

Trade Measurement Act 1989 No 233

[1989-233]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Licensing and Registration \(Uniform Procedures\) Act 2002 No 28](#) (amended by [Trade Measurement \(Repeal\) Act 2009 No 108](#)) (not commenced)
- **Repeal**
The Act was repealed by sec 4 of the [Trade Measurement \(Repeal\) Act 2009 No 108](#) with effect from 1.7.2010.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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Trade Measurement Act 1989 No 233



New South Wales

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

Part I Preliminary

1 Name of Act

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

2 Commencement

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

3 Definitions

(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- (b) has expired or been cancelled (but not withdrawn) under the National Measurement Act and was in force when the measuring instrument was first verified or certified.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.

class 4 measuring instrument means a measuring instrument of an approved pattern that, in accordance with the approved pattern:

- (a) has not less than 100 but not more than 1,000 verification scale intervals, each of which is not less than 5 grams, and
- (b) has a symbol on it that is an oval of any shape, or 2 parallel horizontal lines that are joined at each end by a semi-circle, with 4 vertical lines in it.

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.

firewood means any wood, including dockings, edgings, mill ends, offcuts and timber products, that:

- (a) is intended for use as firewood, and
- (b) is in billets or lengths of not more than 2.4 m.

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 a determination of number or physical quantity, other than 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.

pack, for the purpose of deciding who packs or has packed an article as a pre-packed article, includes authorise, direct, cause or permit a person to pack an article as a pre-packed article.

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 paragraphs (a)–(d) or anything else that is a sale.

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.

use, in relation to the use of a measuring instrument for trade, includes:

- (a) have the measuring instrument in possession for use, and
- (b) make the measuring instrument available for use, and
- (c) authorise, direct, cause or permit a person to do an act mentioned in paragraph (a) or (b) or anything else that is the use of a measuring instrument for trade.

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.

weighbridge suitability statement, for a public weighbridge licence, means a statement, signed by the administering authority, that the weighbridge mentioned in the licence is suitable for use as a public weighbridge.

(2), (3) (Repealed)

3A Determining certain quantities

For the purposes of this Act:

- (a) time interval not related to the calendar is a physical quantity, and
- (b) time interval related to the calendar is not a physical quantity, and
- (c) any packaging or other thing that is not part of an article is to be disregarded when determining a physical quantity.

3B References to functions

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.

4 Use of measuring instrument for trade—meaning

- (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.

5 Application of Act to Crown

- (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.

6 Exemptions from Act

- (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) (Repealed)

Part II Use of measuring instruments for trade

7 Measuring instruments used for trade must be marked

(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) If an inspector finds a measuring instrument that is being used in contravention of subsection (1) or (2), the inspector may give to the owner or user of the measuring instrument a written notice:

(a) stating that the measuring instrument:

(i) does not have an inspector's mark or a licensee's mark on it, or

(ii) for a weighbridge—does not comply with stated requirements of the regulations relating to weighbridges, and

(b) requiring the person to remedy the contravention within a stated period of not more than 28 days.

(4) If the person complies with the notice, the person may not be prosecuted for an offence against this section in relation to the circumstances to which the notice relates.

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

(6) 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.

7A Use of class 4 measuring instruments

A person must not use a class 4 measuring instrument for trade, other than:

- (a) as airport baggage scales, or
- (b) for weighing a thing to decide freight or haulage charges for the thing, or
- (c) for weighing garbage, or
- (d) for weighing earth, sand, gravel or other similar material, or
- (e) as a crane-weigher, or
- (f) for weighing timber in log form, or
- (g) for another purpose prescribed by the regulations.

Maximum penalty:

- (a) if the class 4 measuring instrument is a weighbridge—\$10,000, or
- (b) in any other case—\$5,000.

7B Use of measuring instruments for pre-packed articles

A person must not use a measuring instrument for measuring pre-packed articles on premises in which articles are pre-packed unless at least one measuring instrument on the premises is of an approved pattern, complies with this Act, and is suitable for measuring the articles to be pre-packed.

Maximum penalty: \$5,000.

8 Unjust measurement

- (1) A person who uses for trade a measuring instrument that is incorrect 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 an inspector finds a measuring instrument being used for trade that is incorrect or is being used in a way that is unjust, the inspector may give to the owner or user of the measuring instrument a written notice:
 - (a) stating that:
 - (i) the measuring instrument is incorrect, or
 - (ii) the way the person is using it is unjust, and
 - (b) requiring the person to take stated steps to stop contravening the relevant subsection within a stated period, of not more than 28 days.
- (5) If the person complies with the notice, the person may not be prosecuted for an offence against this section in relation to the circumstances to which the notice relates.
- (6) 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.

9 Supplying incorrect etc measuring instrument

- (1) For the purposes of this section, a measuring instrument is unacceptable for trade use if it is incorrect 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 is guilty of an offence.

Penalty: \$20,000.
- (2A) Subject to subsection (3) (b), it does not matter whether the person who used the measuring instrument purchased it or took it on lease, hire or loan for trade.
- (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

10 Provision and maintenance of standards

- (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 and denominations of reference standards of measurement as the administering authority decides are necessary for the purposes of this Act.
- (2) Each licensee under a servicing licence is responsible for providing such classes and denominations, decided by the administering authority, of reference standards of measurement as may be necessary for the exercise of the functions of the licensee under this Act.

11 Verification and re-verification by inspectors

- (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.

12 Certification by licensees

- (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.

13 Requirements for measuring instruments

- (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.

14 Standards of measurement to be used

- (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.

15 Responsibilities of administering authority concerning verification and re-verification

- (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.

16 Prohibition on use if re-verification cannot be carried out

- (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.

17 Rejection of instrument by inspector—obliteration of marks

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.

18 Duty of repairers etc to obliterate marks

- (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.

19 Marks on labels affixed to measuring instruments

- (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.

20 Making mark without authority

- (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.

21 Other offences concerning marks

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

22 Measurement must be open to scrutiny in certain cases

- (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.

23 Incorrect measurement or price calculation

- (1) This section applies to a person who, for the purpose of the sale of an article at a price determined by reference to the measurement of the article, operates a measuring instrument to measure the article or decides the measurement of the article.
- (2) For the purposes of this section:
 - (a) a reference to the person's measurement of the article is a reference to the person's operation of the measuring instrument or measurement of the article as mentioned in subsection (1), and
 - (b) it does not matter whether the person's measurement of the article is for the article's sale by the person or by anyone else at any time.
- (3) For any sale of the article at any time, the person commits an offence if, because of the person's measurement of the article:
 - (a) the person directly or indirectly misleads any party to the sale as to the measurement of the article or the calculation of the price, to the party's detriment, or
 - (b) the price paid or required to be paid is not the price correctly determined by reference to the correct measurement of the article and as a result any party to the sale suffers or would suffer detriment.

Penalty: \$20,000.

24 Variation of quantity ordered

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.

25 Special provisions for sale of meat

- (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.

25A Special provision for sale of firewood by volume

To apply section 23 to a sale of firewood by volume, the volume stated for the sale of the firewood (**the stated volume**) is taken to comply with that section if, when the firewood is stacked with as few gaps as practicable, the volume worked out using the stack's dimensions is at least the stated volume.

26 Articles required to be sold by specific measurement

- (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.

27 Presumptions concerning mass of vehicles

- (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

28 Requirements as to packaging of pre-packed articles

- (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.

29 Defences concerning packaging of pre-packed articles

(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.

30 Restrictions on use of certain expressions on packages

(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.

31 Incorrect pricing of pre-packed article

- (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 (without any packaging or other thing that is not part 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.

32 Offence of packing or selling short measure

- (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.

33 Extent of deficiency necessary to constitute short measure

- (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.

34 Defences concerning short measure

- (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.

35 Seller's general defence

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.

36 Employee's general defence

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.

37 Regulations concerning methods of measurement

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

38 Administering authority may issue permits

- (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.

39 Requirements for issue

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.

40 Cancellation of permits

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

41 Recognition of permits under corresponding laws

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

42 Requirement for servicing licence

- (1) A person must not test a batch of measuring instruments or certify or purport to certify a measuring instrument unless the person is the holder of a servicing licence or an employee of the holder of a servicing licence.

Maximum penalty: \$20,000.

- (2) A person who is the holder of a servicing licence, or an employee of the holder of a servicing licence, must comply with the conditions of the licence.

Maximum penalty: \$20,000.

- (3) 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.

43 Requirement for public weighbridge licence

- (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

44 Application for licence

- (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 for a single weighbridge.
- (2) However, if two or more persons who carry on business together as partners join in making an application, the licensing authority may only grant a single licence to the joint applicants.
- (2A) If the licensing authority grants a licence to a partnership, the licence must state:
- (a) the names of all the partners, and
 - (b) if the partnership has a registered business name, the registered business name.
- (2B) Each partner stated in the licence, including the licence as amended under section 54B, is taken to be a holder of the licence.
- (3) An application under this section must be accompanied by the application fee prescribed under the Administration Act.
- (4) 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.

45 Grounds for refusal

- (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.

- (1A) If the applicant is a partnership, subsection (1) applies to each member of the partnership.
- (1B) Also, for a public weighbridge licence application for a weighbridge, the licensing authority must refuse the application if the administering authority considers the weighbridge is not suitable for use as a public weighbridge.
- (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.

46 Licensee to be allotted a mark

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.

47 Register of licences

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

48 Conditions may be imposed on licences

- (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.

49 Conditions on all servicing licences

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.

50 Conditions on all public weighbridge licences

- (1) A public weighbridge licence is subject to the following conditions:
- (a) a condition that the licensee must not operate the weighbridge mentioned in the licence unless the licence or a copy of the licence has a weighbridge suitability statement written on it that is in force,
 - (aa) a condition that the weighbridge suitability statement is in force only until the end of:
 - (i) the period for which the fee payable in relation to the statement has been paid,
 - or

- (ii) the period as extended under section 52A,
 - (ab) a condition that the weighbridge mentioned in the licence is to be located at the place stated in the licence,
 - (b) a condition that the licensee must ensure that the weighbridge mentioned in 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.

51 Conditions need not be endorsed on licence

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

52 Periodic licence fee

- (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.

52A Continuation of weighbridge suitability statement in particular circumstances

- (1) This section applies if:
- (a) before the end of the period for which a weighbridge suitability statement is in

force for a particular weighbridge, a licensee pays the fee for a new weighbridge suitability statement, and

- (b) the administering authority has not caused the weighbridge to be examined for the purpose of providing a new weighbridge suitability statement.
- (2) The licensee may continue to operate the weighbridge under the licence until the administering authority:
- (a) issues to the licensee a copy of the public weighbridge licence for the weighbridge with a weighbridge suitability statement on it in force for the period for which the fee payable in relation to the statement has been paid, or
 - (b) decides the weighbridge is no longer suitable for use as a public weighbridge and gives written notice of the decision to the licensee under section 52B (2).

52B If weighbridge no longer suitable for use as public weighbridge

- (1) This section applies if the administering authority decides a public weighbridge is no longer suitable for use as a public weighbridge.
- (2) The administering authority may give the licensee a notice stating:
 - (a) why the administering authority considers the public weighbridge is no longer suitable for use as a public weighbridge, and
 - (b) that the licensee may make written representations to the administering authority within 28 days stating why the licensee considers the public weighbridge licence for the public weighbridge should not be cancelled.
- (3) After considering any representations made to the administering authority, the administering authority may:
 - (a) decide to take no further action against the licensee, or
 - (b) recommend to the licensing authority that the public weighbridge licence for the public weighbridge be cancelled.
- (4) The licensing authority may cancel the licence on the recommendation of the administering authority under subsection (3) (b).
- (5) The administering authority must give the licensee a written notice stating:
 - (a) the decision and the reason for the decision, and
 - (b) that if the licensing authority cancels the licensee's licence, the licensee may apply to the review tribunal under the Administration Act for a review of the decision of the licensing authority.

(6) This section does not limit section 7.

53 Cancellation for non-payment of licence fee

- (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.

54 Surrender etc of licence

- (1) A licensee may surrender the licence by notice in writing given to the licensing authority.
- (2) Subject to section 54B, a licence is not transferable.

54A Effect of relocation of licensed weighbridge

- (1) This section applies if a licensee moves a weighbridge from the location at which it was inspected before the issue of the weighbridge suitability statement for the weighbridge to another location at the place stated in the licence.
- (2) The public weighbridge licence for the weighbridge is taken to have been surrendered under section 54.

54B Application to change licence holders due to change of partnership

- (1) This section applies if:
 - (a) a partnership is the holder of a licence, and
 - (b) there is or is proposed to be a change to the membership of the partnership (**the change**) with at least one partner before the change continuing as a partner after the change.
- (2) The partnership may apply to the licensing authority to amend the licence to state the partners who are or will be the partners after the change.
- (3) To the extent the change consists of a person ceasing to be a partner, the licensing authority must grant the application and amend the licence to remove the name of the partner from the licence.
- (4) To the extent the change involves a new partner being admitted to the partnership:
 - (a) the application must include the information about the new partner that the new partner would have to give to the licensing authority when applying for a licence of that kind, and
 - (b) after considering the application, the licensing authority must:

- (i) grant the application and amend the licence to include the name of the new partner, or
 - (ii) refuse the application under subsection (5).
- (5) The licensing authority must refuse an application to which subsection (4) applies if it would be refused under section 45 were it an application by the new partner for the licence.
- (6) If the licensing authority refuses the application, the licensing authority must notify the partnership of the grounds for the refusal and the right of review of the refusal under section 59.
- (7) If an application is granted relating to a change that is to happen at a later time, the licensing authority must amend the licence in accordance with the application from the later time.
- (8) To amend a licence under this section, the licensing authority may endorse the amendment on the licence held by the partnership, or replace the licence with a licence stating the membership of the partnership after the change.
- (9) An application must be accompanied by the application fee prescribed under the Administration Act.

54C Effect on licence of application under s 54B

- (1) This section applies if a change within the meaning of section 54B happens:
- (a) not more than 28 days before an application under the section is made, or
 - (b) after the application is made but before it is decided.
- (2) From the day of the change, the relevant licence is taken to be held by the partnership as it exists after the change, and each partner is taken to be a holder of the licence, until:
- (a) the application is granted, or
 - (b) if the application is refused—the end of the period allowed under the [Administrative Decisions Tribunal Act 1997](#) for a review and, if the partnership applies for a review of the refusal, the end of the review.

54D Application to amend condition of licence

- (1) A licensee under a servicing licence may apply to the licensing authority for an amendment to a condition of the licence of a kind mentioned in section 48 (2).
- (2) The licensing authority may amend or refuse to amend the licence.

- (3) An application must be accompanied by the application fee prescribed under the Administration Act.

55 Order preventing employment of certain persons

- (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

56 Grounds for disciplinary action

- (1) 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.

- (2) A ground for disciplinary action under subsection (1) exists in relation to a licensee who is a partnership if the ground exists in relation to any one or more of the members of the partnership.

57 Notice to licensee of grounds for disciplinary action

- (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.

58 Taking of disciplinary action

- (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 application with the review tribunal for a review of the decision to take the action, and
 - (b) if such an application has been duly lodged—until determination or abandonment of the application, unless the review tribunal otherwise orders.
- (3) Subsection (2) applies despite the provisions of Division 2 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

Division 4 Reviews by the Administrative Decisions Tribunal

59 Rights of review

A person may apply to the review tribunal under the Administration Act for a review of a decision of the licensing authority:

- (a) to refuse the person's application for a licence or an amendment of a licence, or
- (b) to make an order under section 55 in respect of the person, or
- (c) to impose or vary a condition to which the person's licence is to be subject, or
- (d) to reprimand the person as a licensee, or
- (e) to suspend the person's licence, or
- (ea) to cancel a public weighbridge licence because the public weighbridge mentioned in the licence is no longer suitable for use as a public weighbridge, or
- (f) to cancel the person's licence and disqualify the former licensee from holding a licence.

Part VII Inspectors

60 Powers of entry etc

- (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 an inspector, to enable the inspector:
 - (i) to enter and search it, or

- (ii) to weigh or measure it and its load, 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.

61 Powers in relation to measuring instruments

- (1) 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.
- (2) Also, the inspector may record the details of any measuring instrument that is examined or tested under this section in the way the inspector considers appropriate, including by filming or photographing.

62 Powers in relation to articles

- (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 and measure 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.
- (4) Also, the inspector may record the details of any article that is examined or measured under this section in the way the inspector considers appropriate, including by filming or photographing.

63 Pre-packed articles—special powers

- (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.

64 Return, disposal or forfeiture of seized property

- (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 a person guilty of the offence, 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.

65 Obstruction etc of inspector

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.

66 Self-incrimination

- (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.

67 Inspector's certificate of authority to be produced

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

68 Penalties in provisions

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.

69 Increased penalty for body corporate

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.

70 Compensation for loss caused by offence

- (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.

71 Offence by employee—liability of employer

- (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.

72 Offence by body corporate—liability of directors etc

(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.

73 False or misleading statements

(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.

74 Evidence—signature of Minister, administering authority

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.

75 Certificate evidence

(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.

76 Evidence—pre-packed articles

(1) A marking on the package containing a pre-packed article of the name of a person is 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 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 evidence that the article was packed on that date.

(4) A batch number on a pre-packed article is evidence of the matters indicated by the number, including for example, the date and place the article was packed and who packed it.

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

(6) In this section:

batch number means a number marked on a pre-packed article in accordance with a system of numbers, letters or symbols or any combination of numbers, letters and symbols, used by the person packing the article to mark the article to indicate when and where it was packed and who packed it.

77 Packaged article presumed to be pre-packed in certain circumstances

- (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.

78 Evidence—use of measuring instrument for trade

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.

79 Records—English language

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.

80 Regulations

- (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 certified, 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) weighbridge suitability statements,
- (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,
- (v) the approval of forms for use under this Act.

- (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.

81 Special provisions—application of Act in the State

- (1) Nothing in this Act affects the operation of the *Fair Trading Act 1987*.
- (2) (Repealed)

Part IX Transitional provisions for Trade Measurement Legislation Amendment Act 2007

82 Certificates of suitability

A certificate of suitability for a public weighbridge, that is in force immediately before the commencement of the *Trade Measurement Legislation Amendment Act 2007*, is taken to be a weighbridge suitability statement for the weighbridge's public weighbridge licence expiring when the certificate of suitability would otherwise have expired.

83 Existing licensed public weighbridges

- (1) This section applies if, immediately before the commencement of the *Trade Measurement Legislation Amendment Act 2007*, a licensee operates more than one public weighbridge under a public weighbridge licence.
- (2) On the commencement:
 - (a) each public weighbridge is taken to be licensed under a separate public weighbridge licence, and
 - (b) a separate periodic licence fee is not payable because of paragraph (a) until the day the periodic licence fee is payable under section 52 after the commencement.
- (3) Also, if, after the commencement:
 - (a) a licensee for a public weighbridge that is taken under subsection (2) (a) to be licensed under a separate public weighbridge licence pays a separate periodic licence fee for the public weighbridge, and
 - (b) the administering authority decides the weighbridge is still suitable for use as a

public weighbridge,

the licensing authority must issue to the licensee a separate public weighbridge licence for the weighbridge with a weighbridge suitability statement on it in force for the period for which the fee payable in relation to the statement has been paid.

Schedule 1 (Repealed)