pre-packed article

31. (1) A person who sells a pre-packed article at a specified price for each unit of measurement of the article is guilty of an offence if the

price of the pre-packed article exceeds the price correctly computed by reference to the measurement of the article and the stated price for each unit of measurement.

Penalty: \$20,000.

(2) If the measurement of a pre-packed article is stated by reference to a minimum measurement, any amount by which the actual measurement exceeds that stated minimum measurement shall be disregarded in calculating the correct price for the purposes of subsection (1).

(3) This section applies whether or not the price of the article and the price for each unit of measurement of the article:

- (a) is required by this Act to be marked on the package containing the article; or
- (b) is in fact so marked.

(4) It is a defence in proceedings under this section if it is established that the seller's general defence under this Division applies.

Offence of packing or selling short measure

32. (1) If the actual measurement of the quantity of a pre-packed article is less than the measurement or minimum measurement marked on the package (whether or not marked for the purpose of complying with this Act):

- (a) the person who packed the article is guilty of an offence; and
- (b) a person who sells the article is guilty of an offence.

Penalty: \$20,000.

(2) If more than one measurement is marked on a package, the prosecution is entitled to rely on any of those measurements to establish an offence against this section unless the context in which the measurement appears indicates that it is not to be taken to be a representation as to the measurement of the quantity of the article.

(3) The marking of a measurement on a package must make such allowance for any likely reduction over time in the actual measurement of the article as may be necessary to prevent the commission of an offence under this section in relation to the article.

(4) A measurement or minimum measurement marked on or near a receptacle containing a pre-packed article so as to constitute a representation as to the measurement or minimum measurement of

the quantity of the article shall, for the purposes of this section, be regarded as being marked on the package.

Extent of deficiency necessary to constitute short measure

33. (1) For the purposes of section 32, the actual measurement of a pre-packed article ("the offending article") shall not be regarded as being less than a marked measurement unless:

- (a) the deficiency in actual measurement of the offending article is greater than the deficiency permitted by the regulations for the article concerned; or
- (b) the deficiency in the average of the actual measurements of a number of like articles (found in the same place and at the same time as the offending article is found) is greater than the deficiency permitted by the regulations for the article concerned.

(2) The regulations may:

- (a) make provision with respect to the method to be used in determining the average measurement under subsection (1) (b) and the number of like articles to be measured for that purpose;
- (b) provide that the deficiency permitted in the average of measurements determined under subsection (1) (b) is nil; and
- (c) make different provision according to how long after packaging of the article the measurements concerned are made.

(3) This section does not apply in a case where the number of like articles (found in the same place and at the same time as the offending article is found and available for measurement by an inspector) is not sufficient for the purposes of a determination under subsection (1) (b) in accordance with the regulations.

Defences concerning short measure

34. (1) It is a defence in proceedings under section 32 against a person who packs a pre-packed article if it is established that the deficiency in measurement:

- (a) 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 measurement marked on the package; or

- (b) resulted from something that the defendant could not reasonably have foreseen or for which the defendant could not reasonably have made allowance.

(2) It is a defence in proceedings under section 32 against a person who sells a pre-packed article if it is established:

- (a) that the defendant obtained the article from another person within Australia who packed the article or sold it to the defendant and the defendant identified that other person to an inspector;
- (b) that the package containing the article was marked apparently as required by this Act when the defendant received it; and
- (c) that the defendant sold the article in the same state as it was in when the defendant obtained it.

(3) The defence under subsection (2) is not available to a defendant in relation to the sale of a pre-packed article ("the offending article") if:

- (a) a finding by an inspector in relation to another pre-packed article sold by the defendant indicated that its sale would have been an offence under section 32 had that defence not been available;
- (b) that other pre-packed article was of the same kind, and had the same measurement marked on the package, as the offending article; and
- (c) the inspector informed the defendant of that finding before the sale of the offending article;

unless the defendant establishes that the offending article was not in the defendant's possession when the defendant was informed of the inspector's finding.

(4) It is not a defence in proceedings under section 32 merely to establish that the deficiency in measurement did not exist when the article was packed or when the package was marked.

Seller's general defence

35. If a provision of this Division provides that it is a defence to specified proceedings if it is established that the seller's general defence under this Division applies, it is a defence to those proceedings if it is established that:

- (a) the defendant did not pack or alter the packaging of the article; and
- (b) the offence resulted from something that the defendant could not reasonably have foreseen or for which the defendant could not reasonably have made allowance.

Employee's general defence

36. It is a defence in proceedings against a person for an offence under this Division for packing an article as a pre-packed article if the person establishes that the person packed the article as an employee only.

Regulations concerning methods of measurement

37. For the purposes of this Division:
- (a) the measurement of a pre-packed article shall be determined in accordance with any applicable methods and procedures provided for in the regulations; and
 - (b) a measurement so determined shall be regarded as the measurement of the article.

Division 2 - Permit to Sell Certain Pre-packed Articles

Administering authority may issue permits

38. (1) The administering authority may issue to a person a permit authorising the sale of a pre-packed article the sale of which would otherwise be an offence under section 28 or 30.

(2) The issue of a permit operates to authorise such a sale, in the circumstances and subject to any conditions specified in the permit, by:

- (a) the permit holder, but only while the permit is in force; and
- (b) any other person, whether or not the permit is in force, if the permit holder sells the article while the permit is in force;

so long as, at the time of sale, the seller gives to the purchaser a copy of the permit concerned.

(3) The requirement under subsection (2) that the seller give the purchaser a copy of the permit does not apply if the sale to the purchaser is not for the purposes of resale.

Requirements for issue

39. The administering authority may issue a permit in relation to an article only if it is satisfied that:

- (a) when packed, the article was intended for export from Australia and that it would be reasonable for its sale to be permitted;
- (b) the article was packed outside Australia and was imported in such circumstances that it would be reasonable for its sale to be permitted; or
- (c) the article was packed in Australia and that, having regard to the date of its packing and any other circumstances considered by the administering authority to be relevant, it would be reasonable for its sale to be permitted.

Cancellation of permits

40. The administering authority may, at any time, cancel a permit by notice in writing served on the holder.

Recognition of permits under corresponding laws

41. Except where the Minister by notice published in the Gazette otherwise provides in a particular case or class of cases, a permit that is the equivalent of a permit under this Division and is in force under a corresponding law has effect within the State as if it were a permit under this Division.

PART VI - LICENSING

Division 1 - Requirements for Licences

Requirement for servicing licence

42. (1) A person who certifies or purports to certify a measuring instrument is guilty of an offence unless the person:

- (a) is the holder, or an employee of the holder, of a servicing licence; and
- (b) does so in accordance with the conditions of the licence and the requirements of this Act.

Penalty: \$20,000.

(2) It is a defence in proceedings against an employee of a licensee in respect of a failure to comply with a condition of a servicing licence

if the employee establishes that the licensee failed to make the employee aware of the condition.

Requirement for public weighbridge licence

43. (1) A person who makes a weighbridge available as a public weighbridge is guilty of an offence unless the person:

- (a) is the holder, or an employee of the holder, of a public weighbridge licence; and
- (b) does so in accordance with the conditions of the licence and the requirements of this Act.

Penalty: \$20,000.

(2) It is a defence in proceedings against an employee of a licensee in respect of a failure to comply with a condition of a public weighbridge licence if the employee establishes that the licensee failed to make the employee aware of the condition.

(3) The regulations may provide that the use of a weighbridge in a specified manner that would otherwise be considered to be use as a public weighbridge is not to be considered to be use as a public weighbridge for the purposes of this section.

Division 2 - Granting of Licences

Application for licence

44. (1) On application made in a form approved by the administering authority, the licensing authority may grant:

- (a) a servicing licence; or
- (b) a public weighbridge licence.

(2) The application must be accompanied by the application fee prescribed under the Administration Act.

(3) The licensing authority may require an applicant to provide specified particulars (in writing) and documents relating to the application, and may refuse the application if they are not provided.

Grounds for refusal

45. (1) An application for a licence must be refused if the applicant:

- (a) is a natural person who has not reached the age of 18 years;
- (b) is a person whose licence under this Act or a corresponding law is suspended;
- (c) is a person disqualified under this Act or a corresponding law from holding a licence;
- (d) is not a person likely to carry on the activities of a licensee honestly and fairly; or
- (e) is in any other way not a fit and proper person to be a licensee.

(2) Without limiting the generality of subsection (1) (e), the licensing authority may, in determining whether the applicant is not a fit and proper person to be a licensee, have regard to whether the applicant or, if the applicant is a body corporate, any person concerned in the management of the applicant:

- (a) has, during the period of 10 years that preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence in the State or elsewhere involving fraud or dishonesty;
- (b) was, when the application was made, the subject of a charge pending in relation to such an offence;
- (c) has, at any time, been convicted of an offence against this Act or a corresponding law; or
- (d) has been refused a licence under a corresponding law.

(3) If an application for a licence is refused, the licensing authority must notify the applicant of the grounds for the refusal.

Licensee to be allotted a mark

46. When it issues a servicing licence, the licensing authority shall approve a mark for use by the licensee and employees of the licensee when certifying measuring instruments.

Register of licences

47. The licensing authority shall keep a register of the prescribed particulars relating to licences in the form and manner it thinks fit.

Conditions may be imposed on licences

48. (1) The licensing authority may impose conditions when it grants a licence or at any time after granting a licence and may vary or revoke any such condition.

(2) Without limiting the generality of subsection (1), such a condition may restrict to a specified class or classes the measuring instruments that may be certified under the authority of a servicing licence.

(3) After granting a licence, the licensing authority shall not impose or vary a condition of the licence unless the licensee has first been given an opportunity to make oral or written submissions concerning the imposition or variation of the condition.

(4) The imposition or variation of a condition under this section does not take effect until notice of it has been served on the licensee.

Conditions on all servicing licences

49. A servicing licence is subject to the following conditions:

- (a) (if the licensee is a natural person) a condition that the licensee must not personally certify a measuring instrument unless the licensee is competent to do so;
- (b) a condition that the licensee must not employ a person to certify a measuring instrument unless the person is competent to do so;
- (c) a condition that the licensee or an employee of the licensee must not mark a measuring instrument with the licensee's mark without first obliterating any inspector's mark or licensee's mark that the instrument already bears;
- (d) a condition that any obliteration by the licensee or an employee of the licensee of an inspector's mark or a licensee's mark without certification of the measuring instrument must be reported in writing to the administering authority within 14 days;
- (e) a condition that if the licensee or an employee of the licensee determines, when examining or testing a measuring instrument, that the instrument could not then be certified, the licensee must report the fact in writing to the administering authority within 14 days unless a report of the matter is also required under paragraph (d);
- (f) a condition that the licensee or an employee of the licensee must not certify a measuring instrument without using such

equipment as is specified by the licensing authority when granting the licence;

- (g) a condition that if the licensee's mark is made by an employee of the licensee, the licensee must at all times be able from that mark to identify the employee to the administering authority;
- (h) such other conditions as may be prescribed.

Conditions on all public weighbridge licences

50. (1) A public weighbridge licence is subject to the following conditions:

- (a) a condition that a weighbridge must not be operated pursuant to the licence unless it is the subject of a current certificate (issued by the administering authority in accordance with the regulations) to the effect that the weighbridge is suitable for use as a public weighbridge;
- (b) a condition that the licensee must ensure that a weighbridge operated pursuant to the licence is not operated by any person other than the licensee or an employee of the licensee;
- (c) (if the licensee is a natural person) a condition that the licensee must not personally operate a public weighbridge unless the licensee is competent to do so;
- (d) a condition that the licensee must not employ a person to operate a public weighbridge unless the person is competent to do so;
- (e) such other conditions as may be prescribed.

(2) The condition specified in subsection (1)(b) does not apply to the operation of a weighbridge if:

- (a) the weighbridge is approved by the administering authority for direct operation by the public; and
- (b) the licensee ensures that the weighbridge is operated otherwise than in accordance with that condition only during such periods and in accordance with such conditions as may be specified in the approval.

Conditions need not be endorsed on licence

51. A condition of a licence has effect whether or not it is endorsed on the licence.

Periodic licence fee

52. (1) The fee prescribed under the Administration Act for a licence is payable to the licensing authority:

- (a) with the application for the licence; and
- (b) while the licence is in force or is under suspension - not later than one month after the commencement of each period for which the regulations under the Administration Act require the fee to be paid.

(2) The licensing authority may extend and further extend the time for payment of the licence fee.

Cancellation for non-payment of licence fee

53. (1) If the licence fee is not paid, the licensing authority may serve on the licensee a notice in writing to the effect that the licence will be cancelled if the fee is not paid within 14 days after the notice is served.

(2) The licensing authority may cancel the licence if the fee is not paid within that time.

Surrender etc. of licence

54. (1) A licensee may surrender the licence by notice in writing given to the licensing authority.

(2) A licence is not transferable.

Order preventing employment of certain persons

55. (1) The licensing authority may by order in writing direct that a specified person:

- (a) is not to be employed to certify any measuring instrument or is not to be employed to certify a specified class or classes of measuring instruments, or is to be employed to do so only in compliance with specified conditions; or
- (b) is not to be employed to perform duties relating to the operation of any public weighbridge or is not to be employed to perform duties relating to the operation of a specified class or classes of public weighbridges, or is to be employed to do so only in compliance with specified conditions.

(2) The licensing authority must not make such an order unless satisfied that it is necessary or desirable because of the person's lack of competency, or lack of fitness in any other respect, to exercise the functions concerned.

(3) If the licensing authority makes an order under this section, it shall:

- (a) serve a copy of the order, together with a statement of its reasons for making the order, on the person to whom it relates (if the person's whereabouts are known to the licensing authority); and
- (b) serve a copy of the order on any licensee that the licensing authority knows is employing that person when the order is made.

(4) It is a condition of a licence that the licensee shall not employ a person in contravention of an order in force under this section.

(5) It is the responsibility of a licensee to make due inquiry of the licensing authority before employing a person to establish whether there is an order in force under this section in respect of the person.

Division 3 - Disciplinary Action Against Licensees

Grounds for disciplinary action

56. Each of the following constitutes grounds for disciplinary action against a licensee:

- (a) the licensee has failed to comply with a provision of this Act or a corresponding law or with a condition of the licence;
- (b) the licensee has been found guilty of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more;
- (c) the activities to which the licence relates are being carried on in a dishonest or unfair manner;
- (d) the licensing authority would be required by section 45 to refuse an application for a licence by the licensee (if the licensee were not already a licensee);
- (e) the licensee has been refused a licence under a corresponding law or is the subject of disciplinary action under the provision of a corresponding law that corresponds to section 58;

- (f) the licensee is not, for any other reason, a fit and proper person to continue to hold a licence.

Notice to licensee of grounds for disciplinary action

57. (1) If the licensing authority reasonably suspects that there are grounds for disciplinary action against a licensee, the licensing authority may serve a written notice on the licensee:

- (a) giving full particulars of those grounds, including particulars of the reasons for any general ground; and
- (b) calling on the licensee to show cause within a reasonable period specified in the notice why the licensing authority should not take disciplinary action on those grounds against the licensee under section 58.

(2) A licensee on whom such a notice is served may, within the period allowed by the notice, make written or oral submissions to the licensing authority on the matters concerned.

Taking of disciplinary action

58. (1) If, after consideration of any submissions made by the licensee within the period allowed, the licensing authority is satisfied that grounds for disciplinary action against a licensee have been established, the licensing authority may:

- (a) reprimand the licensee;
- (b) impose a condition on the licence;
- (c) suspend the licence for up to 12 months;
- (d) act under any combination of 2 or more of paragraphs (a), (b) and (c); or
- (e) cancel the licence and disqualify the former licensee permanently or for a specified period from holding a licence.

(2) The licensing authority takes any such action by serving written notice of it on the licensee but any action taken is stayed:

- (a) until the end of the time for lodging an appeal against the decision to take the action; and
- (b) if such an appeal has been duly lodged - until determination or abandonment of the appeal, unless the appeals tribunal otherwise orders.

Division 4 - Appeals

Rights of appeal

59. (1) A person may appeal to the appeals tribunal under the Administration Act against a decision of the licensing authority:

- (a) to refuse the person's application for a licence;
- (b) to make an order under section 55 in respect of the person;
- (c) to impose or vary a condition to which the person's licence is to be subject;
- (d) to reprimand the person as a licensee;
- (e) to suspend the person's licence; or
- (f) to cancel the person's licence and disqualify the former licensee from holding a licence.

(2) An appeal must be commenced within 28 days after notice of the decision appealed against is given to the person.

PART VII - INSPECTORS

Powers of entry etc.

60. (1) For the purpose of investigating an offence against this Act that the inspector reasonably believes has been committed, or for the purpose of exercising any function of an inspector under this Act, an inspector may at any reasonable time:

- (a) enter and search a building, place or vehicle, apparently in use for the carrying on of a business;
- (b) require a person in charge of such a vehicle to stop it, or move it a reasonable distance to a place specified by the inspector, to enable the inspector to enter and search it; and
- (c) require a person in possession of a pack, basket or other receptacle containing articles that are apparently for sale to permit the inspector to examine its contents.

(2) An inspector is not entitled to enter a part of premises used for residential purposes, except:

- (a) with the consent of the occupier; or
- (b) under the authority of a search warrant.

Powers in relation to measuring instruments

61. If an inspector reasonably believes that a measuring instrument is used for trade, the inspector may:

- (a) examine and test the instrument;
 - (b) require a person in the building, place or vehicle where the instrument is found to answer questions, or produce records under the person's control, concerning the instrument or its use; and
 - (c) make copies of or take extracts from records so produced;
- and, if the inspector reasonably believes that an offence against this Act has been committed involving the measuring instrument, may seize and retain the instrument and any records so produced.

Powers in relation to articles

62. (1) If an inspector reasonably believes that an article is for sale by reference to the measurement of the article, or is a pre-packed article, the inspector may:

- (a) examine the article or a package containing the article;
- (b) break open a package containing the article and remove the article from it;
- (c) require a person in the building, place or vehicle where the article is found to answer questions, or produce records under the person's control, concerning the article; and
- (d) make copies of or take extracts from records so produced.

(2) If an inspector reasonably believes that an offence against this Act has been committed involving an article, the inspector may:

- (a) seize and retain the article, samples of the article, any package containing the article and any records concerning the article or package;
- (b) seize and retain any number of packages required to follow the prescribed procedures and make the prescribed determinations as a condition precedent to the bringing of proceedings for any offence concerned; and

- (c) measure anything seized, whether at the time and place of seizure or later and elsewhere.

(3) Measurement of an article or sample may be carried out even though it results in the destruction of the article or sample.

Pre-packed articles - special powers

63. (1) If a name is marked on the package containing a pre-packed article, an inspector may require the person named to state in writing, within a reasonable time specified by the inspector:

- (a) the name and address of the person who packed the article; and
- (b) the address of the premises at which the article was packed.

(2) If a person sells a pre-packed article, an inspector may require the person to state in writing, within a reasonable time specified by the inspector, the name and address of the person who supplied the pre-packed article to that person.

Return etc. of seized property

64. (1) If an inspector seizes a measuring instrument, article or package and:

- (a) proceedings for an offence against this Act in connection with the instrument, article or package are not instituted within 6 months after seizure; or
- (b) proceedings for such an offence are instituted within that period but the defendant is not (on the determination of those proceedings, whether or not within that period) convicted of an offence;

the person from whom it was seized is, on application to the administering authority, entitled to its return.

(2) If an application for return of the measuring instrument, article or package is not made within 3 months after the entitlement to its return arises, the administering authority may dispose of it as it thinks fit.

- (3) If, in proceedings for an offence against this Act, the court:
 - (a) finds the offence proved; and
 - (b) finds that the offence concerned a measuring instrument, article or package seized and retained by an inspector;

the court may order that the measuring instrument, article or package be forfeited to the Crown.

Obstruction etc. of inspector

65. A person is guilty of an offence if the person:

- (a) hinders or obstructs an inspector when the inspector is exercising any function of an inspector under this Act;
- (b) does not, when required to do so by an inspector exercising a function under this Act, produce for examination and testing any measuring instrument in the possession, or under the control, of the person;
- (c) fails to comply with a requirement of an inspector made under the authority of this Act;
- (d) is reasonably suspected by the inspector of having committed, or of having been involved in the commission of, an offence against this Act and fails to state his or her true name and residential address on being required to do so by an inspector (so long as the inspector warns the person that it is an offence to fail to do so);
- (e) assaults or directly or indirectly threatens an inspector while the inspector is exercising the functions of an inspector; or
- (f) impersonates an inspector or otherwise falsely pretends to be engaged in or associated with the administration of this Act.

Penalty: \$10,000.

Self-incrimination

66. (1) A person is not excused from answering any question or producing any record, if required to do so under this Part, on the ground that the answer or record might tend to incriminate the person or make the person liable to a penalty.

(2) An answer given or document produced by a person in compliance with a requirement of this Part is not admissible against the person in any criminal proceedings other than proceedings for an offence under section 73.

Inspector's certificate of authority to be produced

67. An inspector exercising or proposing to exercise a function under this Act shall, on request, produce the inspector's certificate of authority issued under the Administration Act.

PART VIII - MISCELLANEOUS

Penalties in provisions

68. If:

(a) a provision of this Act provides that a person is guilty of an offence under specified circumstances; and

(b) a penalty is specified at the end of the provision and expressed in such a way as to indicate that it applies to the provision;

a person who is guilty of such an offence is liable, on conviction, to a penalty not exceeding the penalty so specified.

Increased penalty for body corporate

69. The maximum penalty for an offence under a provision of this Act committed by a body corporate is a fine that is 5 times the fine provided for in the provision as the penalty.

Compensation for loss caused by offence

70. (1) If a person is convicted of an offence under this Act and the court considers that the commission of the offence caused another person to suffer pecuniary loss, the court may order the convicted person to pay to the other person a specified amount of compensation for the loss.

(2) The court may make such an order whether or not it imposes a penalty for the offence.

(3) The amount ordered to be paid may be recovered in a court of competent jurisdiction as a debt due by the convicted person to the other person.

Offence by employee - liability of employer

71. (1) If an employee contravenes any provision of this Act, the employer shall be deemed to have contravened the same provision (whether or not the employee contravened the provision without the

employer's authority or contrary to the employer's orders or instructions).

(2) It is a defence in proceedings against an employer for such a contravention if it is established:

- (a) that the employer had no knowledge of the contravention; and
- (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.

(3) An employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or convicted under that provision.

Offence by body corporate - liability of directors etc.

72. (1) If a body corporate contravenes any provision of this Act, each person who is a director of the body corporate or who is concerned in its management shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the body corporate has been proceeded against or convicted under that provision.

False or misleading statements

73. (1) A person is guilty of an offence if the person makes a statement that is false or misleading in a material particular in:

- (a) an application under Division 2 of Part V for a permit to sell a pre-packed article;
- (b) an application under Part VI for a licence;
- (c) an answer to a question asked by an inspector under Part VII;
or
- (d) a statement of a name or address to an inspector under Part VII.

Penalty: \$2,000.

(2) It is a defence in proceedings for such an offence if it is established that, when the statement was made, the defendant believed on reasonable grounds that the statement was true and not misleading.

Evidence - signature of Minister, administering authority

74. A signature purporting to be the signature of the Minister or the administering authority, or of a delegate of the Minister or the administering authority, shall, unless the contrary is established, be presumed to be the signature it purports to be.

Certificate evidence

75. (1) The following certificates are prima facie evidence of the matters they certify:

- (a) a certificate purporting to have been issued by the Minister to the effect that a person specified in the certificate is or was the administering authority at a time, or during a period, specified in the certificate;
- (b) a certificate purporting to have been issued by the administering authority to the effect that a person specified in the certificate was or was not an inspector, or was or was not the holder of a specified class of licence, at a time, or during a period, specified in the certificate;
- (c) a certificate purporting to have been issued by the administering authority as to the result of the examination of a measuring instrument, and the testing of its calibration, under section 15 (4).

(2) A document purporting to be certified by the administering authority as a copy of a permit under Division 2 of Part V in force on a specified date or during a specified period and the conditions to which the permit was then subject is prima facie evidence of the matters certified.

Evidence - pre-packed articles

76. (1) A marking on the package containing a pre-packed article of the name of a person is prima facie evidence:

- (a) that the article was packed by the person; or
- (b) where the name is or was registered under the law relating to business names, that the article was packed jointly and severally by the persons in relation to whom the business name is or was registered.

(2) A marking on the package containing a pre-packed article of the address of a place is prima facie evidence that the article was packed at that place.

(3) A marking on the package containing a pre-packed article purporting to be the date on which the article was packed is prima facie evidence that the article was packed on that date.

(4) The fact that an article contained in a package is found exposed for sale or in the possession of a person for sale is prima facie evidence that the article is a pre-packed article.

Packaged article presumed to be pre-packed in certain circumstances

77. (1) Unless the contrary is established, a packaged article is to be presumed to be a pre-packed article for the purposes of this Act if it is found in premises where articles of the same kind are packed for sale or are kept after being packed for sale.

(2) The fact that the package is not marked as required by this Act is not sufficient to establish that the article is not a pre-packed article.

Evidence - use of measuring instrument for trade

78. The possession of a measuring instrument by a person carrying on trade or the presence of a measuring instrument on premises or in a place used by a person for trade is prima facie evidence that the person uses the instrument for trade.

Records - English language

79. A requirement under this Act to produce a record includes, where the record is not written at all or not written wholly in the English language, a requirement to produce a statement, written in the English language, setting out such of the particulars in the record as are not written in the English language.

Regulations

80. (1) The Governor may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision with respect to the following:

- (a) the provision, maintenance, custody and care of standards of measurement;
- (b) regulating, prohibiting or restricting the use of measuring instruments for trade;
- (c) limiting the purposes for which specified measuring instruments may lawfully be used or specifying the measuring instruments required to be used for specified purposes;
- (d) the verification, re-verification or certification of measuring instruments;
- (e) the positioning of, and access to, measuring instruments in order to facilitate their use for trade, their examination by an inspector or licensee and their verification, re-verification or certification;
- (f) the provision of, and payment and recovery of the costs of, labour, materials, equipment and transportation necessary for the purpose of examining, testing, verifying or re-verifying a measuring instrument;
- (g) the sealing of a verified or re-verified measuring instrument;
- (h) batch testing and quality assurance in relation to measuring instruments and the provision of labour, facilities and equipment for those purposes;
- (i) the provision or taking of samples of measuring instruments and the testing of the samples;
- (j) conditionally or unconditionally conferring specified functions of an inspector on a person who has similar functions under a corresponding law;
- (k) providing that the measurement of a specified article, or an article in a specified state or condition, is the measurement of the article for the purposes of this Act if it is carried out in a specified manner;
- (l) matters applicable to weighbridges, whether or not public weighbridges, including their installation, functioning, operation, examination, testing, suitability and use;
- (m) the functions of operators of public weighbridges;
- (n) certificates of suitability for public weighbridges, including their issue, duration, suspension and cancellation and the keeping of

- a register of current certificates of suitability by the administering authority;
- (o) prohibiting, regulating or restricting the sale of specified articles, or articles of a specified class, by reference to measurement or a specified kind or unit of measurement;
 - (p) the manner of and procedure for determining specified measurements or specified proportions of pre-packed articles;
 - (q) standard specifications of capacity in relation to packages containing specified pre-packed articles and the packing and sale of articles in those packages;
 - (r) the circumstances in which the mass of the package containing a specified article may be included in determining the net mass of the article;
 - (s) regulating the advertising of articles (including pre-packed articles) in so far as the advertising relates to measurement;
 - (t) prohibiting, regulating or restricting the sale of articles in relation to which an offence has been committed under this Act or the regulations;
 - (u) the keeping of records relating to measuring instruments.
- (3) The regulations may prescribe a penalty not exceeding \$2,000 for any offence against the regulations.
- (4) A provision of a regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently, according to different factors of a specified kind; or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by the administering authority or the licensing authority.

Special provisions - application of Act in the State

81. (1) Nothing in this Act affects the operation of the Fair Trading Act 1987.

(2) For the purposes of the application of section 13 to a weighbridge that has a capacity of 9 tonnes or more, an additional requirement of that section for the first verification or certification of the weighbridge is that the weighbridge be the subject of a certificate

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under section 317AE of the Local Government Act 1919 issued not more than 12 months before that first verification or certification.
