

Western Australia

Trade Measurement Act 2006

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Trade Measurement Act 2006

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Western Australia

Trade Measurement Act 2006

An Act to make provision in respect of —

- **measuring instruments used for trading and related purposes;**
 - **the measurement of articles and substances for determining their sale price;**
 - **the packaging of things in advance of sale; and**
 - **the measurement and pricing of things so packed,**
- and for incidental and related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Trade Measurement Act 2006*.

2. Commencement

- (1) Subject to subsection (3), this Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.
- (3) Sections 53 and 54 are not to come into operation before the expiry of not less than 3 months after the day on which this Act receives the Royal Assent.
- (4) Nothing in this section affects the operation of Part 9 so far as it provides for the time when the application of this Act commences in relation to certain measurements.

3. Interpretation

- (1) In this Act, unless the contrary intention appears —
Administration Act means the *Trade Measurement Administration Act 2006*;
approved pattern, in relation to a measuring instrument, means a pattern approved for the measuring instrument under the National Measurement Act section 19A, being an approval that —
 - (a) is currently in force under that provision; or
 - (b) has —
 - (i) expired; or
 - (ii) been cancelled (but not withdrawn),
under the National Measurement Act and was in force when the measuring instrument was first verified or certified;

article includes substance;

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

certify has the meaning given by section 19(1);

Commissioner means the person for the time being designated as the Commissioner under section 6 of the Administration Act;

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

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

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

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

inspector has the same meaning as in the Administration Act;

inspector's mark means —

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

licence means a servicing licence or a public weighbridge licence in force under Part 6;

licensee's mark means —

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

measurement means a determination of number or physical quantity, other than for descriptive purposes only;

measuring instrument has the meaning given by the National Measurement Act;

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

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

package includes —

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

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

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

purchaser includes a person purchasing as agent for another person;

re-certify has the meaning given by section 19(2);

record includes any document;

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

re-verify has the meaning given by section 18(2);

sell includes —

- (a) agree to sell;
- (b) offer or expose for the purpose of selling;
- (c) have in possession for the purpose of selling;
- (d) barter or exchange; and

- (e) authorise, direct, cause or permit —
 - (i) any act referred to in paragraphs (a) to (d) to be done; or
 - (ii) anything else that is a sale;

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

servicing licence means a servicing licence in force under Part 6;

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

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

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

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

verify has the meaning given by section 18(1);

weighbridge means a measuring instrument that —

- (a) is of a capacity of 3 tonnes or more; and
- (b) has a platform by the use of which the measuring instrument is capable of determining the mass of a vehicle or of livestock;

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

- (2) References in this Act to making provision in respect of a class of things include making provision in respect of things that come within a particular description.

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4. Determining certain quantities

For the purposes of this Act —

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

5. References to functions

In this Act —

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

6. Use of measuring instrument for trade — meaning

- (1) For the purposes of this Act, a person uses a measuring instrument for trade if the person uses it, has it in possession for use, or makes it available for use, to make a measurement for the purpose of —
 - (a) determining the consideration in respect of a transaction; or
 - (b) determining the amount payable as a tax, rate, toll, duty, charge or other impost (however described).
- (2) In addition, a person is to be regarded as using a measuring instrument for trade if —
 - (a) the person makes the measuring instrument available on premises for use by a party to a transaction that takes place on those premises; and

- (b) the instrument makes a measurement of a kind that is used for the purpose of determining the consideration in respect of the transaction even though a measurement actually made with that measuring instrument is not used for that purpose.
- (3) If a party to a transaction makes a measuring instrument available for use in connection with the transaction, another party to the transaction who uses the measuring instrument in that connection is not, despite subsection (1), to be regarded as using the measuring instrument for trade.

7. Application of Act to Crown

- (1) This Act binds the Crown in right of the State and, so far as the legislative power of the Parliament permits, in all its other capacities.
- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

8. Regulations may make this Act inapplicable to certain matters

The regulations may provide that this Act, or any provision of this Act, does not apply to —

- (a) a measurement; or
- (b) an instrument used to make a measurement,

of a prescribed kind or for a prescribed purpose.

9. Regulations may provide for exemptions from this Act

- (1) The regulations may exempt from all or any of the provisions of this Act —
 - (a) a specified person, matter, measuring instrument, article or transaction; or
 - (b) a specified class of persons, matters, measuring instruments, articles or transactions.

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- (2) An exemption may be expressed to apply —
 - (a) generally;
 - (b) for a specified period; or
 - (c) in specified circumstances or for the purposes of a specified occasion or event.

- (3) The regulations may provide —
 - (a) for conditions and restrictions subject to which an exemption is to apply; and
 - (b) that an exemption is of no effect in relation to a person at any time when any condition or restriction to which it is subject in the case of that person is not being complied with by that person.

Part 2 — Use of measuring instruments for trade

10. Measuring instruments used for trade to be marked

- (1) A person who uses a measuring instrument for trade commits an offence unless —
- (a) the instrument bears an inspector's mark or a licensee's mark; and
 - (b) the inspector's mark or a licensee's mark continues to have effect in accordance with section 21(4) or (5), as the case may be.

Penalty:

- (a) if the measuring instrument is a weighbridge —
\$10 000;
 - (b) in any other case — \$5 000.
- (2) A person who uses a weighbridge for trade commits an offence if the weighbridge does not comply with the requirements of the regulations concerning weighbridges.
Penalty: \$10 000.
- (3) This section does not apply to the use of a measuring instrument to determine a quantity of articles by number of the articles.
- (4) The regulations may provide for the circumstances in which the use for trade of a measuring instrument that has been repaired or modified, or commissioned, is permitted even though it does not bear an inspector's mark or a licensee's mark, pending its verification or certification.

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11. Notice to remedy breach of section 10 may be given

- (1) If an inspector finds a measuring instrument that is being used in contravention of section 10(1) or (2), the inspector may give to the owner or user of the measuring instrument a written notice —
 - (a) stating that the measuring instrument —
 - (i) does not have an inspector's mark or a licensee's mark on it; or
 - (ii) for a weighbridge — does not comply with stated requirements of the regulations relating to weighbridges;
 - and
 - (b) requiring the person to remedy the contravention within a stated period.
- (2) The period stated for the purposes of subsection (1)(b) —
 - (a) is generally to be not more than 28 days; but
 - (b) may be a longer period, not exceeding 56 days, if the person concerned satisfies the inspector that special circumstances apply.
- (3) The Commissioner may extend the period specified in a notice given under subsection (1) if the person concerned applies for an extension before the expiry of the period.
- (4) If the person concerned complies with the notice within —
 - (a) the period allowed under subsection (1)(b); or
 - (b) any extended period allowed under subsection (3),the person may not be prosecuted for an offence against section 10 in relation to the circumstances to which the notice relates.

12. Use of prescribed measuring instruments

A person commits an offence if the person uses for trade a measuring instrument of a prescribed class other than —

- (a) for a purpose that is; or
- (b) in circumstances that are,

prescribed in respect of a measuring instrument of that class.

Penalty:

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

13. Use of measuring instruments for pre-packed articles

A person commits an offence if the person uses a measuring instrument for measuring pre-packed articles on premises in which articles are pre-packed unless at least one measuring instrument on the premises —

- (a) is of an approved pattern;
- (b) complies with this Act; and
- (c) is suitable for measuring the articles to be pre-packed.

Penalty: \$5 000.

14. Instruments that are incorrect or unjustly used

- (1) A person who uses for trade a measuring instrument that is incorrect commits an offence.

Penalty: \$20 000.

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

Penalty: \$20 000.

- (3) A person whose act or omission causes or is likely to cause a measuring instrument in use for trade to give a measurement or

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other information that is incorrect commits an offence if the person acted or omitted to act —

- (a) with the intention of causing that result; or
- (b) with reckless indifference to whether that result would be caused.

Penalty: \$20 000.

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

15. Notice to remedy breach of section 14 may be given

- (1) If an inspector finds a measuring instrument being used for trade that —
 - (a) is incorrect; or
 - (b) is being used in a way that is unjust,

the inspector may give to the owner or user of the measuring instrument a written notice —

- (c) stating that —
 - (i) the measuring instrument is incorrect; or
 - (ii) the way the person is using it is unjust;and
 - (d) requiring the person to take stated steps to stop contravening section 14(1) or (2), as the case may be, within a stated period of not more than 28 days.
- (2) The Commissioner may extend the period specified in a notice given under subsection (1) if the person concerned applies for an extension before the expiry of the period.
 - (3) If the person complies with the notice within —
 - (a) the period allowed under subsection (1)(d); or

(b) any extended period allowed under subsection (2),
the person may not be prosecuted for an offence against
section 14 in relation to the circumstances to which the notice
relates.

16. Supplying incorrect etc. measuring instrument

- (1) For the purposes of this section, a measuring instrument is unacceptable for trade use if —
 - (a) it is incorrect; or
 - (b) it is not of an approved pattern.
- (2) If a measuring instrument that is unacceptable for trade use is used for trade, a person who sold, leased, hired or lent it to the person who used it commits an offence.
Penalty: \$20 000.
- (3) Subject to subsection (4)(b), it does not matter whether the person who used the measuring instrument purchased it or took it on lease, hire or loan for trade.
- (4) It is a defence in proceedings for an offence against this section if it is established —
 - (a) that the measuring instrument was not unacceptable for trade use when the accused parted with possession of it;
 - (b) that the accused did not know and had no reason to suspect that the measuring instrument would be used for trade; or
 - (c) that the person who purchased the measuring instrument or took it on lease, hire or loan was informed in writing at the time that the measuring instrument was unacceptable for trade use.

Part 3 — Verification and certification of measuring instruments

17. Provision and maintenance of standards

- (1) It is a responsibility of the Commissioner to arrange for the provision, custody and maintenance of —
 - (a) such State primary standards of measurement; and
 - (b) such classes and denominations of reference standards of measurement,

as the Commissioner decides are necessary for the purposes of this Act.

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

18. Verification and re-verification by inspectors

- (1) A measuring instrument is verified when it does not already bear an inspector's mark or a licensee's mark and an inspector —
 - (a) is satisfied that the instrument complies with the requirements for verification specified in section 22; and
 - (b) marks the instrument with the inspector's mark.
- (2) A measuring instrument is re-verified when it already bears an inspector's mark or a licensee's mark and an inspector —
 - (a) is satisfied that the instrument complies with the requirements for re-verification specified in section 22;
 - (b) obliterates the inspector's mark or licensee's mark that the instrument already bears; and
 - (c) marks the instrument with the inspector's mark.

19. Certification and re-certification by licensees

- (1) A measuring instrument is certified when it does not already bear an inspector's mark or a licensee's mark and the licensee under a servicing licence or an employee of the licensee —
 - (a) is satisfied that the instrument complies with the requirements for certification specified in section 22;
 - (b) issues a certificate to that effect; and
 - (c) marks the instrument with the licensee's mark.
- (2) A measuring instrument is re-certified when it already bears an inspector's mark or a licensee's mark and the licensee under a servicing licence or an employee of the licensee —
 - (a) is satisfied that the instrument complies with the requirements for re-certification specified in section 22;
 - (b) issues a certificate to that effect;
 - (c) obliterates any inspector's mark or licensee's mark that the instrument already bears; and
 - (d) marks the instrument with the licensee's mark.

20. Provision of information to Commissioner by licensee

- (1) When a measuring instrument is certified or re-certified the licensee concerned must give to the Commissioner the prescribed information relating to —
 - (a) the measuring instrument; and
 - (b) the certification or re-certification of the measuring instrument.
- (2) The information is to be given under subsection (1) —
 - (a) in a form approved by the Commissioner; and
 - (b) within the prescribed period after the certification or re-certification.

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- (3) A person who fails to comply with subsection (1) commits an offence.

Penalty: \$5 000.

21. Duration of verification and certification

- (1) The regulations may make provision —
- (a) for and in relation to the period for which the verification, re-verification, certification or re-certification of measuring instruments or classes of measuring instruments is to have effect; or
 - (b) for the verification, re-verification, certification or re-certification of particular classes of measuring instruments to have effect for an indefinite period.
- (2) The references in subsection (1)(b) to *re-verification* and *re-certification* are to a re-verification or re-certification that is in fact carried out even though under regulations referred to in that subsection the verification or certification of the measuring instrument concerned had effect for an indefinite period.
- (3) The regulations may provide for different periods in respect of measuring instruments that are in use in different areas of the State.
- (4) Unless subsection (5) applies, the verification, re-verification, certification or re-certification of a measuring instrument has effect until —
- (a) the expiry of the prescribed period applicable to the instrument; or
 - (b) the inspector's mark or the licensee's mark is obliterated from the instrument under —
 - (i) section 27 or 28; or
 - (ii) section 18 of the Administration Act,
- whichever first occurs.

- (5) If regulations referred to in subsection (1)(b) apply to a measuring instrument the verification, re-verification, certification or re-certification of the instrument has effect until the inspector's mark or the licensee's mark is obliterated from the instrument —
- (a) under —
 - (i) section 27 or 28; or
 - (ii) section 18 of the Administration Act;
 - or
 - (b) in the course of the measuring instrument being re-verified or re-certified as mentioned in subsection (2).

22. Requirements for measuring instruments

The requirements for verification, re-verification, certification or re-certification of a measuring instrument are as follows —

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

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23. Standards of measurement to be used

- (1) The determination of whether the requirements of section 22 for verification, re-verification, certification or re-certification are complied with must be made by means of, by reference to, by comparison with or by derivation from —
 - (a) an appropriate State primary standard of measurement;
 - (b) an appropriate reference standard of measurement; or
 - (c) 2 or more standards of measurement each of which is an appropriate State primary standard of measurement or an appropriate reference standard of measurement.
- (2) Subsection (1) does not apply if there is not an appropriate standard for the measurement in respect of which the measuring instrument is to be verified, re-verified, certified or re-certified.

24. Responsibilities of Commissioner concerning verification and certification

- (1) The Commissioner is responsible for —
 - (a) providing the means by which measuring instruments may be verified and re-verified;
 - (b) establishing and maintaining a register of measuring instruments containing —
 - (i) the information given to the Commissioner under section 20; and
 - (ii) other relevant information;
 - (c) arranging for audits of the information referred to in paragraph (b) to be carried out to the extent that the Commissioner thinks fit, including the examination and testing by inspectors of measuring instruments that have been certified or re-certified by the holders of servicing licences; and
 - (d) otherwise monitoring compliance with this Act by the holders of servicing licences.

- (2) Nothing in subsection (1)(a) affects the power to charge amounts in accordance with the regulations for or in connection with the verification and re-verification of measuring instruments.

25. Keeping of register

The register referred to in section 24(1)(b) is to be —

- (a) established and maintained —
 - (i) in such manner and form; and
 - (ii) with such contents,as the Commissioner thinks fit; and
- (b) available for public inspection subject to payment of the fee, if any, prescribed under the Administration Act.

26. Instruments not covered by this Act

A measuring instrument that is not required by this Act to bear an inspector's mark or a licensee's mark may be examined and its calibration tested as if there were such a requirement but only —

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

27. Rejection of instrument by inspector — obliteration of marks

If a measuring instrument that bears an inspector's mark or a licensee's mark —

- (a) is examined or tested by an inspector; and
- (b) is found not to comply with the requirements specified in section 22,

the inspector must obliterate any inspector's mark or licensee's mark that the instrument bears.

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28. Duty of persons doing certain work to obliterate marks or take other action

(1) When a person does anything to a measuring instrument (including repair, modification and commissioning) that affects its metrological performance, the person must, unless that effect can be corrected by normal operational adjustment of the instrument —

- (a) obliterate any inspector's mark or licensee's mark that the instrument bears; or
- (b) take any other action prescribed by the regulations for the purposes of this section in relation to measuring instruments of the class that includes the instrument,

or take action under both paragraphs (a) and (b), as the case may require.

(2) A person who fails to comply with subsection (1) commits an offence.

Penalty: \$20 000.

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

29. Marks on labels affixed to measuring instruments

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

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

30. Making mark without authority

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

Penalty: \$20 000.

- (2) A person is authorised to make an inspector's mark on a measuring instrument if the mark is made in the course of verifying or re-verifying the instrument and the person —
- (a) is an inspector; or
 - (b) is acting under the authority and direct supervision of an inspector.
- (3) A person is authorised to make a licensee's mark on a measuring instrument if the mark is made in the course of certifying or re-certifying the instrument under the authority conferred by a servicing licence and the person is —
- (a) the licensee in respect of whom the mark is approved by the Commissioner; or
 - (b) an employee of such a licensee.
- (4) A person is authorised to make an inspector's mark or a licensee's mark on a measuring instrument if the person does so in accordance with the provisions of the regulations as to the batch testing and marking of measuring instruments.

31. Other offences concerning marks

A person commits an offence if the person —

- (a) has possession, without authority, of an instrument for making an inspector's mark or a licensee's mark;
- (b) makes on a measuring instrument a mark resembling an inspector's mark or a licensee's mark intending to create a false impression that it is an inspector's mark or a licensee's mark;
- (c) makes or possesses, without lawful justification or excuse, an instrument designed to make a mark resembling an inspector's mark or a licensee's mark; or
- (d) sells, or uses for trade, a measuring instrument marked in contravention of paragraph (b) or section 30 knowing it to have been unlawfully marked.

Penalty: \$20 000.

Part 4 — Transactions by measurement

32. Measurement to be open to scrutiny in certain cases

- (1) If an article is sold at a price determined by reference to measurement of the article, the party that determines the price of the article must ensure —
 - (a) that the measurement is made in the presence of the other party to the sale; or
 - (b) that the other party is furnished at or before the time of delivery of the article with a written statement of the measurement of the article.
- (2) If the article is to be delivered at the time and place of measurement, the party that determines the price of the article by reference to the measurement must, if the other party to the sale requests it, measure the article in the presence of that other party.
- (3) A person who fails to comply with subsection (1) or (2) commits an offence.
Penalty: \$5 000.
- (4) For the purposes of this section, an article is measured in the presence of a person if —
 - (a) the measuring process is readily visible to the person; and
 - (b) any reading or information displayed by the measuring instrument is readily visible to the person.
- (5) Unless the regulations otherwise provide, this section does not apply to the sale of a pre-packed article.

33. Incorrect measurement or price calculation

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

Penalty: \$20 000.

34. Variation of quantity ordered

If the quantity of an article sold is less than the quantity stated in the offer to purchase, the seller commits an offence unless the

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seller informs the purchaser of that fact before completion of the sale.

Penalty: \$20 000.

35. Special provisions for sale of meat

(1) In this section —

killed animal includes —

- (a) fish, other than shellfish, that has been caught; and
- (b) killed poultry;

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

- (a) the whole or any part of a rabbit;
- (b) heads, feet, hearts, lights, kidneys, brains or sweetbread; or
- (c) meat packed as a pre-packed article.

(2) A person who sells meat otherwise than at a price determined by reference to the mass of the meat commits an offence.

Penalty: \$5 000.

(3) If the article sold as referred to in section 32 is meat consisting of more than one cut, a written statement of measurement is not sufficient to comply with section 32(1)(b) unless it specifies the mass of each cut.

(4) A person who offers or exposes a quantity of meat for sale at a marked price for that quantity commits an offence unless —

- (a) the mass of the meat is also marked in the same manner as, and as prominently as, the price marking; and
- (b) the price per kilogram of the meat is also indicated as prominently as the price marking by —
 - (i) a marking on the meat; or

- (ii) another statement in letters and figures not less than 10 mm high that clearly refers to the meat.

Penalty: \$5 000.

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

36. Special provision for sale of firewood by volume

To apply section 33 to a sale of firewood by volume, the volume stated for the sale of the firewood (the *stated volume*) is taken to comply with that section if, when the firewood is stacked with as few gaps as practicable, the volume worked out using the stack's dimensions is at least the stated volume.

37. Articles required to be sold by specific measurement

- (1) This section applies to an article, or to an article of a class, prescribed for the purposes of this section.
- (2) A person who sells a quantity of an article to which this section applies commits an offence unless the sale is at a price determined by reference to a measurement of quantity in the unit of measurement required by the regulations.
Penalty: \$5 000 or such lesser penalty as may be provided by the regulations in respect of the article concerned.
- (3) This section does not apply to the sale of a pre-packed article.

38. Presumptions concerning mass of vehicles

- (1) For the purpose of determining —
 - (a) the consideration in respect of a transaction; or

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- (b) the amount payable as a tax, rate, toll, duty, charge or other impost (however described),

it is to be conclusively presumed that —

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

- (2) In this section —

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

Part 5 — Pre-packed articles

Division 1 — Requirements for packaging and sale of pre-packed articles

39. Requirements as to packaging of pre-packed articles

- (1) A person who packs an article as a pre-packed article commits an offence unless the package complies with the provisions of the regulations made for the purposes of this section as to the packaging of such an article when it is packed.
Penalty: \$10 000.
- (2) A person who sells a pre-packed article commits an offence unless the package complies with the provisions of the regulations made for the purposes of this section as to the packaging of such an article when it is sold.
Penalty: \$10 000.
- (3) The regulations may make provision —
 - (a) restricting the quantities in which articles may be packed or sold as pre-packed articles; and
 - (b) requiring the marking on the package containing a pre-packed article when it is packed or sold of —
 - (i) the name and address of the person who packed the article or on whose behalf it was packed;
 - (ii) the measurement of the article and other information concerning the measurement of the article; and
 - (iii) the price of the article and other information concerning the price of the article.
- (4) This section does not apply to the sale of a pre-packed article by a person if the sale is authorised under Division 2.

40. Defences concerning packaging of pre-packed articles

- (1) It is a defence in proceedings under section 39 against a person who packs an article if it is established —
 - (a) (to the extent that the proceedings concern the requirement that a name or address be marked on the package) that the article was packed on premises for sale on those premises to a person for consumption or use and not for resale; or
 - (b) (to the extent that the proceedings are not so concerned) that the article was packed with the intention that it be exported from Australia and the package was marked to give a clear indication to that effect.
- (2) It is a defence in proceedings under section 39 against a person who sells a pre-packed article (to the extent that the proceedings concern the requirement that a name or address be marked on the package) if it is established —
 - (a) that the pre-packed article was packed outside Australia; or
 - (b) that the pre-packed article was sold on the premises on which it was packed and was so sold for consumption or use and not for resale.
- (3) It is a defence in proceedings under section 39 against a person who sells a pre-packed article if the seller's general defence under this Division applies.

41. Restrictions on use of certain expressions on packages

- (1) A person who packs an article as a pre-packed article or sells a pre-packed article commits an offence if, except as authorised by the regulations, there is marked on the package —
 - (a) the expression “net mass when packed” or “net mass at standard condition”, or any other words that have a similar meaning to those words; or
 - (b) any other expression directly or indirectly relating to the measurement of the article or the size of the package that

is prescribed by the regulations (including by being specified or described by reference to its meaning or effect) as a prohibited or restricted expression.

Penalty: \$5 000.

- (2) It is a defence in proceedings under this section against a person who sells a pre-packed article if it is established that the seller's general defence under this Division applies.
- (3) This section does not apply to the sale of a pre-packed article by a person if the sale is authorised under Division 2.

42. Incorrect pricing of pre-packed article

- (1) A person who sells a pre-packed article at a specified price for each unit of measurement of the article commits an offence if the price of the pre-packed article exceeds the price correctly computed by reference to —
 - (a) the measurement of the article (without any packaging or other thing that is not part of the article); and
 - (b) the stated price for each unit of measurement.

Penalty: \$20 000.

- (2) If the measurement of a pre-packed article is stated by reference to a minimum measurement, any amount by which the actual measurement exceeds that stated minimum measurement is to be disregarded in calculating the correct price for the purposes of subsection (1).
- (3) This section applies whether or not the price of the article and the price for each unit of measurement of the article —
 - (a) is required by this Act to be marked on the package containing the article; or
 - (b) is in fact so marked.
- (4) It is a defence in proceedings under this section if it is established that the seller's general defence under this Division applies.

43. Offence of packing or selling short measure

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

(a) the person who packed the article commits an offence; and

(b) a person who sells the article commits an offence.

Penalty: \$20 000.

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

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

(4) A measurement or minimum measurement marked on or near a receptacle containing a pre-packed article so as to constitute a representation as to the measurement or minimum measurement of the quantity of the article is, for the purposes of this section, to be regarded as being marked on the package.

44. Extent of deficiency necessary to constitute short measure

(1) For the purposes of section 43, the actual measurement of a pre-packed article (the *offending article*) is not to be regarded as being less than a marked measurement unless —

(a) the deficiency in actual measurement of the offending article is greater than the deficiency permitted by the regulations for the article concerned; or

- (b) the deficiency in the average of the actual measurements of a number of like articles (found in the same place and at the same time as the offending article is found) is greater than the deficiency permitted by the regulations for the article concerned.
- (2) The regulations may —
 - (a) make provision with respect to the method to be used in determining the average measurement under subsection (1)(b) and the number of like articles to be measured for that purpose;
 - (b) provide that the deficiency permitted in the average of measurements determined under subsection (1)(b) is nil; and
 - (c) make different provision according to how long after packaging of the article the measurements concerned are made.
- (3) This section does not apply in a case where the number of like articles (found in the same place and at the same time as the offending article is found and available for measurement by an inspector) is not sufficient for the purposes of a determination under subsection (1)(b) in accordance with the regulations.

45. Defences concerning short measure

- (1) It is a defence in proceedings under section 43 against a person who packs a pre-packed article if it is established that the deficiency in measurement —
 - (a) arose after the packing of the article and the marking of the package and was attributable wholly to factors for which reasonable allowance was made in stating the measurement marked on the package; or
 - (b) resulted from something that the accused could not reasonably have foreseen or for which the accused could not reasonably have made allowance.

- (2) It is a defence in proceedings under section 43 against a person who sells a pre-packed article if it is established —
- (a) that the accused —
 - (i) obtained the article from another person within Australia who packed the article or sold it to the accused; and
 - (ii) identified that other person to an inspector;
 - (b) that the package containing the article was marked apparently as required by this Act when the accused received it; and
 - (c) that the accused sold the article in the same state as it was in when the accused obtained it.
- (3) The defence under subsection (2) is not available to the accused in relation to the sale of a pre-packed article (the *offending article*) if —
- (a) a finding by an inspector in relation to another pre-packed article sold by the accused indicated that its sale would have been an offence under section 43 had that defence not been available;
 - (b) that other pre-packed article was of the same kind, and had the same measurement marked on the package, as the offending article; and
 - (c) the inspector informed the accused of that finding before the sale of the offending article,
- unless the accused establishes that the offending article was not in the accused's possession when the accused was informed of the inspector's finding.
- (4) It is not a defence in proceedings under section 43 merely to establish that the deficiency in measurement did not exist when the article was packed or when the package was marked.

46. Seller's general defence

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

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

47. Employee's general defence

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

48. Regulations concerning methods of measurement

For the purposes of this Division —

- (a) the measurement of a pre-packed article is to be determined in accordance with any applicable methods and procedures provided for in the regulations; and
- (b) a measurement so determined is to be regarded as the measurement of the article.

Division 2 — Permit to sell certain pre-packed articles

49. Commissioner may issue permits

- (1) The Commissioner may issue to a person a permit authorising the sale of a pre-packed article the sale of which would otherwise be an offence under section 39 or 41.

- (2) The issue of a permit operates to authorise such a sale, in the circumstances and subject to any conditions specified in the permit, by —
- (a) the permit holder, but only while the permit is in force; and
 - (b) any other person, whether or not the permit is in force, if the permit holder sells the article while the permit is in force,

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

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

50. Requirements for issue

The Commissioner may issue a permit in relation to an article only if the Commissioner is satisfied that —

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

51. Cancellation of permits

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

52. Recognition of permits under corresponding laws

Except where the Minister by notice published in the *Gazette* otherwise provides in a particular case or class of cases, a permit that —

- (a) is the equivalent of a permit under this Division; and
- (b) is in force under a corresponding law,

has effect within the State as if it were a permit under this Division.

Part 6 — Licensing

Division 1 — Requirements for licences

53. Requirement for servicing licence

- (1) A person commits an offence if the person —
- (a) tests a batch of measuring instruments for the purposes of certification or re-certification; or
 - (b) certifies or re-certifies or purports to certify or re-certify a measuring instrument,

unless the person is —

- (c) the holder of a servicing licence; or
- (d) an employee of the holder of a servicing licence.

Penalty: \$20 000.

- (2) A person who is —
- (a) the holder of a servicing licence; or
 - (b) an employee of the holder,

commits an offence if the person does not comply with the conditions of the licence.

Penalty: \$20 000.

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

54. Requirement for public weighbridge licence

- (1) A person who makes a weighbridge available as a public weighbridge commits an offence unless the person —
- (a) is the holder, or an employee of the holder, of a public weighbridge licence; and

- (b) does so in accordance with the conditions of the licence and the requirements of this Act.

Penalty: \$20 000.

- (2) It is a defence in proceedings against an employee of a licensee in respect of a failure to comply with a condition of a public weighbridge licence if the employee establishes that the licensee failed to make the employee aware of the condition.
- (3) The regulations may provide that the use of a weighbridge in a specified manner that would otherwise be considered to be use as a public weighbridge is not to be considered to be use as a public weighbridge for the purposes of this section.

Division 2 — Granting of licences and related provisions

55. Application for licence

- (1) On application made in a form approved by the Commissioner, the Commissioner may grant —
- (a) a servicing licence; or
- (b) a public weighbridge licence for a single weighbridge.
- (2) However, if 2 or more persons who carry on business together as partners join in making an application, the Commissioner may only grant a single licence to the joint applicants.
- (3) If the Commissioner grants a licence to a partnership, the licence must state the names of all the partners.
- (4) Each partner stated in the licence, including the licence as amended under section 73, is taken to be a holder of the licence.
- (5) An application under this section must be accompanied by the application fee prescribed under the Administration Act.
- (6) The Commissioner may require an applicant to provide specified particulars (in writing) and documents relating to the application, and may refuse the application if they are not provided.

56. Grounds for refusal

- (1) In this section —
- applicant* —
- (a) in subsections (2) and (6), means any person that has applied for a licence, and in the case of a partnership, any member of the partnership;
 - (b) in subsection (3), means —
 - (i) a body corporate that has applied for a licence; and
 - (ii) a body corporate that is a member of a partnership that has applied for a licence; and
 - (c) in subsection (5), has the meanings given by both paragraphs (a) and (b).
- (2) An application for a licence must be refused if the applicant —
- (a) is a natural person who has not reached the age of 18 years;
 - (b) is a person whose licence under this Act or a corresponding law is suspended;
 - (c) is a person disqualified under this Act or a corresponding law from holding a licence;
 - (d) is not a person likely to carry on the activities of a licensee honestly and fairly; or
 - (e) is in any other way not a fit and proper person to be a licensee.
- (3) An application for a licence must also be refused if any person concerned in the management of the applicant is a person who —
- (a) comes within subsection (2)(a), (b) or (c); or
 - (b) is not a fit and proper person to be concerned in the management of a body that carries on the activities of a licensee.

- (4) Also, for a public weighbridge licence application for a weighbridge, the Commissioner must refuse the application if the Commissioner considers the weighbridge is not suitable for use as a public weighbridge.
- (5) Without limiting the generality of subsection (2)(e) or (3), the Commissioner may, in determining whether the applicant is not a fit and proper person for the purposes of that subsection, have regard to whether the applicant or any person concerned in the management of the applicant —
- (a) has, during the period of 10 years that preceded the making of the application —
 - (i) been convicted of; or
 - (ii) served any part of a term of imprisonment for, an offence in the State or elsewhere involving fraud or dishonesty;
 - (b) was, when the application was made, the subject of a charge pending in relation to such an offence;
 - (c) has, at any time, been convicted of an offence against this Act or a corresponding law; or
 - (d) has been refused a licence under a corresponding law.
- (6) If an application for a licence is refused, the Commissioner is to notify the applicant in writing of the grounds for the refusal.

57. Licence to include reference to any registered business name

- (1) A licence is to include a reference to any name registered under the *Business Names Act 1962* that the licensee uses in carrying on activities under the licence.
- (2) A licensee commits an offence if the licensee carries on activities under the licence using a registered business name and the licence does not refer to that name as mentioned in subsection (1).
- Penalty: \$2 000.

- (3) The Commissioner, on the application of a licensee, is to amend the licence —
- (a) to include a reference to any registered business name that the licensee starts to use, or wishes to use, in carrying on activities under the licence; or
 - (b) to give effect to any change in a registered business name used by the licensee.
- (4) An application under subsection (3) in respect of a business name must be made before, or not later than 14 days after, the licensee —
- (a) starts using the business name; or
 - (b) starts using the business name as changed,

as the case may be, and subsection (2) does not apply to the use of the business name, or the business name as changed, during that period of 14 days.

58. Licensee to be allotted a mark

When the Commissioner issues a servicing licence, the Commissioner must approve a mark for use by the licensee and employees of the licensee when certifying or re-certifying measuring instruments.

59. Register of licences

- (1) The Commissioner must keep a register of the prescribed particulars relating to licences in the manner and form the Commissioner thinks fit.
- (2) The register referred to in subsection (1) is to be available for public inspection subject to payment of the fee, if any, prescribed under the Administration Act.

60. Conditions may be imposed on licences

- (1) The Commissioner may impose conditions —
 - (a) when a licence is granted; or

- (b) at any time after granting a licence,
and may vary or revoke any such condition.
- (2) Without limiting the generality of subsection (1), such a condition may restrict to a specified class or specified classes the measuring instruments that may be certified or re-certified under the authority of a servicing licence.
- (3) After granting a licence, the Commissioner must not impose or vary a condition of the licence unless the licensee has first been given an opportunity to make oral or written submissions concerning the imposition or variation of the condition.
- (4) The imposition or variation of a condition under this section does not take effect until notice in writing of it has been served on the licensee.

61. Conditions on all servicing licences

A servicing licence is subject to the following conditions —

- (a) if the licensee is a natural person — a condition that the licensee is not personally to certify or re-certify a measuring instrument unless the licensee is competent to do so;
- (b) a condition that the licensee must not employ a person to certify or re-certify a measuring instrument unless the person employed is competent to do so;
- (c) a condition that the licensee or an employee of the licensee must not mark a measuring instrument with the licensee's mark without first obliterating any inspector's mark or licensee's mark that the instrument already bears;
- (d) a condition that any obliteration by the licensee or an employee of the licensee of an inspector's mark or a licensee's mark without certification or re-certification of the measuring instrument must be reported in writing to the Commissioner within 14 days;

- (e) a condition that if the licensee or an employee of the licensee determines, when examining or testing a measuring instrument, that the instrument could not then be certified or re-certified the licensee must report the fact in writing to the Commissioner within 14 days unless a report of the matter is also required under paragraph (d);
- (f) a condition that the licensee or an employee of the licensee must not certify or re-certify a measuring instrument without using such equipment as is specified by the Commissioner when granting the licence;
- (g) a condition that if the licensee's mark is made by an employee of the licensee, the licensee must at all times be able from that mark to identify the employee to the Commissioner;
- (h) such other conditions as may be prescribed.

62. Conditions on all public weighbridge licences

- (1) A public weighbridge licence is subject to the following conditions —
 - (a) a condition that the licensee must not operate the weighbridge mentioned in the licence unless the licence or a copy of the licence has a weighbridge suitability statement written on it that is in force;
 - (b) a condition that the weighbridge suitability statement is in force only until the end of —
 - (i) the period for which the fee payable in relation to the statement has been paid; or
 - (ii) the period as extended under section 65;
 - (c) a condition that the weighbridge mentioned in the licence is to be located at the place stated in the licence;
 - (d) a condition that the licensee must ensure that the weighbridge mentioned in the licence is not operated by

- any person other than the licensee or an employee of the licensee;
- (e) if the licensee is a natural person — a condition that the licensee must not personally operate a public weighbridge unless the licensee is competent to do so;
 - (f) a condition that the licensee must not employ a person to operate a public weighbridge unless the person is competent to do so;
 - (g) such other conditions as may be prescribed.
- (2) The condition specified in subsection (1)(d) does not apply to the operation of a weighbridge if —
- (a) the weighbridge is approved by the Commissioner for direct operation by the public; and
 - (b) the licensee ensures that the weighbridge is operated otherwise than in accordance with that condition only during such periods and in accordance with such conditions as may be specified in the approval.

63. Conditions need not be endorsed on licence

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

64. Periodic licence fee

- (1) The fee prescribed under the Administration Act for a licence is payable to the Commissioner —
- (a) with the application for the licence; and
 - (b) while the licence is in force or under suspension — not later than one month after the commencement of each period for which the regulations under the Administration Act require the fee to be paid.
- (2) The Commissioner may extend and further extend the time for payment of the licence fee.

65. Continuation of weighbridge suitability statement in particular circumstances

- (1) This section applies if —
 - (a) before the end of the period for which a weighbridge suitability statement is in force for a particular weighbridge, a licensee pays the fee prescribed under the Administration Act for a new weighbridge suitability statement; and
 - (b) the Commissioner has not caused the weighbridge to be examined for the purpose of providing a new weighbridge suitability statement.
- (2) The licensee may continue to operate the weighbridge under the licence until the Commissioner —
 - (a) issues to the licensee a copy of the public weighbridge licence for the weighbridge with a weighbridge suitability statement on it in force for the period for which the fee payable in relation to the statement has been paid; or
 - (b) decides the weighbridge is no longer suitable for use as a public weighbridge and gives written notice of the decision to the licensee under section 66(2).

66. If weighbridge no longer suitable for use as a public weighbridge

- (1) This section applies if the Commissioner decides a public weighbridge is no longer suitable for use as a public weighbridge.
- (2) The Commissioner may give the licensee a notice stating —
 - (a) why the Commissioner considers the public weighbridge is no longer suitable for use as a public weighbridge; and
 - (b) that the licensee may make written submissions to the Commissioner within 28 days stating why the licensee

considers the public weighbridge licence for the public weighbridge should not be cancelled.

- (3) After considering any submissions made to the Commissioner, the Commissioner may —
 - (a) decide to take no further action against the licensee; or
 - (b) cancel the public weighbridge licence for the public weighbridge.
- (4) The Commissioner must give the licensee a written notice stating —
 - (a) the decision and the reason for the decision; and
 - (b) that if the Commissioner cancels the licensee's licence, the licensee may apply for a review of the decision under section 81(g).
- (5) This section does not limit section 10.

67. Cancellation for non-payment of licence fee

- (1) If the licence fee is not paid, the Commissioner may serve on the licensee a notice in writing to the effect that the licence will be cancelled if the fee is not paid within 14 days after the notice is served.
- (2) The Commissioner may cancel the licence if the fee is not paid within that time.

68. Surrender etc. of licence

- (1) A licensee may surrender the licence by giving to the Commissioner —
 - (a) notice in writing of the surrender; and
 - (b) the licence document.
- (2) Subject to section 73, a licence is not transferable.

69. Return of licence

If a licensee receives written notice from the Commissioner that the licence has been cancelled or suspended under this Part, the licensee commits an offence if the licensee does not return the licence to the Commissioner within 14 days.

Penalty: \$2 000.

70. Effect of relocation of licensed weighbridge

- (1) This section applies if a licensee moves a weighbridge from the location at which it was inspected before the issue of the weighbridge suitability statement for the weighbridge to another location at the place stated in the licence.
- (2) The public weighbridge licence for the weighbridge is taken to have been surrendered under section 68.

71. Application to amend condition of licence

- (1) A licensee under a servicing licence may apply to the Commissioner for an amendment to a condition of the licence of a kind mentioned in section 60(2).
- (2) The Commissioner may amend or refuse to amend the licence.
- (3) An application must be accompanied by the application fee prescribed under the Administration Act.

72. Order preventing employment of certain persons

- (1) The Commissioner may by order in writing direct that —
 - (a) a specified person —
 - (i) is not to be employed to certify or re-certify any measuring instrument;
 - (ii) is not to be employed to certify or re-certify a specified class or specified classes of measuring instruments; or

- (iii) is to be employed to do so only in compliance with specified conditions;

or

- (b) a specified person —
 - (i) is not to be employed to perform duties relating to the operation of any public weighbridge;
 - (ii) is not to be employed to perform duties relating to the operation of a specified class or specified classes of public weighbridges; or
 - (iii) is to be employed to do so only in compliance with specified conditions.
- (2) The Commissioner must not make such an order unless satisfied that it is necessary or desirable because of the person's —
 - (a) lack of competency; or
 - (b) lack of fitness in any other respect,to exercise the functions concerned.
- (3) If the Commissioner makes an order under this section, the Commissioner must —
 - (a) serve a copy of the order, together with a statement of the reasons for making the order, on the person to whom it relates (if the person's whereabouts are known to the Commissioner); and
 - (b) serve a copy of the order on any licensee that the Commissioner knows is employing that person when the order is made.
- (4) It is a condition of a licence that the licensee must not employ a person in contravention of an order in force under this section.
- (5) It is the responsibility of a licensee to make due enquiry of the Commissioner before employing a person to establish whether there is an order in force under this section in respect of the person.

Division 3 — Changes in licensed partnership or management of licensed body corporate

73. Change of licence holders due to change of partnership

- (1) This section applies if —
 - (a) a partnership is the holder of a licence; and
 - (b) there is or is proposed to be a change to the membership of the partnership (the *change*) with at least one partner before the change continuing as a partner after the change.
- (2) The partnership may apply to the Commissioner to amend the licence to state the partners who are or will be the partners after the change.
- (3) The application must be accompanied by the application fee prescribed under the Administration Act.
- (4) To the extent the change consists of a person ceasing to be a partner, the Commissioner must grant the application and amend the licence to remove the name of the partner from the licence.
- (5) To the extent the change involves a new partner being admitted to the partnership —
 - (a) the application must include the information about the new partner that would have to be given to the Commissioner in an application for a licence of the kind concerned; and
 - (b) after considering the application, the Commissioner must —
 - (i) grant the application and amend the licence to include the name of the new partner; or
 - (ii) refuse the application under subsection (6).
- (6) The Commissioner must refuse an application to which subsection (5) applies if it would be refused under section 56 were it an application by the new partner for the licence.

74. Inclusion of new person in management of body corporate

- (1) This section applies if —
 - (a) a body corporate is the holder, or one of the holders, of a licence; and
 - (b) a new person is included, or proposed to be included, in the persons who are concerned in the management of the body corporate, irrespective of whether an increase in the number of such persons is involved.
- (2) The body corporate may apply to the Commissioner for approval of the inclusion.
- (3) The application must be accompanied by the application fee prescribed under the Administration Act.
- (4) The application must include the information about the new person that would have to be given to the Commissioner in an application for a licence of the kind concerned.
- (5) After considering the application, the Commissioner must —
 - (a) approve the inclusion of the person in the persons who are concerned in the management of the body corporate; or
 - (b) refuse the application under subsection (6).
- (6) The Commissioner must refuse an application if he or she is satisfied that a licence of the kind concerned would not be granted if —
 - (a) the body corporate were the applicant, or one of the applicants, under section 55 for a licence of that kind; and
 - (b) at the time of the application the persons concerned in the management of the body corporate were the persons who would be so concerned if the proposed inclusion were approved.

75. Notice to applicant and amendment of licence

- (1) If the Commissioner refuses an application under section 73 or 74, the Commissioner must in writing notify the applicant —
 - (a) of the grounds for the refusal; and
 - (b) of the right to apply for a review of the decision under section 81(a)(ii) or 81(d), as the case may be.
- (2) If an application under section 73 is granted relating to a change that is to happen at a later time, the Commissioner must amend the licence in accordance with the application from the later time.
- (3) To amend a licence held by a partnership, the Commissioner may —
 - (a) endorse the amendment on the licence held by the partnership; or
 - (b) replace the licence with a licence stating the membership of the partnership after the change.

76. Time allowed for making and determination of applications under this Division

- (1) This section applies if —
 - (a) a change within the meaning of section 73 happens; or
 - (b) a new person is included in the management of a body corporate as mentioned in section 74(1)(b),and the change or inclusion happens —
 - (c) not more than 28 days before an application under section 73 or 74, as the case may be, is made; or
 - (d) after the application is made but before it is decided.
- (2) From the day when the change within the meaning of section 73 happens —
 - (a) the relevant licence is taken to be held by the partnership as it exists after the change; and

- (b) each partner is taken to be a holder of the licence, until the application under that section is decided.
- (3) From the day when the new person is included in the management of the body corporate as mentioned in section 74(1)(b), the inclusion is taken to be approved by the Commissioner until the application under that section is decided.
- (4) For the purposes of this section an application is decided —
 - (a) when the application is granted under section 73 or 74; or
 - (b) if the application is refused —
 - (i) when the time for making an application under section 81 for a review of the refusal has expired without an application for review being duly made; or
 - (ii) when an application so made has been unsuccessful,whichever occurs first.
- (5) For the purposes of subsection (4)(b) an application for review is unsuccessful if —
 - (a) the application results in the refusal of the application under section 73 or 74 being confirmed; or
 - (b) the application for review is dismissed or struck out.

77. Offence of failure by body corporate to take certain action without approval

If a body corporate is the holder, or one of the holders, of a licence, the body corporate commits an offence if —

- (a) a new person is included in the persons who are concerned in the management of the body corporate and an application is not made under section 74 in respect of

the person either before or within 28 days after the inclusion; or

- (b) a new person continues to be included in the persons who are concerned in the management of the body corporate after an application so made is refused and any application for review of the refusal is unsuccessful, as mentioned in section 76(5).

Penalty: \$20 000.

Division 4 — Disciplinary action against licensees

78. Grounds for disciplinary action

- (1) Each of the following constitutes grounds for disciplinary action against a licensee —
 - (a) the licensee, or if the licensee or one of the licensees is a body corporate a person concerned in the management of the body corporate, has failed to comply with —
 - (i) a provision of this Act, the Administration Act or a corresponding law; or
 - (ii) a condition of the licence;
 - (b) the licensee, or if the licensee or one of the licensees is a body corporate a person concerned in the management of the body corporate, has been convicted of an offence in the State or elsewhere involving fraud or dishonesty;
 - (c) the activities to which the licence relates are being carried on in a dishonest or unfair manner;
 - (d) the Commissioner would be required by section 56 to refuse an application for a licence by the licensee (if the licensee were not already a licensee);
 - (e) the licensee —
 - (i) has been refused a licence under a corresponding law; or

- (ii) is the subject of disciplinary action under the provision of a corresponding law that corresponds to section 80;
 - (f) the licensee is not, for any other reason, a fit and proper person to continue to hold a licence.
- (2) A ground for disciplinary action under subsection (1) exists in relation to a licensee who is a partnership if the ground exists in relation to any one or more of the members of the partnership.

79. Notice to licensee of grounds for disciplinary action

- (1) If the Commissioner reasonably suspects that there are grounds for disciplinary action against a licensee, the Commissioner may serve a written notice on the licensee —
- (a) giving full particulars of those grounds, including particulars of the reasons for any general ground; and
 - (b) calling on the licensee to show cause within a reasonable period specified in the notice why the Commissioner should not take disciplinary action on those grounds against the licensee under section 80.
- (2) A licensee on whom such a notice is served may, within the period allowed by the notice, make written or oral submissions to the Commissioner on the matters concerned.

80. Taking of disciplinary action

- (1) If, after consideration of any submissions made by the licensee within the period allowed, the Commissioner is satisfied that grounds for disciplinary action against a licensee have been established, the Commissioner may —
- (a) reprimand the licensee;
 - (b) impose a condition on the licence;
 - (c) suspend the licence for up to 12 months;
 - (d) act under any combination of 2 or more of paragraphs (a), (b) and (c); or

- (e) cancel the licence and disqualify the former licensee permanently or for a specified period from holding a licence.
- (2) The Commissioner takes any such action by serving written notice of it on the licensee but any action taken is stayed —
 - (a) until the end of the period allowed for the making of an application under section 81 for a review of the decision to take the action; and
 - (b) if such an application is made, but subject to any order of the State Administrative Tribunal, until —
 - (i) the application results in the disciplinary action being confirmed; or
 - (ii) the application is dismissed or struck out.

Division 5 — Review of decisions

81. Right to have certain decisions reviewed

A person may apply to the State Administrative Tribunal for a review of a decision of the Commissioner —

- (a) to refuse the person's application for —
 - (i) a licence; or
 - (ii) an amendment of a licence;
- (b) to make an order under section 72 in respect of the person;
- (c) to impose or vary a condition to which the person's licence is to be subject;
- (d) to refuse the person's application for approval under section 74;
- (e) to reprimand the person as a licensee;
- (f) to suspend the person's licence;
- (g) to cancel a public weighbridge licence held by the person because the public weighbridge mentioned in the

licence is no longer suitable for use as a public weighbridge; or

- (h) to cancel the person's licence and disqualify the former licensee from holding a licence.

Part 7 — Inspectors

82. Powers of entry etc.

- (1) An inspector may exercise any power conferred by subsection (2) for the purpose of —
 - (a) investigating an offence against this Act that the inspector reasonably believes has been committed; or
 - (b) exercising any function of an inspector under this Act.
- (2) An inspector may at any reasonable time —
 - (a) enter and search a building, place or vehicle, apparently in use for the carrying on of a business;
 - (b) require a person in charge of such a vehicle to stop it, or move it a reasonable distance to a place specified by the inspector, to enable the inspector —
 - (i) to enter and search it; or
 - (ii) to weigh or measure it and its load;and
 - (c) require a person in possession of a pack, basket or other receptacle containing articles that are apparently for sale to permit the inspector to examine its contents.
- (3) An inspector is not entitled to enter a part of premises used for residential purposes, except —
 - (a) with the consent of the occupier; or
 - (b) under the authority of a search warrant.

83. Powers in relation to measuring instruments

- (1) If an inspector reasonably believes that a measuring instrument is used for trade, the inspector may —
 - (a) examine and test the instrument;

- (b) require a person —
 - (i) who is in the building, place or vehicle where the instrument is found; or
 - (ii) who the inspector reasonably believes may be able to provide relevant information, to answer questions, or produce records under the person's control, concerning the instrument or its use; and
- (c) make copies of or take extracts from records so produced,

and, if the inspector reasonably believes that an offence against this Act has been committed involving the measuring instrument, may seize and retain the instrument and any records so produced.

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

84. Powers in relation to articles

- (1) If an inspector reasonably believes that an article is for sale by reference to the measurement of the article, or is a pre-packed article, the inspector may —
 - (a) examine and measure the article or a package containing the article;
 - (b) break open a package containing the article and remove the article from it;
 - (c) require a person —
 - (i) who is in the building, place or vehicle where the article is found; or

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- (ii) who the inspector reasonably believes may be able to provide relevant information, to answer questions, or produce records under the person's control, concerning the article; and
 - (d) make copies of or take extracts from records so produced.
- (2) If an inspector reasonably believes that an offence against this Act has been committed involving an article, the inspector may —
 - (a) seize and retain the article, samples of the article, any package containing the article and any records concerning the article or package;
 - (b) seize and retain any number of packages required to follow the prescribed procedures and make the prescribed determinations as a condition precedent to the bringing of proceedings for any offence concerned; and
 - (c) measure anything seized, whether at the time and place of seizure or later and elsewhere.
- (3) Measurement of an article or sample may be carried out even though it results in the destruction of the article or sample.
- (4) Also, the inspector may record the details of any article that is examined or measured under this section in the way the inspector considers appropriate, including by filming or photographing.

85. Pre-packed articles — special powers

- (1) If a name is marked on the package containing a pre-packed article, an inspector may require the person named to state in writing, within a reasonable time specified by the inspector —
 - (a) the name and address of the person who packed the article; and
 - (b) the address of the premises at which the article was packed.

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

86. Return etc. of seized property

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

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

- (2) If an application for return of the measuring instrument, article or package is not made within 3 months after the entitlement to its return arises, the Commissioner may dispose of it as the Commissioner thinks fit.
- (3) If, in proceedings for an offence against this Act, the court —
- (a) finds the offence proved; and
 - (b) finds that the offence concerned a measuring instrument, article or package seized and retained by an inspector,

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

87. Obstruction etc. of inspector

A person commits an offence if the person —

- (a) hinders or obstructs an inspector when the inspector is exercising any function of an inspector under this Act;

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

Penalty: \$10 000.

88. Self-incrimination

- (1) A person is not excused from answering any question or producing any record, if required to do so under this Part, on the ground that the answer or record might tend to incriminate the person or make the person liable to a penalty.
- (2) An answer given or document produced by a person in compliance with a requirement of this Part is not admissible against the person in any criminal proceedings other than an offence under section 93.

89. Inspector's certificate of authority to be produced

An inspector exercising or proposing to exercise a function under this Act or the Administration Act must, on request,

produce the inspector's certificate of authority issued under the Administration Act.

Part 8 — Miscellaneous

90. Compensation for loss caused by offence

- (1) If —
 - (a) a person is convicted of an offence under this Act; and
 - (b) the court considers that the commission of the offence caused another person to suffer pecuniary loss,

the court may order the convicted person to pay to the other person a specified amount of compensation for the loss.
- (2) The court may make such an order whether or not it imposes a penalty for the offence.
- (3) The amount ordered to be paid may be recovered in a court of competent jurisdiction as a debt due by the convicted person to the other person.

91. Offence by employee — liability of employer

- (1) If an employee contravenes any provision of this Act, the employer is to be taken to have contravened the same provision whether or not the employee contravened the provision —
 - (a) without the employer's authority; or
 - (b) contrary to the employer's orders or instructions.
- (2) It is a defence in proceedings against an employer for such a contravention if it is established that the employer —
 - (a) had no knowledge of the contravention; and
 - (b) could not, by the exercise of due diligence, have prevented the contravention.
- (3) An employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or convicted under that provision.

92. Offence by body corporate — liability of directors etc.

- (1) If a body corporate contravenes any provision of this Act, each person who —
- (a) is a director of the body corporate; or
 - (b) is concerned in its management,
- is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the body corporate has been proceeded against or convicted under that provision.

93. False or misleading statements

- (1) A person commits an offence if the person makes a statement that is false or misleading in a material particular in —
- (a) a form given to the Commissioner for the purposes of section 20;
 - (b) an application under Part 5 Division 2 for a permit to sell a pre-packed article;
 - (c) an application under Part 6 for a licence;
 - (d) an answer to a question asked by an inspector under Part 7; or
 - (e) a statement of a name or address to an inspector under Part 7.
- Penalty: \$2 000.
- (2) It is a defence in proceedings for such an offence if it is established that, when the statement was made, the accused believed on reasonable grounds that the statement was true and not misleading.

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94. Evidence — signatures of Minister and officials

A signature purporting to be the signature of —

- (a) the Minister;
- (b) the Commissioner; or
- (c) a delegate of the Minister or the Commissioner,

is, unless the contrary is established, to be presumed to be the signature it purports to be.

95. Certificate evidence

(1) The following certificates are evidence of the matters they certify —

- (a) a certificate purporting to have been issued by the Minister to the effect that a person specified in the certificate is or was the Commissioner or the Deputy Commissioner at a time, or during a period, specified in the certificate;
- (b) a certificate purporting to have been issued by the Commissioner to the effect that a person specified in the certificate —
 - (i) was or was not an inspector; or
 - (ii) was or was not the holder of a specified class of licence,at a time, or during a period, specified in the certificate;
- (c) a certificate purporting to have been issued by the Commissioner as to the result of the examination of a measuring instrument, and the testing of its calibration, under section 26.

(2) A document purporting to be certified by the Commissioner as a copy of —

- (a) a permit under Part 5 Division 2 in force on a specified day or during a specified period; and

(b) the conditions to which the permit was then subject,
is evidence of the matters certified.

96. Evidence — pre-packed articles

- (1) A marking on the package containing a pre-packed article of the name of a person is evidence —
 - (a) that the article was packed by the person; or
 - (b) where the name is or was registered under the law relating to business names, that the article was packed jointly and severally by the persons in relation to whom the business name is or was registered.
- (2) A marking on the package containing a pre-packed article of the address of a place is evidence that the article was packed at that place.
- (3) A marking on the package containing a pre-packed article purporting to be the date on which the article was packed is evidence that the article was packed on that date.
- (4) A batch number on a pre-packed article is evidence of the matters indicated by the number, including, for example, the date and place the article was packed and who packed it.
- (5) The fact that an article contained in a package is found exposed for sale or in the possession of a person for sale is evidence that the article is a pre-packed article.
- (6) In subsection (4) —
batch number means a number marked on a pre-packed article in accordance with a system of numbers, letters or symbols or any combination of numbers, letters and symbols, used by the person packing the article to mark the article to indicate when and where it was packed and who packed it.

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97. Packaged article presumed to be pre-packed in certain circumstances

- (1) Unless the contrary is established, a packaged article is to be presumed to be a pre-packed article for the purposes of this Act if it is found in premises where articles of the same kind are packed for sale or are kept after being packed for sale.
- (2) The fact that the package is not marked as required by this Act is not sufficient to establish that the article is not a pre-packed article.

98. Evidence — use of measuring instrument for trade

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

99. Records — English language

A requirement under this Act to produce a record includes, where the record —

- (a) is not written at all in the English language; or
- (b) is not written wholly in that language,

a requirement to produce a statement, written in the English language, setting out such of the particulars in the record as are not written in the English language.

100. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to this Act.

- (2) Without limiting the generality of subsection (1), the regulations may make provision with respect to the following —
- (a) the provision, maintenance, custody and care of standards of measurement;
 - (b) in addition to any provision made under section 12, regulating, prohibiting or restricting the use of measuring instruments for trade;
 - (c) in addition to any provision made under section 12 —
 - (i) limiting the purposes for which specified measuring instruments may lawfully be used; or
 - (ii) specifying the measuring instruments required to be used for specified purposes;
 - (d) the verification, re-verification, certification or re-certification of measuring instruments;
 - (e) the positioning of, and access to, measuring instruments in order to facilitate —
 - (i) their use for trade;
 - (ii) their examination by an inspector or licensee; or
 - (iii) their verification, re-verification, certification or re-certification;
 - (f) the provision of, and payment and recovery of the costs of, labour, materials, equipment and transportation necessary for the purpose of examining, testing, verifying or re-verifying a measuring instrument;
 - (g) the sealing of a verified, re-verified, certified or re-certified measuring instrument;
 - (h) batch testing and quality assurance in relation to measuring instruments and the provision of labour, facilities and equipment for those purposes;
 - (i) the provision or taking of samples of measuring instruments and the testing of the samples;

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- (j) conditionally or unconditionally conferring specified functions of an inspector on a person who has similar functions under a corresponding law;
- (k) providing that the measurement of a specified article, or an article in a specified state or condition, is the measurement of the article for the purposes of this Act if it is carried out in a specified manner;
- (l) matters applicable to weighbridges, whether or not public weighbridges, including their installation, functioning, operation, examination, testing, suitability and use;
- (m) the functions of operators of public weighbridges;
- (n) weighbridge suitability statements;
- (o) prohibiting, regulating or restricting the sale of specified articles, or articles of a specified class, by reference to measurement or a specified kind or unit of measurement;
- (p) the manner of and procedure for determining specified measurements or specified proportions of pre-packed articles;
- (q) standard specifications of capacity in relation to —
 - (i) packages containing specified pre-packed articles; and
 - (ii) the packing and sale of articles in those packages;
- (r) the circumstances in which the mass of the package containing a specified article may be included in determining the net mass of the article;
- (s) regulating the advertising of articles (including pre-packed articles) in so far as the advertising relates to measurement;
- (t) prohibiting, regulating or restricting the sale of articles in relation to which an offence has been committed under this Act;

- (u) the keeping of records relating to measuring instruments;
 - (v) the approval of forms for use under this Act.
- (3) The regulations may prescribe a penalty not exceeding \$2 000 for any offence against the regulations.

101. Regulations may commence on different days

- (1) In this section —
different days means different days after the day of the publication of the relevant regulations in the *Gazette*.
- (2) Different provisions of regulations may come into operation on different days.
- (3) Different provisions of regulations may be made applicable on and after different days to —
- (a) any specified person, matter, measuring instrument, article or transaction; or
 - (b) any specified class of persons, matters, measuring instruments, articles or transactions.

102. Operation of *Fair Trading Act 1987* not affected

Nothing in this Act affects the operation of the *Fair Trading Act 1987*.

Part 9 — Transitional provisions for the measurement of certain alcoholic liquor

103. Interpretation and application

- (1) In this Part —
- alcoholic liquor* means beer, stout, ale, brandy, gin, rum, whisky and vodka;
- designated day* means the second anniversary of the day on which section 10(1) comes into operation;
- repealed Act* means the Act repealed by the Administration Act section 36(1).
- (2) Nothing in this Part applies to alcoholic liquor that is packed as a pre-packed article.

104. Delayed application of sections 10(1), 16 and 32

Despite any other provision of this Act —

- (a) section 10(1) applies to the use of a measuring instrument for the measurement of alcoholic liquor for trade;
- (b) section 16 applies to the use of a measuring instrument that is not of an approved pattern for the measurement of alcoholic liquor for trade; and
- (c) section 32 applies to the measurement of alcoholic liquor for sale,

only on and after the designated day.

105. Temporary continuation of certain provisions of repealed Act

- (1) Despite the repeal of the repealed Act, until the designated day —
- (a) Part III; and

(b) section 40(1) and (2),

of that Act as in force immediately before that repeal continue to apply to the measurement of alcoholic liquor for the purposes of sale (within the meaning of that term in the repealed Act) as if the repealed Act had not been repealed.

(2) For the purposes of any reference —

(a) in this Act to “this Act”; or

(b) in the Administration Act to “the principal Act”,

the provisions continued in force by subsection (1) —

(c) are to be regarded as if they were enacted in this Act; but

(d) despite paragraph (c), are to be construed in accordance with Part I of the repealed Act.

106. Further provision may be made for this Part

(1) If there is no sufficient provision in this Part for any matter or thing necessary or convenient to give effect to the purposes of this Part, that provision may be made by regulations.

(2) If in the opinion of the Minister an anomaly arises in the operation of any provision continued in force by section 105(1), the Governor may by regulations —

(a) modify that provision to remove the anomaly; and

(b) make such provision as is necessary or expedient to achieve the purposes referred to in subsection (1) in the intended manner.

(3) If regulations under subsection (1) provide that a state of affairs is to be taken to have existed, or not to have existed, on and from a day that is —

(a) earlier than the day on which the regulations are published in the *Gazette*; but

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- (b) not earlier than the day on which this Part came into operation,

the regulations have effect according to their terms.

- (4) A provision referred to in subsection (3) does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State) the rights of that person existing; or
 - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done,before the day of publication of the regulations.

Notes

¹ This is a compilation of the *Trade Measurement Act 2006*. The following table contains information about that Act.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Trade Measurement Act 2006</i>	13 of 2006	11 May 2006	s. 1 and 2: 11 May 2006 (see s. 2) Act other than s. 1 and 2: 1 Jun 2007 (see s. 2 and <i>Gazette</i> 29 May 2007 p. 2485)