

WEIGHTS AND MEASURES (AMENDMENT) ACT.

New South Wales



ANNO SEPTIMO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 12, 1968.

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

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

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

(2)

Weights and Measures (Amendment).

(2) The Weights and Measures Act, 1915, as subsequently amended, is in this Act referred to as the Principal Act. No. 12, 1968

(3) The Principal Act, as amended by this Act, may be cited as the Weights and Measures Act, 1915–1968.

(4) The several provisions of this Act shall commence upon such day or days as may be appointed by the Governor in respect thereof and notified by proclamation published in the Gazette.

2. The Principal Act is amended—

Amendment
of Act No.
10, 1915.
(Part I—
Prelim-
inary.)

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

Sec. 1.
(Short
title.)

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

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

New sec.
5A.

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

Construc-
tion of Act.

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

Sec. 6.
(Defini-
tions.)

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

“Brand”

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—

“Brand” includes any mark, device, name, word, letter, numeral or symbol, or any combination thereof.

(ii) by omitting from the definition of “Coal” in the same section the words “, coke, and charcoal” and by inserting in lieu thereof the words “and coke”;

(iii) by inserting in the same section next before the definition of “Measuring instrument” the following new definition :—

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

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

“Pack” includes authorise, direct, cause, permit or suffer to be packed.

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

(v) by omitting from the definition of “Purchaser” in the same section the words “person purchasing” and by inserting in lieu thereof the words “a person who purchases an article”;

(vi) by inserting in the same section next after the definition of “Schedule” the following new definition :—

“Sell” includes—

(a) offer or expose for sale;

(b) keep or have in possession for sale;

(c) barter or exchange;

(d)

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- (d) deal in or agree to sell; **No. 12, 1968**
 (e) send, forward or deliver for sale or on sale; and
 (f) authorise, direct, cause, permit or suffer any of those acts or things,

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

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

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

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

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

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

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

PART III.

SALE AND PACKAGING OF ARTICLES.

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

Interpretation.

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

(b)

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(b) any article of any description, being an article contained in a package, that is found on premises where articles of that description are so packed, or are kept or stored for sale after being so packed, shall be deemed to be pre-packed within the meaning of this Part unless the contrary is proved, and it shall not be sufficient proof to the contrary to show that the package has not been marked in accordance with or has been marked in contravention of the provisions of this or any other Part of this Act or any other Act or the regulations made under this or any other Act with respect to the marking of packages containing articles of that description.

(2) Except as otherwise prescribed, a reference in this Part or the regulations to the weight or measure or the true weight or measure of an article shall be construed as a reference to the weight or measure of the article excluding the weight or measure of the package in which the article is contained.

(3) A reference in this Part to the weight or measure or the true weight or measure of an article shall, in the case of an article of a kind that is ordinarily packed or sold by number, be construed as a reference to a quantity of that article counted by number.

(4) Where by or under this Part, any particulars or words are, or any statement or expression is, required, permitted or forbidden to be marked on a package containing an article, the particulars, words, statement or expression shall be deemed to be marked on the package if marked on a label attached to the package or to the article.

(5) A reference in this Part, however expressed, to the marking of a package with a statement of the weight or measure of the article contained in the package shall be construed as including a reference to the marking with such a statement of a label attached to the package or the article.

(6)

Weights and Measures (Amendment).

(6) A reference in this Part, however expressed, to— No. 12, 1968

- (a) a package containing an article, or a package in which an article is contained, shall be construed, where appropriate, as including a reference to a package to which an article is attached or around which an article is wound or wrapped; and
- (b) an article contained in a package, shall be construed, where appropriate, as including a reference to an article that is attached to, wound around, or wrapped around, a package.

(7) For the purposes of this Part, an article shall be deemed not to be weighed or measured in the presence of a purchaser unless the weighing instrument or the measure or measuring instrument by which the article is weighed or measured is so constructed, placed in such a position, and so used as to enable the purchaser to have a clear and unobstructed view of and to see easily—

- (a) the weight or measure, or indication of the weight or measure of the article; and
- (b) the operation of the weighing or measuring of the article.

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

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

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

25.

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No. 12, 1968
Weight
of bushel.

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

Sales to be
by net
weight or
measure.

26. A person shall not, except as prescribed or as otherwise provided by or under any other Act—

- (a) sell an article by weight or measure otherwise than by net weight or measure; or
- (b) mark a package containing any article with the words "gross weight" or words to the like effect or sell an article in a package so marked.

Invoice or
delivery
note to be
supplied in
certain
cases.

27. (1) Where an article sold by weight or measure is delivered to the purchaser at a place other than the premises of the seller, the seller shall deliver to the purchaser with the article an invoice or delivery note showing as the weight or measure of the article a weight or measure that is not more than its true weight or measure.

(2) Subsection one of this section does not apply to—

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

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

No. 12, 1968
Provision
for weigh-
ing or
measuring.

29. (1) Any person who—

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

False
declaration
as to
measures,
weight, &c.

shall be guilty of an offence against this Act.

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

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

Sale at
stated price
per unit
of weight
or measure.

(iii)

29B.

Weights and Measures (Amendment).

No. 12, 1968 29B. (1) A person shall not, except as prescribed, on or after the appointed day, pack an article as a pre-packed article, unless the package in which the article is contained is marked—

Name, etc., of packer to be marked on packages.

(a) where the person packing the article—

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

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

(b) where the article is packed for or on behalf of another person by a person who is not an employee of that other person, and that other person—

- (i) is an individual—with the name and address of that individual;
- (ii) is a corporation—with the name of that corporation and if it has a registered office in New South Wales, the address of that office or if it has no such office in New South Wales, the address of its sole or principal place of business; or

(iii)

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(iii) is a firm trading under a registered business name—^{No. 12, 1968} with that business name and the address of its sole or principal place of business,

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

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

(2) A person shall not, on or after the appointed day, sell a pre-packed article unless the package containing the article is marked as mentioned in subsection one of this section.

(3) Nothing in subsection two of this section prohibits the sale, pursuant to a permit under section 29F of this Act, of an article to which the permit relates.

(4) In this section, “registered business name”, in relation to a firm, means the business name of that firm registered under the law in force in the place where that firm has its sole or principal place of business.

29c. (1) A person shall not, on or after the appointed day, pack, as a pre-packed article, an article of any description to which this section applies except in a weight or measure of such denomination as may be prescribed in relation to articles of that description.

Certain articles to be packed and sold only in certain denominations.

(2) A person shall not, on or after the appointed day, sell a pre-packed article of any description to which this section applies unless the article is packed as mentioned in subsection one of this section.

(3) Nothing in subsection two of this section prohibits the sale, pursuant to a permit under section 29F of this Act, of an article to which the permit relates.

(4)

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(4) Notwithstanding the provisions contained in this or any other Act or in any regulation relating to the denominations of weight or measure in which an article of any description to which this section applies may be packed for sale, a person may, on and after the date of the commencement of this section and before the appointed day under subsection one of this section in relation to any such article, pack for sale or, on or after that date of commencement and before the appointed day under subsection two of this section in relation to any such article, sell, any such article in a weight or measure of a denomination prescribed for the purposes of this section in relation to articles of that description.

(5) This section applies to articles of such description as may be prescribed.

Packages,
etc., to
be marked
with
particulars
of the
quantity of
the articles
contained
therein.

29D. (1) A person shall not, on or after the appointed day, pack, as a pre-packed article, an article of any description to which this section applies unless a statement of the purported weight or measure of the article is marked, as prescribed, on the package containing the article.

(2) For the purposes of subsection one of this section any statement of weight or measure marked on a package containing an article shall be deemed to be a statement of the purported weight or measure of the article unless the context in which the statement is made indicates the contrary.

(3) A person shall not, on or after the appointed day, sell a pre-packed article of any description to which this section applies unless the package in which the article is contained is marked as mentioned in subsection one of this section.

(4) Nothing in subsection three of this section prohibits the sale, pursuant to a permit under the provisions of section 29F of this Act, of an article to which the permit relates.

(5)

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(5) Notwithstanding the provisions contained in this **No. 12, 1968** or any other Act relating to the marking of a package containing an article with particulars of the weight or measure of the article, a person may, on and after the date of the commencement of this section and before the appointed day under subsection one of this section in relation to any such article, pack for sale, or, on or after that date of commencement and before the appointed day under subsection three of this section in relation to any such article, sell, any such article if the package in which the article is contained is marked in accordance with subsection one of this section.

(6) This section applies to all articles other than articles of such descriptions as may be prescribed.

29E. (1) In subsections one and two of section 29C of this Act, the appointed day in relation to articles of any particular description means such day as the Minister may, by order published in the Gazette, declare, for the purposes of those or either of those subsections, to be the appointed day in relation to articles of that description. “Appointed day” for purposes of sections 29B (1), (2), 29C (1), (2) and 29D (1), (3).

(2) An order made by the Minister under subsection one of this section may declare different days as the appointed days in relation to articles of different descriptions, but any day so declared shall be a day not earlier than one year after the date of commencement of the subsection for the purposes of which the day is appointed and not earlier than the day on which the order is published in the Gazette.

(3) In subsections one and two of section 29B, and in subsections one and three of section 29D, of this Act, the appointed day means such day as the Minister may, by order published in the Gazette, declare, for the purposes of those or any of those subsections, to be the appointed day, that day or any of those days being not earlier than one year after the date of the commencement of the subsection for the purposes of which the day is appointed and not earlier than the day on which the order is published in the Gazette.

29F.

Weights and Measures (Amendment).

No. 12, 1968 29F. (1) Where any pre-packed articles were not packed, or the packages in which the articles are contained are not marked, in the manner prescribed by or under this Act and the Minister is satisfied that—

Permits for sale of articles that do not comply with the pre-scribed requirements.

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

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

(2) A permit under this section may be granted upon and subject to—

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

(iv)

Weights and Measures (Amendment).

- (iv) the furnishing by the holder of the permit No. 12, 1968 of returns relating to the sale of the articles; and
- (b) such other conditions as the Minister thinks fit and specifies in the permit.
- (3) A person—
- (a) being the holder of a permit under this section, shall not sell a pre-packed article the sale of which is authorised by a permit under this section otherwise than in accordance with the conditions specified in the permit;
- (b) shall not falsely represent that a permit has been granted under this section in relation to any particular article;
- (c) shall not, where a permit issued to him under this section has ceased to be in force, whether by reason of its cancellation or the effluxion of time, sell any article to which the permit related; or
- (d) shall not, where he has been authorised by a permit under this section to sell a specified number of articles of any description, sell any greater number of those articles.
- (4) Unless sooner cancelled pursuant to subsection five of this section a permit under this section shall be in force for such period as is specified in the permit, but may be renewed from time to time by the Minister for such further period or periods as the Minister may think fit.
- (5) The Minister may, at any time, by notice in writing to the holder of a permit under this section, cancel the permit if the Minister is satisfied that it is desirable in the public interest so to do.
- (6) Where a permit under this section is cancelled pursuant to subsection five of this section the holder thereof shall forthwith deliver up the permit to the superintendent.

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Short
weight or
measure of
pre-packed
articles.

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

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

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

shall be guilty of an offence against this Act.

(3) Subsection one of this section and paragraph (a) of subsection two of this section shall have effect in relation to any pre-packed article whether or not the package containing the article is required, by or under this Act, to be marked with a statement of the weight or measure of the article.

(4) Where a package is marked with two or more statements of weight or measure, each of those statements shall, for the purposes of this section, be deemed to be a statement of the weight or measure of the article contained in the package unless the context in which the statement is made indicates the contrary, and the true weight or measure of the article shall for the purposes of subsection one, and paragraph (a) of subsection two, of this section, be deemed to be less than the weight or measure of the article marked on the package if that true weight or measure is less than the weight or measure stated in any of those statements.

(5) Where—

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

(b)

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- (b) a statement of the price of the article is marked **No. 12, 1968** on the package containing the article; and
- (c) that statement exceeds the price correctly computed from the true weight or measure of the article and the indicated price per unit of weight or measure,

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

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

(a) to prove—

(i) that he obtained the article from another person who packed the article or delivered it to him pursuant to a sale to him and that that other person furnished him with a written statement (in this section referred to as a “guarantee”) that the weight or measure of the article stated on the package containing the article was correct; and

(ii) that he sold the article in the same state as it was when delivered to him; or

(b) to prove that, in the case of an article of any description to which section 29D of this Act applies,—

(i) he obtained the article from another person who delivered it to him pursuant to a sale to him and that when he so obtained the article it was in a package that was marked as required by section 29B and by section 29D of this Act; and

(ii) that he sold the article in the same state as it was when delivered to him.

(7)

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(7) Where a person gives a guarantee referred to in paragraph (a) of subsection six of this section and the true weight or measure of any pre-packed article in respect of which the guarantee was given is found by an inspector to be less than the weight or measure of the article as stated in the guarantee, that person shall, subject to this section, be guilty of an offence against this Act and be liable to a penalty not exceeding four hundred dollars.

(8) In proceedings against a person in respect of an offence against this Act arising under subsection seven of this section, it shall be a defence for the person charged to prove that any deficiency in the true weight or measure of the article to which the proceedings relate—

- (a) arose after the giving of the guarantee and was attributable wholly to factors for which reasonable allowance was made in stating the weight or measure of the article; or
- (b) is due to the act or default of some other person after the article had passed from the control of the person charged.

(9) Where—

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

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

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

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

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

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(10) Where an inspector referred to in paragraph No. 12, 1968
(e) of subsection nine of this section finds that the average true weight or measure of the deficient article referred to in that subsection and of all the articles contained in the similar packages taken as referred to in that subsection is—

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

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

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

he

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No. 12, 1968 — he intends to rely on a defence provided by any of the provisions of those subsections of this section and of the particulars of that defence.

Articles that may be marked "net weight when packed".

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

- (a) the article is of a description to which this section applies; and
- (b) where the regulations prescribe the manner of marking any such words on a package, the package is marked in that manner.

(2) The regulations may require that in relation to any other particulars required by or under this Act to be marked on a package containing an article of a description to which this section applies, a package shall be marked in the prescribed manner with the date on which the article was packed or with an approved brand indicating that date.

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

Articles that may be marked with their weight at standard conditions.

29I. (1) A person shall not mark the words "at standard conditions" or words to the like effect on a package containing an article unless—

- (a) the article is of a description to which this section applies; and
- (b) where the regulations prescribe the manner of marking any such words on a package, the package is marked in that manner.

(2) In the application of section 29G of this Act to any article of a description to which this section applies a reference in that section to the true weight of an article shall be construed as a reference to the weight ascertained in the prescribed manner of the article if it were weighed at the prescribed standard conditions.

(3)

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(3) This section applies to articles of such descriptions as may be prescribed. No. 12, 1968

29J. (1) Subject to this section, a person who, on or after the appointed day, packs a pre-packed article in a package on which is marked a prohibited expression or a restricted expression shall be guilty of an offence against this Act. Prohibition and restriction of use of certain expressions on packages.

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

(3) The provisions of subsections one and two of this section relating to the marking on a package of a restricted expression shall not apply to or in relation to an article contained in a package on which a restricted expression appears if, in addition to that expression—

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

(4)

No. 12, 1968

(4) In this section—

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

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

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

Fraud in
using
weights,
measures,
etc.

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

(2)

Weights and Measures (Amendment).

(2) Where the weight, measure, weighing instrument No. 12, 1968 or measuring instrument with which any such fraud was so committed was in the possession of the person by whom the fraud was committed, the weight, measure, weighing instrument or measuring instrument may be seized by an inspector.

29L. (1) Notwithstanding any other law or rule of law where any person, in this section referred to as "the agent", acting, otherwise than as an employee, for or on behalf of another person, in this section referred to as "the principal", contravenes this Part or is guilty of an offence against this Act arising under any of the provisions of this Part, the principal shall be guilty of an offence against this Act in like manner as the agent and may be proceeded against and convicted accordingly unless he proves that he had no knowledge of the commission of the offence and that he took all reasonable precautions and used all due diligence to avoid the commission of the offence. Liability of principal for acts of agent.

(2) The principal may be proceeded against and convicted pursuant to subsection one of this section whether or not the agent has been proceeded against or been convicted under this Act.

(3) Nothing in subsection one of this section shall prejudice or affect any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.

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

the

Weights and Measures (Amendment).

No. 12, 1968 the employer's authority or contrary to his orders or instructions, and may be proceeded against and convicted accordingly unless he proves that he had no knowledge of the commission of the offence and could not, by the exercise of due diligence, have prevented the commission of the offence.

(2) The employer may be proceeded against and convicted pursuant to subsection one of this section whether or not the employee has been proceeded against or been convicted under this Act.

(3) Nothing in subsection one of this section shall prejudice or affect any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.

General provisions relating to proceedings for offences.

29N. (1) Where a person, in this subsection referred to as "the defendant", is convicted of an offence against this Act arising under this Part and the court by which he is convicted is of the opinion that some other person was defrauded or suffered pecuniary loss by reason of the commission of the offence, the court may, in addition to imposing a penalty for the offence, order the defendant to pay to that other person, by way of recoupment of his loss, such sum as the court thinks fit and as may be specified in the order.

(2) Any order made under subsection one of this section shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, as subsequently amended, and be enforceable as such under the provisions of that Act.

(3) A prosecution for an offence against this Act arising under this Part may be instituted at any time within a period of twelve months after the commission of the offence or within a period of six months after the commission of the offence comes to the knowledge of an inspector, whichever period last expires.

(4)

Weights and Measures (Amendment).

(4) In any proceedings for an offence against this Act arising under this Part, a witness shall not be excused from answering any question or producing any document on the ground that the answer or production may criminate or tend to criminate him, but an answer made or a document produced by any such witness shall not be admissible in evidence against him in any proceedings for an offence against this Act arising under this Part. No. 12, 1968

29o. (1) In proceedings in respect of an offence against this Act arising under section 29B of this Part, it is a defence for the person charged to prove that the article to which the proceedings relate was packed on any premises for sale on those premises to a person for the purpose of consumption or use and not for the purpose of re-sale. Defences.

(2) In proceedings in respect of an offence against this Act arising under section 29C or 29D of this Act, it is a defence for the person charged to prove that the article to which the proceedings relate was packed for export from Australia and that the marking on the package containing the article clearly so indicated and, in the case of an offence against this Act arising under subsection two of section 29C, or subsection three of section 29D, of this Act, that the article was sold for export from Australia.

(3) In proceedings in respect of an offence against this Act arising under subsection two of section 29B, subsection two of section 29C, subsection three of section 29D, subsection two or subsection five of section 29G or subsection two of section 29J of this Act, it is a defence for the person charged to prove—

- (a) that the commission of the offence was due to a cause or to causes beyond his control;
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the article to which the proceedings relate; and

(c)

Weights and Measures (Amendment).

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(c) that he obtained the article from another person and sold or delivered it in the same state as it was when delivered to him.

(4) In proceedings in respect of an offence against this Act arising under subsection one of section 29G of this Act, it is a defence for the person charged to prove—

(a) that—

(i) the deficiency arose after the packing of the article and the marking of the package and was attributable wholly to factors for which reasonable allowance was made in stating the weight or measure of the article; or

(ii) the commission of the offence was due to a cause or to causes beyond his control; and

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

(5) For the purposes of subsections three and four of this section a cause is not beyond the control of a person against whom proceedings referred to in either of those subsections are brought unless the court before which the proceedings are brought is satisfied that the cause was one that the person charged could not reasonably have foreseen or for which he could not reasonably have made allowance.

(6) Subsections one, two, three and four of this section do not apply unless the person charged has, not less than two days before the date set down for the hearing of the proceedings, by a notice in writing, informed the informant that he intends to rely on a defence provided by any of the provisions of those subsections and of the particulars of that defence.

Weights and Measures (Amendment).

29P. (1) On the application of a person by whom or for or on whose behalf an article is packed as mentioned in subsection one of section 29B of this Act, the superintendent may approve in writing of a brand for use by that person—

No. 12,1968
Approval
of brands.

- (a) for the purpose of marking on packages—
 - (i) the name and address required by paragraph (a) of subsection one of section 29B of this Act to be marked on packages; or
 - (ii) the name and address required by paragraph (b) of that subsection to be marked on packages; or
- (b) which, where the regulations require the dates when the articles contained in the packages were packed to be marked on the packages is, or incorporates, a device approved by the superintendent for the purpose of indicating those dates.

(2) An approval under subsection one of this section may be granted subject to such conditions, if any, as the superintendent determines and specifies in the approval and may be cancelled by the superintendent at any time by notice in writing given to the person to whom the approval was granted.

(3) A person to whom an approval under subsection one of this section has been granted subject to conditions shall not mark a package containing an article with the brand specified in the approval otherwise than in compliance in all respects with those conditions.

(4) Where a brand has been approved under subsection one of this section for use by a person for the purposes of marking on packages the name and address referred to in subparagraph (i) or (ii) of paragraph (a) of that subsection, a person other than the person to whom that approval was granted or a person having his authority so to do shall not mark a package containing an article with the brand specified

in

No. 12, 1968 in the approval or with any other brand so closely resembling the brand specified in the approval as to be likely to lead to the belief that it is the brand specified in the approval.

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

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

(ii)

Weights and Measures (Amendment).

- (ii) that a permit cancelled under subsection No. 12, 1968 five of section 29F of this Act has not been delivered up to him,
shall be evidence of the matters stated in the certificate;
- (g) a document purporting to be certified by the superintendent to be a copy of an approval granted by him under subsection one of section 29P of this Act shall be evidence of the approval and of the conditions, if any, subject to which the approval was granted, and the fact that such a brand is marked on a package containing an article shall be evidence—
- (i) where the approval was granted to a person for the purpose referred to in subparagraph (i) of paragraph (a) of that subsection, that the article was packed by the person to whom the approval was granted and at the place the address of which is specified in the approval as the address indicated by the brand;
 - (ii) where the approval was granted to a person for the purpose referred to in subparagraph (ii) of paragraph (a) of that subsection, that the article was packed for or on behalf of the person whose name and address are indicated by the brand; or
 - (iii) where approval is of a brand which is, or incorporates, a device referred to in paragraph (b) of that subsection, that the article was packed on the date indicated by that device,
- as the case requires; and
- (h) a certificate purporting to be signed by the superintendent and stating that an approval granted by him under subsection one of section 29P of this Act was cancelled on a date specified in the certificate shall be evidence of the matters stated in the certificate.

29R.

Weights and Measures (Amendment).

No. 12, 1968 29R. (1) The Governor may make regulations for or with
Regulations. respect to—

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

(g)

Weights and Measures (Amendment).

- (g) the method by which, and the conditions under which, the weight or measure of articles is to be determined in connection with the marking or displaying on packages or on vending machines referred to in paragraph (c) of this subsection of any particulars or statements referred to in the foregoing provisions of this subsection; No. 12, 1968
- (h) permitting, in the case of such articles and in such circumstances as may be specified in the regulations, the weight or measure of any articles used in packing the first-mentioned articles for sale as may be so specified to be included, notwithstanding any other provision of this Part, in the net weight or measure of the first-mentioned articles;
- (i) exempting, either wholly or to such extent as may be prescribed, or authorising a prescribed person to exempt, either unconditionally or subject to such conditions and restrictions as that person may determine, from any of the provisions of this Part—
- (i) articles of any description prescribed or referred to in the regulations and packages containing any such articles; and
 - (ii) prescribed transactions and classes of sales;
- (j) prescribing standard specifications of capacity for or in relation to packages used in the packing or sale of prescribed articles, prescribing distinctive marks for packages made to those specifications, and prohibiting or regulating the sale of any such articles, when packed, otherwise than in prescribed packages made to those specifications and bearing the prescribed distinctive marks;
- (k) requiring packages containing articles to be marked with a statement of the sale price per unit of weight or measure of the articles;

Weights and Measures (Amendment).

No. 12, 1968

- (l) generally regulating and controlling the packing of articles and the marking of packages in which articles are contained; and
- (m) prescribing all matters which by this Part are required or permitted to be prescribed or which are necessary or convenient for giving effect to this Part.

(2) The regulations made under this Part may impose a penalty not exceeding one hundred dollars for any offence against the regulations.

(3) The regulations made under this Part—

- (a) may make different provision in respect of different descriptions of articles, packages, transactions and classes of sales;
- (b) may be made so as to apply generally or only in respect of the packing or sale of articles of denominations of weight or measure greater than or less than some other prescribed multiple of a prescribed denomination;
- (c) may be of general or specially limited application; and
- (d) may differ according to differences in time, locality, place or circumstance.

(2) Notwithstanding the repeal of Part III of the Principal Act by subsection one of this section, subsection three of section twenty-five of the Principal Act as in force immediately before the commencement of section 29D of the Principal Act (as inserted by subsection one of this section) shall after that commencement continue in force in relation to any article in a package, not being an article referred to in paragraph (a) or (b) of subsection four of the said section twenty-five, until the appointed day referred to in subsection three of section 29D of the Principal Act (as so inserted) and a person contravening the provisions of subsection three of the said section twenty-five may be proceeded against and shall be liable to the same penalty as if that subsection had not been repealed.

*Weights and Measures (Amendment).***4. The Principal Act is further amended—****No. 12, 1968**Further
amendment
of Act No.
10, 1915.
(Part IV—
Verification
and Stamp-
ing.)

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

Sec. 30.
(Verification
and stamp-
ing.)

(1A) Subsection one of this section does not operate to require any measure made entirely of glass to be stamped, if that measure—

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

(1c)

Weights and Measures (Amendment).

No. 12, 1968

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

Sec. 31.
(Reverifica-
tion and re-
stamping.)

(b) by inserting in subsection one of section thirty-one after the word "glass," the words "or a weight, measure, weighing instrument or measuring instrument of a prescribed class";

Sec. 33.
(Using
defective
or repaired
weights,
&c., until
re-stamped.)

(c) by inserting in section thirty-three after the word "thereon" the words "and, unless the weight, measure, weighing instrument or measuring instrument has been produced at the office of an inspector and reverified and stamped, notify the superintendent in writing within twenty-one days after destroying the stamp that the stamp has been destroyed".

Further
amendment
of Act No.
10, 1915.

(Part V—
Sale of
Coal and
Firewood.)

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

Sec. 39.
(Regula-
tions.)

5. The Principal Act is further amended—

(a) by omitting section thirty-seven;

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

6.

Weights and Measures (Amendment).

6. The Principal Act is further amended—

No. 12, 1968

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

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

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

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

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

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

(1B) An inspector may require the driver or person in charge of a vehicle by whom any invoice or delivery note relating to any articles being carried on the vehicle for delivery to a purchaser is held to produce that invoice or delivery note to the inspector.

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

Subst.
sec. 42.

42. Any person who—

Obstruc-
tion of
inspector.

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

(b)

Weights and Measures (Amendment).

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

shall be guilty of an offence against this Act.

Sec. 44.
(Penalties.)

- (c) by omitting from section forty-four the words "one hundred dollars" and by inserting in lieu thereof the words "two hundred dollars for a first offence or four hundred dollars for a second or subsequent offence";

Sec. 54.
(Evidence of regulations.)

- (d) by inserting at the end of section fifty-four the following new subsection :—
 - (2) A certificate purporting to be signed by the superintendent certifying—
 - (a) that any weight or measure specified in the certificate is a standard of measurement—
 - (i) that has been provided and maintained by the Minister under subsection one of section twelve of this Act; or
 - (ii)

Weights and Measures (Amendment).

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

(b) that a person specified in the certificate is or was at a time or during a period specified in the certificate an inspector,

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

(e) (i) by omitting paragraphs (o1) and (q) of subsection one of section fifty-seven;

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

(ii) by inserting next before paragraph (r) of the same subsection the following new paragraphs :—

(q1) The registration, examination and licensing of persons carrying on the business of repairing or adjusting weighing and measuring instruments and the regulation of persons carrying on any such business.

(q2) The manner of testing of glass measures for the purposes of paragraph (c) of subsection (1A) of section thirty of this Act, the manner of marking any such measures, requiring the manufacturer to produce to an inspector production records relating to the manufacture of any such measures and prohibiting the removal from the manufacturer's premises of any such measures bearing a mark of verification without approval of an inspector.

(iii)

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

GOVERNOR'S