

WEIGHTS AND MEASURES.

No. 34 of 1967.

AN ACT to amend the Weights and Measures Act, 1915-1965 and to repeal section nine of the Weights and Measures Act Amendment Act, 1965.

[Assented to 21st November, 1967.]

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

1. (1) This Act may be cited as the *Weights and Measures Act Amendment Act, 1967*.

(2) In this Act the Weights and Measures Act, 1915-1965, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Weights and Measures Act, 1915-1967.

2. (1) Subject to subsection (2) of this section, this Act or any provision thereof shall come into operation on such date or such dates as are respectively fixed by proclamation. Commence-
ment.

(2) Where pursuant to subsection (1) of this section a date has been fixed as the date of the coming into operation of this Act or any provision thereof, the Governor may, by subsequent proclamation published in the *Gazette* before that date, fix such later date as is specified in the proclamation as the date of the coming into operation of this Act or of that provision, as the case requires.

3. Section nine of the Weights and Measures Act Amendment Act, 1965 is repealed. Repeal.

4. Section two of the principal Act is amended by adding after the passage, "PART III.—THE LAW OF WEIGHTS AND MEASURES, SS. 18-27.", the following passage— S.2 amended.

PART IIIA. — SPECIAL PROVISIONS IN
RESPECT OF PRE-PACKED ARTICLES,
SS. 27A-27S.

5. Section four of the principal Act is amended— S.4 amended.

(a) by adding immediately after the section number, "4.", the subsection designation, "(1)";

(b) by adding before the interpretation, "Coal", the following interpretation—

"Chief Inspector" means the chief inspector of weights and measures appointed under section six of this Act. ;

- (c) by substituting for the interpretation, "Package" the following interpretation—

"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. ;

- (d) by adding after the interpretation, "Secretary for Labour", the following interpretation—

"Sell" includes—

- (a) offer or expose for sale;
- (b) keep or have in possession for sale;
- (c) barter or exchange;
- (d) deal in or agree to sell;
- (e) send, forward, or deliver for sale or on sale; and
- (f) authorise, direct, cause, permit or suffer any of those acts or things,

and "sale" and "sold" have corresponding meanings. ; and

- (e) by adding the following subsections—

(2) Except as otherwise prescribed, a reference in this Act to the 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 Act to the 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 Act, 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 Act (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 to the article.

(6) A reference in this Act (however expressed) to—

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

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

6. Section nineteen of the principal Act is ^{S.19} amended—

(a) by repealing subsection (1) and re-enacting that subsection as follows—

(1) 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. ; and

- (b) by deleting the proviso appearing at the end of the section.

S.21
repealed and
re-enacted.

7. Section twenty-one of the principal Act is repealed and re-enacted as follows—

Sales by net
weight or
measure.

21. (1) Except as otherwise prescribed by this or any other Act, a person shall not—

- (a) sell an article by weight or measure otherwise than by net weight or measure; or
- (b) mark a package containing an article, or cause, permit, or suffer such a package to be marked, with the words "Gross weight" or words to the like effect.

Penalty: Two hundred dollars.

(2) A person by whom an article is sold shall, if the article is sold by weight or measure and is delivered to the purchaser at a place other than the premises of the seller, deliver with the article an invoice or delivery note showing the weight or measure of the article so delivered.

(3) Subsection (2) of this section does not apply to or in relation to bread or—

- (a) a pre-packed article within the meaning of section twenty-seven A of this Act contained in a package on which is marked the net weight or measure of the article; or
- (b) an article that is, otherwise than at the request of the purchaser, weighed or measured before or at the time of sale and in the presence of the purchaser, or to a package containing such an article.

(4) For the purposes of paragraph (b) of subsection (3) of this section, an article shall be deemed not to be weighed or measured in the presence of the purchaser unless the 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.

(5) Where beer, including ale, porter and stout is sold in a vessel specified in the first column of the table to this subsection, the vessel shall contain not less than the quantity set out in the second column of that table opposite to that vessel—

Hogshead	.....	.....	.....	52 gallons
Barrel	.....	.....	.....	35 gallons
Half-hogshead	.....	.....	.....	26 gallons
Kilderkin	.....	.....	.....	17 gallons
10-gallon keg	.....	.....	.....	9½ gallons
9-gallon keg	.....	.....	.....	8½ gallons
5-gallon keg	.....	.....	.....	4½ gallons

(6) Any article may, by regulation, be exempted from all or any of the provisions of this section. .

8. Section twenty-two of the principal Act is ^{S.22} repealed.

9. Section twenty-three of the principal Act is ^{S.23} repealed.

S.24
amended.

10. Subsection (1) of section twenty-four of the principal Act is repealed and re-enacted with amendments as follows—

(1) Any person who offers or exposes for retail sale by weight or measure any article in a shop or other place, or in a vehicle, pack, basket or other receptacle, shall—

(a) have a suitable weighing or measuring instrument that is placed in such a position, and is capable of being so used in that position, as to enable a purchaser to have a clear and unobstructed view of, and to see easily—

(i) the weight or measure, or indication of the weight or measure, of any article weighed or measured on the instrument;
and

(ii) the operation of the weighing or measuring of the article;

(b) where the instrument is a weighing instrument, keep thereby such weights, if any, as are necessary for weighing articles thereon; and

(c) at the request of the purchaser of any article sold by retail, by weight or measure, weigh or measure the article in the presence of the purchaser on a weighing or measuring instrument that complies with the requirements of paragraph (a) of this subsection.

S.26A
added.

11. The principal Act is amended by adding after section twenty-six a section as follows—

Certain
provisions of
this Part not
to apply to
certain
articles and
packages.

26A. The provisions of sections twenty-five and twenty-six of this Act do not apply to or in relation to an article or package to which the provisions of Part IIIA of this Act apply. .

12. The principal Act is amended by adding after Part III the following heading and section—

Heading and
S.27A added.

PART IIIA.—PRE-PACKED ARTICLES.

27A. (1) In this Part —

Interpreta-
tion.

“approved brand” means a brand approved by the chief inspector;

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

(2) For the purposes of this Part —

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

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

13. The principal Act is amended by adding a section as follows—

S.27B added.

27B. (1) Nothing in this Part or in the regulations in force thereunder applies to or in relation to—

Exemptions.

(a) an exempted article; or

(b) a package that contains an exempted article only or two or more exempted articles only.

(2) Nothing in this Part or in the regulations in force thereunder with respect to the packing of an article for sale or the marking of a package containing an article applies to or in relation to an article that is, otherwise than at the request of the purchaser, weighed or measured before or at the time of sale and in the presence of the purchaser, or to a package containing such an article. .

(3) For the purposes of subsection (2) of this section, an article shall be deemed not to be weighed or measured in the presence of the purchaser unless the 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.

(4) In subsection (1) of this section, “exempted article” means—

- (a) bread; and
- (b) an article of any description that is wholly exempted by the regulations from the operation of this Part and the regulations in force thereunder.

S.27C added.

14.* The principal Act is amended by adding a section as follows—

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

27C. (1) A person shall not pack an article for sale, or cause, permit, or suffer an article to be packed for sale, unless the package in which the article is contained is marked, in accordance with the regulations, with—

- (a) his name and the address of the place where the article was packed, or an approved brand; and

- (b) if the article was packed for or on behalf of another person (not being the employer of the person who packed the article), the name and address of that other person, or an approved brand.

Penalty: Two hundred dollars.

(2) Where an article is packed by a person as an employee of another person (in this subsection referred to as "the employer"), the name required by paragraph (a) of subsection (1) of this section to be marked on the package containing the article is the name of the employer.

(3) Where an article is packed by or for or on behalf of a corporation, or a person or persons trading under a business name (within the meaning of the Business Names Act, 1962)—

- (a) the name required by paragraph (a) or paragraph (b) of subsection (1) of this section to be marked on the package containing the article is—

- (i) in the case of a corporation, the name under which the corporation is incorporated; or

- (ii) in the case of a person or persons trading under a business name (within the meaning of the Business Names Act, 1962), the business name as registered under that Act; and

- (b) the address required by paragraph (b) of that subsection to be marked on the package containing the article is—

- (i) in the case of a corporation, the address of its registered office in the State; or

- (ii) in the case of a person or persons trading under a business name (within the

meaning of the Business Names Act, 1962), the address of the sole or principal place of business of that person or those persons in the State.

(4) A person shall not sell a pre-packed article unless the package containing the article is marked as required by subsection (1) of this section.

Penalty: Two hundred dollars.

s.27D added.

15. The principal Act is amended by adding a section as follows—

Certain
articles to
be packed
and sold
only
in certain
denomina-
tions.

27D. (1) A person shall not, on or after the appointed day, pack for sale, or cause, permit, or suffer to be packed for sale, 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.

Penalty: For a first offence, two hundred dollars; for a second or subsequent offence, four hundred dollars.

(2) For the purposes of subsection (1) of this section, the appointed day in relation to articles of any particular description is such day as the Minister may, by order published in the *Gazette*, declare to be the appointed day in relation to articles of that description.

(3) A person shall not, on or after the appointed day, sell an article of any description to which this section applies if the article is packed otherwise than as required by subsection (1) of this section.

Penalty: For a first offence, two hundred dollars; for a second or subsequent offence, four hundred dollars.

(4) For the purposes of subsection (3) of this section, the appointed day in relation to articles of any particular description is such day as the Minister may, by order published in the *Gazette*, declare to be the appointed day in relation to articles of that description.

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

(6) An order made by the Minister under this section—

(a) may declare different days as the appointed day for the purposes of subsections (1) and (3), respectively, of this section; and

(b) may declare different days as the appointed day in relation to articles of different descriptions,

but a day so declared shall be a day not earlier than one year after the date of coming into operation of this section and not earlier than the day on which the order is published in the *Gazette*.

(7) Notwithstanding any other Act 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, on and after the date of the passing of the Weights and Measures Act Amendment Act, 1967, a person may pack for sale, or cause, permit, or suffer to be packed for sale, or sell, an article of any description to which this section applies in a weight or measure of a denomination prescribed for the purposes of this section in relation to articles of that description.

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

S.27E added.

16. The principal Act is amended by adding a section as follows—

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

27E. (1) A person shall not, on or after the appointed day, pack for sale, or cause, permit, or suffer to be packed for sale, an article of any description to which this section applies unless the package containing the article is marked, in accordance with the regulations, with a statement of the true weight or measure of the article.

Penalty: For a first offence, two hundred dollars; for a second or subsequent offence, four hundred dollars.

(2) For the purposes of subsection (1) of this section, the appointed day in relation to articles of any particular description is such day as the Minister may, by order published in the *Gazette*, declare to be the appointed day in relation to articles of that description.

(3) A person shall not, on or after the appointed day, sell an article of any description to which this section applies unless the package in which the article is contained is marked as required by subsection (1) of this section.

Penalty: For a first offence two hundred dollars; for a second or subsequent offence, four hundred dollars.

(4) For the purposes of subsection (3) of this section, the appointed day in relation to articles of any particular description is such day as the Minister may, by order published in the *Gazette*, declare to be the appointed day in relation to articles of that description.

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

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

(7) Notwithstanding any other Act relating to the marking of a package containing an article with particulars of the weight or measure of the article, on and after the date of the passing of the Weights and Measures Act Amendment Act, 1967, a person may pack for sale, or cause, permit, or suffer to be packed for sale, or sell, an article of any description to which this section applies, if the package in which the article is contained is marked in accordance with subsection (1) of this section.

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

17. The principal Act is amended by adding a section as follows— S.27F added.

27F. (1) Where, in relation to any pre-packed articles, there has been a contravention of or failure to comply with any of the provisions of this Act with respect to the packing of the articles or the marking of the packages in which the articles are contained, and the Minister is satisfied that—

Permits for sale of articles that do not comply with the prescribed requirements.

- (a) the articles were, when packed, intended to be exported from Australia and considers that it is just or reasonable that the sale of the articles in the State should be permitted;
- (b) the articles were packed outside Australia and were brought into the State in such circumstances as, in the

opinion of the Minister, render it just and reasonable that the sale of the articles in the State 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 of the articles in the State should be permitted,

the Minister may, on the application of a person, grant to that person a permit authorising the sale of the articles in the State by that person.

(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; and
 - (iii) the weight or measure of the articles contained in each package; and
- (b) such other conditions (if any) as the Minister determines and specifies in the permit.

(3) A person who sells an article the sale of which is authorised by a permit under this section to another person for the purpose of resale shall, before or at the time of the sale of the article to that other person, inform that other person in writing of the conditions specified in the permit.

Penalty: Two hundred dollars.

(4) A person shall not—

- (a) sell an 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) falsely represent that a permit has been granted under this section or that such a permit has been granted in relation to any particular article;
- (c) purport to sell any article the sale of which is authorised by a permit under this section at any time after the permit ceases to be in force, whether by reason of its cancellation or of the effluxion of time; or
- (d) being the holder of a permit under this section, purport to sell pursuant to the permit any greater number of individual articles than the number (if any) of articles to which the permit relates.

Penalty: Two hundred dollars.

(5) A person to whom a permit under this section is granted shall, while the permit is in force, deliver or forward by post to the chief inspector, on or before the fifteenth day of each month, particulars, in a form approved by the Minister, of all articles sold by him under the authority of the permit during the preceding month.

(6) Unless sooner cancelled pursuant to subsection (7) of this section, a permit under this section continues in force for such period as is specified in that behalf in the permit, but may be renewed by the Minister for such further period or periods as the Minister may think fit.

(7) 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.

(8) Where a permit under this section is cancelled pursuant to subsection (7) of this section, the holder thereof shall forthwith deliver up the permit to the chief inspector.

S.27G added.

18. The principal Act is amended by adding a section as follows—

Incorrect
weight or
measure.

27G. (1) Subject to this section, where the true weight or measure of a pre-packed article is less than the weight or measure of the article stated on the package containing the article the person who packed the article, or who caused, permitted, or suffered the article to be packed, is guilty of an offence.

Penalty: For a first offence, two hundred dollars; for a second or subsequent offence, four hundred dollars.

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

(a) sells a pre-packed article the true weight or measure of which is less than the weight or measure of the article stated on the package containing the article; or

(b) delivers or sends to a purchaser an invoice or delivery note relating to an article sold to the purchaser (whether a pre-packed article or not) which states as the weight or measure of the article a weight or measure that is greater than the true weight or measure of the article so sold,

is guilty of an offence.

Penalty: For a first offence, two hundred dollars; for a second or subsequent offence, four hundred dollars.

(3) Subsection (1) of this section and paragraph (a) of subsection (2) of this section 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 a statement of the weight or measure of an article contained therein expressed in Commonwealth legal units of measurement related to the yard, the pound, or the gallon, and is, in addition, marked, pursuant to the regulations, with a statement of the weight or measure of its contents expressed in terms of a unit of measurement of some other system of weights or measures, the true weight or measure of the article shall, for the purposes of subsection (1) of this section, be deemed to be less than the weight or measure of the article stated on the package if that true weight or measure is less than the weight or measure stated in either of those statements.

(5) Notwithstanding the provisions of subsections (1) and (2) of this section, a pre-packed article shall, for the purposes of this Act, be deemed to be of a true weight or measure equal to the weight or measure stated on the package in which the article is contained if—

- (a) any deficiency of weight or measure of the article does not exceed five parts per centum of that stated weight or measure or, where the article is contained in a glass bottle the stated contents of which do not exceed eight ounces or eight fluid ounces, seven and one half parts per centum of the stated contents; and
- (b) there is no average deficiency in the contents of twelve packages containing the article taken at random by an inspector or, when there are less than

twelve such packages available, in the contents of all the available packages, being not fewer than six.

(6) Where a pre-packed article is sold at a stated price per unit of weight or measure and the statement of the price of the article marked on the package containing the article is inconsistent with the price correctly computed from the true weight or measure of the article and the stated price per unit of weight or measure, the person who marked the package with the statement of price, or who caused, permitted, or suffered the package to be so marked, and the person who sold the article, are each guilty of an offence.

Penalty: Two hundred dollars.

(7) In proceedings in respect of an offence against paragraph (a) of subsection (2) of this section, it is a defence for the person charged to prove—

(a) that—

- (i) the person from whom he purchased the article or who packed the article furnished him with a written guarantee that the weight or measure of the article stated on the package containing the article was correct; and
- (ii) he sold or delivered the article in the same state as it was when delivered to him; or

(b) that —

- (i) he purchased the article in a package that was marked as required by section twenty-seven C and by section twenty-seven E of this Act;
- (ii) he sold or delivered the article in the same state as it was when delivered to him; and

- (iii) the person who packed the article or the agent of that person or of the manufacturer of the article from which agent the person charged purchased the article is resident in the State,

but the marking on the package of the weight or measure of the article contained therein constitutes a warranty by the person who packed the article or, as the case requires, by that agent that the true weight or measure of the article is as marked on the package.

(8) Where the true weight or measure of an article contained in such a package as is referred to in sub-paragraph (i) of paragraph (b) of subsection (7) of this section is found by an inspector to be less than the weight or measure stated on the package containing the article, any person who appears from the marking on the package to have packed the article or, if that person is not resident in the State, the agent referred to in that subsection—

- (a) shall be deemed to have sold the article to the inspector on the day when, and at the place where, the inspector weighed or measured the article or caused it to be weighed or measured; and
- (b) is liable to the same penalty as if he had actually sold the article to the inspector on that day and at that place.

(9) A person who gives such a guarantee as is referred to in paragraph (a) of subsection (7) of this section that is false or misleading in a material particular is guilty of an offence.

Penalty: Four hundred dollars.

(10) In proceedings against a person in respect of an offence against subsection (9) of this section, it is a defence for the person charged to prove that any discrepancy between the true weight or measure of the article to

which the proceedings relate and the weight or measure of the article as stated in the guarantee—

- (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;
- (b) was attributable wholly to the taking of measures reasonably necessary in order to avoid the commission of an offence in respect of a deficiency in the weight or measure of that article or of any other article; or
- (c) is due to the act or default of some other person after the article had passed from the control of the person charged.

(11) Subsections (7) and (10) 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, notified the complainant that he intends to avail himself of the protection of subsection (7) or, as the case may be, subsection (10) of this section, giving the reasons relied on for claiming that protection.

S.27H added.

19. The principal Act is amended by adding a section as follows—

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

27H. (1) Where an article of any description to which this section applies (being a pre-packed article) is of such a nature and is so packed that the weight of the article is or is likely, by reason of climatic conditions or evaporation, to be subject to variation after the packing of the article, the regulations may prescribe that packages containing articles of that description may be marked, in the

prescribed form and manner, with the words "Net weight when packed" or words to the like effect.

(2) The regulations may provide that a package containing an article of a specified kind (in this section referred to as "a specified article"), being an article of a description to which this section applies, may, in lieu of being marked with the words referred to in subsection (1) of this section, be marked with such other words as may be prescribed (in this section referred to as "the alternative words").

(3) A person shall not pack for sale, or cause, permit, or suffer to be packed for sale—

- (a) an article of any description to which this section applies in a package marked with a statement of the weight of the article together with the words "Net weight when packed" or words to the like effect; or
- (b) a specified article in a package marked with a statement of the weight of the article together with the alternative words,

unless the true weight of the article is, at the time when the article is packed and at all times thereafter during the day on which the article is packed, equal to or greater than the weight stated on the package.

Penalty: For a first offence, two hundred dollars; for a second or subsequent offence, four hundred dollars.

(4) A person shall not mark, or cause, permit, or suffer to be marked—

- (a) the words "Net weight when packed" or words to the like effect on a package containing any article other than an article to which this section applies; or

- (b) the alternative words on a package containing any article other than a specified article.

Penalty: For a first offence, two hundred dollars; for a second or subsequent offence, four hundred dollars.

(5) For the purposes of this section, but subject to subsection (6) of this section, an article of any description to which this section applies contained in a package marked pursuant to this section with the words "Net weight when packed" or words to the like effect or, in the case of a specified article, with the alternative words, shall be deemed to have been, at the time when the article was packed and at all times thereafter during the day on which the article was packed, of a true weight equal to the weight stated on the package if—

- (a) any deficiency of weight of the article does not exceed five parts per centum of that stated weight; and
- (b) there is no average deficiency in the contents of twelve packages containing the article taken at random by an inspector or, where there are less than twelve such packages available, in the contents of all the available packages, being not fewer than six.

(6) Notwithstanding anything in subsection (5) of section twenty-seven G of this Act or in subsection (5) of this section, where—

- (a) an article is contained in a package marked, pursuant to this section, with the words "Net weight when packed" or words to the like effect or, in the case of a specified article, with the alternative words;
- (b) the article is declared by the regulations to be an article to which this subsection applies; and

(c) at any time subsequent to the day when the article was packed—

(i) there is a deficiency of weight of the article exceeding such number of parts per centum (being greater than five parts per centum) of the weight stated on the package as is prescribed for the purposes of this subsection in relation to that article; or

(ii) there is an average deficiency exceeding such number of parts per centum of the weight stated on the package as is prescribed as the permissible average deficiency for the purposes of this subsection in relation to that article in the contents of twelve packages containing the article taken at random by an inspector or, where there are less than twelve such packages available, in the contents of all the available packages, being not fewer than six,

the article shall, for the purposes of this section, be deemed not to have been, at the time when the article was packed and at all times thereafter during the day on which the article was packed, of a true weight equal to the weight stated on the package.

(7) The regulations may require that, in addition to any other particulars required by or under this Act to be marked on the package containing an article to which subsection (6) of this section applies, the package shall be marked with the date when the article was packed or with an approved brand indicating that date.

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

S.27J added.

20. The principal Act is amended by adding a section as follows—

Prohibition
and
restriction
of use of
certain
expressions
on packages.

27J. (1) Subject to this section, if a prohibited expression or a restricted expression is marked on a package containing a pre-packed article, the person who packed the article, or who caused, permitted, or suffered the article to be packed, is guilty of an offence.

Penalty: For a first offence, two hundred dollars; for a second or subsequent offence, four hundred dollars.

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

(3) The provisions of subsections (1) and (2) of this section do 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 weight or measure of the article contained in the package as is referred to in subsection (1) of section twenty-seven E 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 dimension of the package;

- (ii) is of a size not less than one-third of the size of the largest letter or figure contained in the restricted expression; and
- (iii) is marked in a colour of a distinct contrast to the colour of its background.

(4) In this section—

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

“restricted expression” means any expression not being a prohibited expression (and whether consisting of a single word or of more words than one or of any word or words in combination with any figure or figures and whether in an abbreviated form or not) that directly or indirectly relates to the size of the package containing the article (not being such a statement as to the weight or measure of the article as is required by subsection (1) of section twenty-seven E 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.

21. The principal Act is amended by adding a section as follows—

S.27K
added.

27K. Where it appears to the chief inspector that an offence against this Part or the regulations in force thereunder has been

Proceedings
for offences
in certain
cases.

committed by a person and the chief inspector is of the opinion that the offence was due to an act or default of some other person and that the first-mentioned person could establish a defence under this Act applicable to the offence, the chief inspector may take or authorise the taking of proceedings against that other person without first taking or authorising the taking of proceedings against the first-mentioned person, and in any such proceedings that other person may be charged with and, on proof that the commission of the offence was due to his act or default, be convicted of, the offence with which the first-mentioned person might have been charged, and in any proceedings against that other person the first-mentioned person is a competent and compellable witness.

S.27L added.

22. The principal Act is amended by adding a section as follows—

Defences.

27L. (1) In proceedings in respect of an offence against section twenty-seven C of this Act, it is a defence for the person charged to prove that the article to which the proceedings relate was packed on any premises for sale on those premises to a person for the purpose of consumption or use and not for the purpose of re-sale.

(2) In proceedings in respect of an offence against subsection (1) of section twenty-seven D, or subsection (1) of section twenty-seven E, 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.

(3) In proceedings in respect of an offence against subsection (4) of section twenty-seven C, subsection (3) of section twenty-seven D, subsection (3) of section twenty-seven E, paragraph (a) of subsection (4) of section twenty-seven F, subsection (2) or subsection (6)

of section twenty-seven G, or subsection (2) of section twenty-seven J, of this Act, in relation to a pre-packed article, it is a defence for the person charged to prove—

- (a) that the commission of the offence was due to a cause or to causes beyond his control;
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the article to which the proceedings relate; and
- (c) that he purchased the article from another person and sold or delivered it in the same state as it was when delivered to him.

(4) A cause beyond the control of a person charged with an offence against subsection (4) of section twenty-seven C, subsection (3) of section twenty-seven D, subsection (3) of section twenty-seven E, paragraph (a) of subsection (4) of section twenty-seven F, subsection (2) or subsection (6) of section twenty-seven G or subsection (2) of section twenty-seven J, of this Act, is not a defence under subsection (3) of this section if the court before which the proceedings are brought is of the opinion that the cause was one that the person charged could reasonably have foreseen or for which he could reasonably have made allowance.

(5) In proceedings against a person who packed an article, or who caused, permitted, or suffered an article to be packed, in respect of an offence against subsection (1) or subsection (2) of section twenty-seven G of this Act, being an offence in relation to an alleged deficiency in the true weight or measure of the article, it is a defence for the person charged to prove—

- (a) that the deficiency—
 - (i) 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) was attributable wholly to the taking of measures reasonably necessary in order to avoid the commission of an offence in respect of a deficiency in the weight or measure of that article or of any other article;

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

(c) 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 offence relates,

but a cause beyond the control of the person charged is not a defence under paragraph (b) of this subsection if the court before which the proceedings are brought is of the opinion that the cause was one that the person charged could reasonably have foreseen or for which he could reasonably have made allowance.

(6) Subsections (3) and (5) 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, notified the complainant that he intends to avail himself of the protection of this section, giving the reasons relied on for claiming that protection.

S.27M
added.

23. The principal Act is amended by adding a section as follows—

Certificate
of incorrect
guarantee or
warranty.

27M. (1) When a person is charged with an offence against subsection (2) of section twenty-seven G of this Act, being an offence in relation to an alleged deficiency in the true weight or

measure of a pre-packed article, and the court before which the proceedings are brought is satisfied that—

- (a) the article to which the alleged offence relates was packed by a person other than the defendant;
- (b) the defendant was furnished with such a guarantee as is referred to in paragraph (a) of subsection (7) of section twenty-seven G of this Act, or the marking on the package containing the article constitutes a warranty pursuant to that subsection;
- (c) the defendant sold or delivered the article in the same state as it was when delivered to him; and
- (d) the guarantee or warranty, as the case may be, was false or misleading in a material particular,

the court may, on the application of the complainant, grant a certificate as to its findings.

(2) In proceedings in respect of an offence against subsection (1), subsection (2) or subsection (8) of section twenty-seven G of this Act, being an offence in relation to an alleged deficiency in the true weight or measure of a pre-packed article, a certificate purporting to have been granted under subsection (1) of this section or under a corresponding law is evidence of the matters stated therein.

(3) In this section, “corresponding law” means a law, or a specified provision of a law, of a State other than this State or of a Territory of the Commonwealth that is declared by the Minister, by order published in the *Gazette* to be a corresponding law for the purposes of this section.

s. 27N
added.

24. The principal Act is amended by adding a section as follows—

Approval
of brands.

27N. (1) On the application of a person whose business consists of or includes the packing of articles for sale, the chief inspector may approve in writing of a brand for use by that person for the purpose of marking on packages—

- (a) the name and address required by paragraph (a) of subsection (1) of section twenty-seven C of this Act to be marked on packages;
- (b) the name and address required by paragraph (b) of that subsection to be marked on packages; or
- (c) where the regulations so require, the dates when the articles contained in the packages were packed,

and a package on which such a brand is marked in accordance with the approval shall, for the purposes of this Act, be deemed to be marked with the name and address as required by paragraph (a) of subsection (1) of section twenty-seven C of this Act, or paragraph (b) of that subsection, or with the date when the article contained therein was packed, as the case requires.

(2) An approval under subsection (1) of this section may be granted subject to such conditions (if any) as the chief inspector determines and specifies in the approval, and may be cancelled by the chief inspector at any time by notice in writing to the person to whom the approval was granted.

(3) A person to whom an approval under subsection (1) of this section has been granted subject to conditions shall not mark a package containing an article, or cause, permit, or suffer such a package to be marked, with the brand

specified in the approval otherwise than in compliance in all respects with those conditions.

Penalty: Two hundred dollars.

(4) Where an approval has been granted to a person under subsection (1) of this section of a brand for use by that person for the purposes of marking on packages the name and address referred to in paragraph (a) of that subsection, or the name and address referred to in paragraph (b) of that subsection, no person other than the person to whom that approval was granted or a person having his authority so to do shall mark a package containing an article with the brand specified in the approval or with any other brand so closely resembling the brand specified in the approval as to be likely to lead to the belief that it is the brand specified in the approval.

Penalty: Two hundred dollars.

25. The principal Act is amended by adding a section as follows— S.27P added.

27P. In proceedings in respect of an offence against this Act in relation to a pre-packed article— Evidentiary provisions.

- (a) the marking on the package in which the article is contained indicating the name of the person who packed the article is 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 is 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 is 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 is evidence that the article was packed on that date;
- (e) a document purporting to be certified by the chief inspector to be a copy of a permit granted by the Minister under section twenty-seven F of this Act is evidence of the grant of the permit and of the conditions (if any) specified in the permit;
- (f) a certificate purporting to be signed by the chief inspector and stating—
 - (i) that the particulars required by subsection (5) of section twenty-seven F of this Act to be supplied to him have not been so supplied;
 - (ii) that a permit granted by the Minister under subsection (1) of section twenty-seven F of this Act has been cancelled;
 - (iii) that a permit cancelled under subsection (7) of section twenty-seven F of this Act has not been delivered up to him;
 - (iv) that an approval granted by him under subsection (1) of section twenty-seven N of this Act has been cancelled,is evidence of the matters stated in the certificate; and
- (g) a document purporting to be certified by the chief inspector to be a copy of an approval granted by him under subsection (1) of section twenty-seven

N of this Act of a brand for use by a person for the purpose of marking on packages—

- (i) the name and address required by paragraph (a) of subsection (1) of section twenty-seven C of this Act to be marked on packages;
- (ii) the name and address required by paragraph (b) of that subsection to be marked on packages; or
- (iii) the date when the articles contained therein were packed,

is 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 is evidence that—

- (iv) 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;
- (v) the article was packed for or on behalf of the person whose name and address are indicated by the brand; or
- (vi) the article was packed on the date indicated by that brand,

as the case requires.

26. The principal Act is amended by adding a section as follows— S. 27Q added.

27Q. (1) Without affecting the generality of sections thirty-six, thirty-seven and thirty-eight of this Act, an inspector may at all reasonable times either in the daytime or at night— Powers of inspectors.

- (a) search for and examine any pre-packed article and for that purpose enter any place where he has reasonable cause to

believe there is any pre-packed article, and, in the presence of the person in charge, select and weigh or measure or cause to be weighed or measured any pre-packed article and, if necessary, break open the package containing any such article; and

- (b) on payment or tender to the person in charge thereof of the current market value of a pre-packed article, demand, select, and take any such article.

(2) If a person in whose presence any article referred to in paragraph (a) of subsection (1) of this section may be selected and weighed or measured, when requested by the inspector to be present at that selection and weighing or measuring, refuses or fails to be present then, notwithstanding the provisions of that paragraph, the inspector may select and weigh or measure the article in the absence of any person referred to in that paragraph.

(3) Notwithstanding the provisions of paragraph (b) of subsection (1) of this section, an inspector may seize any pre-packed article in respect of which a contravention of this Act appears to him to have been committed.

S.27R
added.

27. The principal Act is amended by adding a section as follows—

Regulations.

27R. (1) The Governor may make regulations for the purposes of this Part, and in particular and without prejudice to the generality of the provisions of this section, may make regulations—

- (a) for or with respect to the form and manner in which packages required or permitted by any provision of this Part to be marked with any particulars, statement, or approved brand, shall or may be so marked;

- (b) for or with respect to the denominations of weight or measure in which articles of any prescribed description shall or may be packed or sold;
- (c) regulating, controlling, and restricting the sale or supply of articles by means of a vending machine (as defined in the regulations) and prohibiting the sale or supply of articles by means of such a machine otherwise than in accordance with the regulations;
- (d) for securing that articles that are sold by means of a vending machine (as defined in the regulations) 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;
- (e) for or with respect to the units of weight or measurement to be used in marking or displaying on packages or vending machines (as defined in the regulations) any particulars or statements required to be marked or displayed thereon, either generally or in respect of any prescribed description of articles, and the manner in which those units of weight or measurement 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;
- (f) for or with respect to the method in which, and the conditions under which, the weight or measure of articles is to be determined in connection with the marking or displaying on packages or on vending machines (as defined in the regulations) of any particulars or statements referred to in the foregoing provisions of this subsection;

- (g) 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 in the net weight or measure of the first-mentioned articles;
- (h) 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 all or 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;
- (i) prescribing standard specifications of capacity for or in relation to packages used in the packing or sale of prescribed articles, prescribing distinctive marks for packages made to those specifications, and providing that any such articles, when packed, shall be sold only in prescribed packages made to those specifications and bearing the prescribed distinctive marks;
- (j) requiring packages containing articles of a prescribed description to be marked with a statement of the sale price per unit of weight or measure of the articles;
- (k) generally regulating and controlling the packing of articles or of articles of prescribed descriptions and the marking of packages in which pre-packed articles are contained; and

- (1) imposing penalties, not exceeding one hundred dollars, for offences against the regulations.
- (2) The regulations—
 - (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.
- (3) The regulations shall not be regarded as invalid on the ground that they delegate to or confer on a person a discretionary authority.

28. The principal Act is amended by adding a section as follows—

S.27S added.

27S. Where there is any inconsistency between the application of any provision of this Part or the regulations in force thereunder and the application of any other provision of this Act, or the regulations in force thereunder, to or in relation to a pre-packed article, or to or in relation to any act done or required to be done, or not done or forbidden to be done, in relation to such an article, the former provision shall prevail and the latter provision shall, in its application to or in relation to that pre-packed article or that act, be of no effect. .

Provisions of this Part to prevail.

29. Section forty of the principal Act is repealed and re-enacted as follows—

S.40 repealed and re-enacted.

40. (1) Where by or under this Act any act is directed or forbidden to be done, or authority is given to any person to direct or forbid any

General provisions relating to offences.

act to be done, a person who offends against any such direction or prohibition is guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act for which no specific penalty is provided elsewhere in this Act is liable to a penalty of two hundred dollars.

(3) Where a person (in this subsection referred to as "the defendant") is convicted of an offence against this Act 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.

(4) All offences against this Act may be prosecuted in a summary way under the Justices Act, 1902, and proceedings for an offence against Part IIIA of this Act or the regulations in force thereunder may be commenced only on complaint by the chief inspector or by any person authorised by the chief inspector.

(5) A prosecution for an offence against this Act may be instituted at any time within twelve months after the commission of the offence or within six months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period. .

31. The principal Act is amended by adding after section forty-six a section as follows—

S.46A
added.

46A. (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") packs an article for sale, marks a package containing an article, or sells an article, and commits an offence against this Act in relation to that packing, marking, or sale, the principal is 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 in relation to the article to which the proceedings relate.

Liability of
principal
for acts
of agent.

(2) The principal may be proceeded against and convicted pursuant to subsection (1) of this section notwithstanding that the agent has not been proceeded against or has not been convicted under this Act.

(3) Nothing in subsection (1) of this section prejudices or affects any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.

32. The principal Act is amended by adding a section as follows—

S.46B added.

46B. (1) Notwithstanding any other law or rule of law, where any person, as the employee of another person (in this section referred to as "the employer"), packs an article for sale, marks a package containing an article, or sells an article, and commits an offence against this Act in relation to that packing, marking, or sale, the employer is guilty of an offence against this Act in like manner as the employee (whether or not the offence was committed

Liability of
employer
for offence
by
employee.

without his 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 (1) of this section notwithstanding that the employee has not been proceeded against or has not been convicted under this Act.

(3) Nothing in subsection (1) of this section prejudices or affects any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.

S.47
repealed
and
re-enacted.

33. Section forty-seven of the principal Act is repealed and re-enacted with amendments as follows—

Offences by
Corpora-
tions.

47. (1) Where a corporation is convicted of an offence against this Act, every person who at the time of the commission of the offence was a director or member of the governing authority of the corporation or an officer concerned in the management of the corporation and who authorised or permitted the commission of the offence is guilty of the like offence.

(2) A person referred to in subsection (1) of this section may, on the request of the complainant, be convicted on the proceedings on which the corporation is convicted if the Court is satisfied that the person had reasonable notice that the complainant intended to make that request.
