



Australian Capital Territory

# **Trade Measurement Act 1991      No 56**

## **Republication No 3**

Republication date: 2 November 2001

Last amendment made by Act 2001 No 70

Amendments incorporated to 14 September 2001

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Trade Measurement Act 1991* as in force on 2 November 2001. It includes any amendment, repeal or expiry affecting the republished law to 14 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
14 September 2001



Australian Capital Territory

# Trade Measurement Act 1991

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Australian Capital Territory

## **Trade Measurement Act 1991**

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An Act relating to trade measurement in the Territory as part of the scheme for uniform trade measurement legislation throughout Australia

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Trade Measurement Act 1991*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*Australian legal unit of measurement*—see the National Measurement Act, section 3 (1) (Interpretation).' means that the expression 'Australian legal unit of measurement' is defined in the National Measurement Act (defined as the *National Measurement Act 1960* (Cwlth)), section 3 (1) and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

### 3 Determining certain quantities

In this Act—

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

#### **4 Use of measuring instrument for trade—meaning**

- (1) For this Act, a person uses a measuring instrument for trade if the person uses it, has it in possession for use, or makes it available for use, to make a measurement for the purpose of—
  - (a) determining the consideration in respect of a transaction; or
  - (b) determining the amount payable as a tax, rate, toll, duty, charge or other impost (however described).
- (2) In addition, a person shall be regarded as using a measuring instrument for trade if—
  - (a) the person makes the measuring instrument available on premises for use by a party to a transaction that takes place on those premises; and
  - (b) the instrument makes a measurement of a kind that is used for the purpose of determining the consideration in respect of the transaction even though a measurement actually made with that instrument is not used for that purpose.
- (3) If a party to a transaction makes a measuring instrument available for use in connection with the transaction, another party to the transaction who uses the instrument in that connection shall not, despite subsection (1), be regarded as using the instrument for trade.

#### **6 Exemptions from Act**

- (1) The regulations may exempt from the operation of this Act, or specified provisions of this Act, a specified person, matter, article or transaction or a specified class of persons, matters, articles or transactions.
- (2) Except to the extent that regulations made under the Administration Act otherwise provide, this Act does not apply to a measurement, or an instrument used for the purposes of a measurement, to determine any of the following:

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

## Part 2                      Use of measuring instruments for trade

### 7      Measuring instruments used for trade must be marked

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

Maximum penalty:

- (a) if the measuring instrument is a weighbridge—100 penalty units; or
- (b) in any other case—50 penalty units.
- (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.

Maximum penalty: 100 penalty units.

- (3) If an inspector finds a measuring instrument that is being used in contravention of subsection (1) or (2), the inspector may give the owner or user of the measuring instrument a written notice—
- (a) stating 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 owner to remedy the contravention within a stated period of not more than 28 days.
- (4) If the person complies with the notice, the person is taken not to have committed an offence against this section in relation to the circumstances to which the notice relates.

- (5) This section does not apply to the use of a measuring instrument to determine a quantity of articles by number of the articles.
- (6) The regulations may provide for the circumstances in which the use for trade of a measuring instrument that has been repaired or modified, or commissioned, is permitted even though it does not bear an inspector's mark or a licensee's mark, pending its verification or certification.

### **7A Use of class 4 measuring instruments**

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

- (a) as airport baggage scales; or
- (b) for freight scales with a capacity of up to 2 000kg; or
- (c) for weighing garbage; or
- (d) for weighing earth, sand, gravel or other similar material; or
- (e) as a crane-weigher; or
- (f) for weighing timber in log form; or
- (g) for another purpose prescribed under the regulations.

Maximum penalty:

- (a) if the class 4 measuring instrument is a weighbridge—100 penalty units; or
- (b) in any other case—50 penalty units.

### **7B Use of measuring instruments for prepacked articles**

A person must not use a measuring instrument for measuring prepacked articles on premises where articles are prepacked unless at least 1 measuring instrument on the premises—

- (a) is approved for trade use under the National Measurement Act; and
- (b) complies with this Act; and

(c) is suitable for measuring the articles to be prepacked.

Maximum penalty: 50 penalty units.

## **8 Unjust measurement**

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

Maximum penalty: 200 penalty units.

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

Maximum penalty: 200 penalty units.

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

Maximum penalty: 200 penalty units.

- (4) If an inspector finds a measuring instrument being used for trade that is incorrect or is being used in a way that is unjust, the inspector may give the owner or user of the measuring instrument a written notice—

(a) stating—

(i) that the measuring instrument is incorrect; or

(ii) that the way the person is using the measuring instrument is unjust; and

(b) requiring the person to take stated steps to stop contravening the relevant subsection within a stated period of not more than 28 days.

- (5) If the person complies with the notice, the person is taken not to have committed an offence against this section in relation to the circumstances to which the notice relates.

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

## **9 Supplying incorrect etc measuring instrument**

- (1) For this section, a measuring instrument is unacceptable for trade use if it is incorrect or is not of an approved pattern.
- (2) If a measuring instrument that is unacceptable for trade use is used for trade, a person who sold, leased, hired or lent it to the person who used it for trade commits an offence.

Maximum penalty: 200 penalty units.

- (3) It is a defence in proceedings for an offence against this section if it is established—
- (a) that the measuring instrument was not unacceptable for trade use when the defendant parted with possession of it; or
  - (b) that the defendant did not know and had no reason to suspect that the measuring instrument would be used for trade; or
  - (c) that the person who purchased the measuring instrument or took it on lease, hire or loan was informed in writing at the time that the measuring instrument was unacceptable for trade use.

## **Part 3**

# **Verification, reverification and certification of measuring instruments**

### **10 Provision and maintenance of standards**

- (1) It is the responsibility of the administering authority to arrange for the provision, custody and maintenance of such State primary standards of measurement and such classes and denominations of reference standards of measurement as the administering authority decides are necessary for this Act.
- (2) Each licensee under a servicing licence is responsible for providing such classes and denominations, decided by the administering authority, of reference standards of measurement as may be necessary for the exercise of the functions of the licensee under this Act.

### **11 Verification and reverification by inspectors**

- (1) A measuring instrument is verified when it does not already bear an inspector's mark or a licensee's mark and an inspector—
  - (a) is satisfied that the instrument complies with the requirements for verification specified in section 13; and
  - (b) marks the instrument with the inspector's mark.
- (2) A measuring instrument is reverified 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 reverification specified in section 13; and
  - (b) obliterates the inspector's mark or licensee's mark that the instrument already bears; and
  - (c) marks the instrument with the inspector's mark.

**12 Certification by licensees**

- (1) A measuring instrument is certified when the licensee under a servicing licence or an employee of the licensee—
  - (a) is satisfied that the instrument complies with the requirements for certification specified in section 13 and issues a certificate to that effect; and
  - (b) obliterates any inspector's mark or licensee's mark that the instrument already bears; and
  - (c) marks the instrument with the licensee's mark.
- (2) Certification may be carried out whether or not the measuring instrument already bears an inspector's mark or a licensee's mark.

**13 Requirements for measuring instruments**

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

**14 Standards of measurement to be used**

- (1) The determination of whether the requirements of section 13 for verification, reverification or certification are complied with shall be made by means of, by reference to, by comparison with or by derivation from—
  - (a) an appropriate State primary standard of measurement; or
  - (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, reverified or certified.

**15 Responsibilities of administering authority concerning verification and reverification**

- (1) It is the responsibility of the administering authority—
  - (a) to provide the means by which measuring instruments may be verified; and
  - (b) to arrange for the reverification of measuring instruments that are in use for trade.
- (2) Arrangements under subsection (1) (b) shall provide for the reverification of a measuring instrument as often as the administering authority determines is necessary or desirable in relation to the class of measuring instrument concerned but need not be made in any cases or circumstances for which the regulations provide reverification is not required.
- (3) This section does not affect the power of the administering authority to charge amounts in accordance with the regulations for or in connection with the verification and reverification of measuring instruments.

- (4) Even if a measuring instrument is not required by this Act to bear an inspector's mark or a licensee's mark, it may be examined and its calibration tested as if there were such a requirement but only—
- (a) for the purposes of another Act; or
  - (b) if the administering authority so approves, at the request of the person in possession of the measuring instrument.

### **16 Prohibition on use if reverification cannot be carried out**

- (1) An inspector may give reasonable directions to a person in possession of a measuring instrument for the purpose of facilitating reverification of the instrument.
- (2) Those directions may include (but are not limited to)—
- (a) directions as to the time and place at which the instrument is to be made available to an inspector; and
  - (b) any other directions authorised by the regulations.
- (3) If the inspector's directions are not complied with, an inspector may, by notice in writing given to the person, prohibit the use of the measuring instrument for trade until it is reverified.
- (4) A person given a notice under subsection (3) commits an offence if the instrument to which the notice refers is used for trade by the person before it is reverified.

Maximum penalty: 50 penalty units.

### **17 Rejection of instrument by inspector—obliteration of marks**

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

**18 Duty of repairers etc to obliterate marks**

- (1) A person shall obliterate any inspector's mark or licensee's mark that a measuring instrument bears when the person does anything to the measuring instrument (including repair, modification and commissioning) that affects its metrological performance, unless that effect can be corrected by normal operational adjustment of the instrument.
- (2) A person who fails to comply with subsection (1) commits an offence.

Maximum penalty: 200 penalty units.

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

**19 Marks on labels affixed to measuring instruments**

- (1) Any inspector's mark or a licensee's mark that is made on a label affixed to a measuring instrument shall be taken to have been made on the measuring instrument.
- (2) Such a mark is obliterated by being removed or destroyed.

**20 Making mark without authority**

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

Maximum penalty: 200 penalty units.

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

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

## **21 Other offences concerning marks**

A person 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; or
- (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; or
- (c) makes or possesses, without lawful justification or excuse, an instrument designed to make a mark resembling an inspector's mark or a licensee's mark; or
- (d) sells, or uses for trade, a measuring instrument marked in contravention of paragraph (b) or section 20 knowing it to have been unlawfully marked.

Maximum penalty: 200 penalty units.

## Part 4 Transactions by measurement

### 22 Measurement must be open to scrutiny in certain cases

- (1) If an article is sold at a price determined by reference to measurement of the article, the party that determines the price of the article shall ensure—
  - (a) that the measurement is made in the presence of the other party to the sale; or
  - (b) that the other party is furnished at or before the time of delivery of the article with a written statement of the measurement of the article.
- (2) If the article is to be delivered at the time and place of measurement, the party that determines the price of the article by reference to the measurement shall, if the other party to the sale requests it, measure the article in the presence of that other party.
- (3) A person who fails to comply with subsection (1) or (2) commits an offence.  
Maximum penalty: 50 penalty units.
- (4) For 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 prepacked article.

**23 Incorrect measurement or price calculation**

If an article is sold at a price determined by reference to measurement of the article, the party who operates the measuring instrument or decides the measurement commits an offence if—

- (a) he or she directly or indirectly misleads any other person who is a party to a sale of the article as to the measurement of the article or the calculation of the price, to that other party's detriment; or
- (b) the price paid or required to be paid is not the price correctly computed by reference to the measurement of the article and as a result the other party suffers or would suffer detriment.

Maximum penalty: 200 penalty units.

**24 Variation of quantity ordered**

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

Maximum penalty: 200 penalty units.

**25 Special provisions for sale of meat**

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

Maximum penalty: 50 penalty units.

- (2) If the article sold as referred to in section 22 is meat consisting of more than 1 cut, a written statement of measurement is not sufficient to comply with section 22 (1) (b) unless it specifies the mass of each cut.
- (3) A person who offers or exposes a quantity of meat for sale at a marked price for that quantity 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 a marking on the meat or by another statement in letters and figures not less than 10mm high that clearly refers to the meat.

Maximum penalty: 50 penalty units.

- (4) In this section:

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

- (a) the whole or any part of rabbit or shellfish; or  
(b) heads, feet, hearts, lights, kidneys, brains or sweetbread; or  
(c) meat packed as a prepacked article.
- (5) This section does not apply to the sale (other than for the purpose of resale) of cooked meat sold on the premises on which it is cooked.

## **26 Articles required to be sold by specific measurement**

- (1) This section applies to an article, or an article of a class, prescribed for 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.

Maximum penalty:

- (a) 50 penalty units; or  
(b) if a lesser maximum penalty is prescribed under the regulations in relation to the article—the maximum penalty prescribed.
- (3) This section does not apply to the sale of a prepacked article.

## **27 Presumptions concerning mass of vehicles**

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

it shall be conclusively presumed that—

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

(2) In this section:

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

## **Part 5**                      **Pre-packed articles**

### **Division 5.1**              **Requirements for packaging and sale of prepacked articles**

#### **28**      **Requirements for packaging of prepacked articles**

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

Maximum penalty: 100 penalty units.

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

Maximum penalty: 100 penalty units.

- (3) The regulations may make provision—
- (a) restricting the quantities in which articles may be packed or sold as prepacked articles; and
  - (b) requiring the marking on the package containing a prepacked 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; and
    - (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 prepacked article by a person if the sale is authorised under division 5.2.

## **29 Defences concerning packaging of prepacked articles**

- (1) It is a defence in proceedings under section 28 against a person who packs an article if it is established—
  - (a) (to the extent that the proceedings concern the requirement that a name or address be marked on the package) that the article was packed on premises for sale on those premises to a person for consumption or use and not for resale; or
  - (b) (to the extent that the proceedings are not so concerned) that the article was packed with the intention that it be exported from Australia and the package was marked to give a clear indication to that effect.
- (2) It is a defence in proceedings under section 28 against a person who sells a prepacked 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 prepacked article was packed outside Australia; or
  - (b) that the prepacked article was sold on the premises on which it was packed and was so sold for consumption or use and not for resale.
- (3) It is a defence in proceedings under section 28 against a person who sells a prepacked article if it is established that the seller's general defence under this division applies.

## **30 Restrictions on use of certain expressions on packages**

- (1) A person who packs an article as a prepacked article or sells a prepacked 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.

Maximum penalty: 50 penalty units

- (2) It is a defence in proceedings under this section against a person who sells a prepacked 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 prepacked article by a person if the sale is authorised under division 5.2.

### **31 Incorrect pricing of prepacked article**

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

Maximum penalty: 200 penalty units.

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

### **32 Offence of packing or selling short measure**

- (1) If the actual measurement of the quantity of a prepacked 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.

Maximum penalty: 200 penalty units.

- (2) If more than 1 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 shall 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 prepacked article so as to constitute a representation as to the measurement or minimum measurement of the quantity of the article shall, for this section, be regarded as being marked on the package.

### **33 Extent of deficiency necessary to constitute short measure**

- (1) For section 32, the actual measurement of a prepacked article (the offending article) shall not be regarded as being less than a marked measurement unless—
- (a) the deficiency in actual measurement of the offending article is greater than the deficiency permitted by the regulations for the article concerned; or

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

### **34 Defences concerning short measure**

- (1) It is a defence in proceedings under section 32 against a person who packs a prepacked article if it is established that the deficiency in measurement—
- (a) arose after the packing of the article and the marking of the package and was attributable wholly to factors for which reasonable allowance was made in stating the measurement marked on the package; or
  - (b) resulted from something that the defendant could not reasonably have foreseen or for which the defendant could not reasonably have made allowance.

- (2) It is a defence in proceedings under section 32 against a person who sells a prepacked article if it is established—
- (a) that the defendant obtained the article from another person within Australia who packed the article or sold it to the defendant and the defendant identified that other person to an inspector; and
  - (b) that the package containing the article was marked apparently as required by this Act when the defendant received it; and
  - (c) that the defendant sold the article in the same state as it was in when the defendant obtained it.
- (3) The defence under subsection (2) is not available to a defendant in relation to the sale of a prepacked article (the offending article) if—
- (a) a finding by an inspector in relation to another prepacked article sold by the defendant indicates that its sale would have been an offence under section 32 had that defence not been available; and
  - (b) that other prepacked article was of the same kind, and had the same measurement marked on the package, as the offending article; and
  - (c) the inspector informed the defendant of that finding before the sale of the offending article;
- unless the defendant establishes that the offending article was not in the defendant's possession when the defendant was informed of the inspector's finding.
- (4) It is not a defence in proceedings under section 32 merely to establish that the deficiency in measurement did not exist when the article was packed or when the package was marked.

### **35 Seller's general defence**

If a provision of this division provides that it is a defence to specified proceedings if it is established that the seller's general

defence under this division applies, it is a defence to those proceedings if it is established that—

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

### **36 Employee's general defence**

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

### **37 Regulations concerning methods of measurement**

For this division—

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

## **Division 5.2 Permit to sell certain prepacked articles**

### **38 Administering authority may issue permits**

- (1) The administering authority may issue to a person a permit authorising the sale of a prepacked article the sale of which would otherwise be an offence under section 28 or 30.
- (2) The issue of a permit operates to authorise such a sale, in the circumstances and subject to any conditions specified in the permit, by—

- (a) the permit holder, but only while the permit is in force; and
  - (b) any other person, whether or not the permit is in force, if the permit holder sells the article while the permit is in force;
- so long as, at the time of sale, the seller gives to the purchaser a copy of the permit concerned.
- (3) The requirement under subsection (2) that the seller give to the purchaser a copy of the permit does not apply if the sale to the purchaser is not for the purposes of resale.

### **39 Requirements for issue**

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

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

### **40 Cancellation of permits**

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

### **41 Recognition of permits under corresponding laws**

- (1) A permit that is the equivalent of a permit under this division, and is in force under a corresponding law, has effect in the ACT as if it were a permit under this division.

- (2) However, subsection (1) does not apply to a permit if the Minister directs, in writing, that it is not to apply.
- (3) A direction is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **Part 6 Licensing**

### **Division 6.1 Requirements for licences**

#### **42 Requirement for servicing licence**

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

Maximum penalty: 200 penalty units.

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

Maximum penalty: 200 penalty units.

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

#### **43 Requirement for public weighbridge licence**

- (1) A person who makes a weighbridge available as a public weighbridge 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.

Maximum penalty: 200 penalty units.

- (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 this section.

## **Division 6.2                    Granting of licences**

### **44      Application for licence**

- (1) On application, the licensing authority may grant—
- (a) a servicing licence; or
  - (b) a public weighbridge licence.

*Note 1* A fee may be determined under the Administration Act, s 12 (Determination of fees) for this section.

*Note 2* If a form is approved under the Administration Act, s 17 (Approved forms) for an application, the form must be used.

- (2) However, if 2 or more persons who carry on business together as partners join in making an application, the licensing authority may only grant a single licence to the joint applicants.
- (3) The licensing authority may require an applicant to provide specified particulars (in writing) and documents relating to the application, and may refuse the application if they are not provided.

### **45      Grounds for refusal**

- (1) An application for a licence must be refused if the applicant—
- (a) is a natural person who has not reached 18 years of age; or
  - (b) is a person whose licence under this Act or a corresponding law is suspended; or
  - (c) is a person disqualified under this Act or a corresponding law from holding a licence; or
  - (d) is not a person likely to carry on the activities of a licensee honestly and fairly; or

- (e) is in any other way not a fit and proper person to be a licensee.
- (2) However, if 2 or more persons who carry on business together as partners join in making an application, the licensing authority may only grant a single licence to the joint applicants.
- (3) Without limiting subsection (1) (e), the licensing authority may, in determining whether the applicant is not a fit and proper person to be a licensee, have regard to whether the applicant or, if the applicant is a body corporate, any person concerned in the management of the applicant—
- (a) has, during the period of 10 years that preceded the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence in the Territory or elsewhere involving fraud or dishonesty; or
- (b) was, when the application was made, the subject of a charge pending in relation to such an offence; or
- (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.
- (4) If an application for a licence is refused, the licensing authority shall notify the applicant of the grounds for the refusal.

#### **46 Licensee to be allotted a mark**

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

#### **47 Register of licences**

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

#### **48 Conditions may be imposed on licences**

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

#### **49 Conditions on all servicing licences**

A servicing licence is subject to the following conditions:

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

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

## **50 Conditions on all public weighbridge licences**

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

- (2) The condition specified in subsection (1) (b) does not apply to the operation of a weighbridge if—
- (a) the weighbridge is approved by the administering authority for direct operation by the public; and
  - (b) the licensee ensures that the weighbridge is operated otherwise than in accordance with that condition only during such periods and in accordance with such conditions as may be specified in the approval.

### **51 Conditions need not be endorsed on licence**

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

### **52 Periodic licence fee**

- (1) The fee determined under the Administration Act, section 12 (Determination of fees) for a licence is payable to the licensing authority—
- (a) with the application for the licence; and
  - (b) while the licence is in force or is under suspension—not later than 1 month after the commencement of each period for which the regulations under the Administration Act require the fee to be paid.
- (2) The licensing authority may extend and further extend the time for payment of the licence fee.

### **53 Cancellation for nonpayment of licence fee**

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

**54      Surrender etc of licence**

- (1) A licensee may surrender the licence by notice in writing given to the licensing authority.
- (2) A licence is not transferable.

**55      Order preventing employment of certain persons**

- (1) The licensing authority may by order in writing direct that a specified person—
  - (a) is not to be employed to certify any measuring instrument or is not to be employed to certify a specified class or classes of measuring instruments, or is to be employed to do so only in compliance with specified conditions; or
  - (b) is not to be employed to perform duties relating to the operation of any public weighbridge or is not to be employed to perform duties relating to the operation of a specified class or classes of public weighbridges, or is to be employed to do so only in compliance with specified conditions.
- (2) The licensing authority shall not make such an order unless satisfied that it is necessary or desirable because of the person's lack of competency, or lack of fitness in any other respect, to exercise the functions concerned.
- (3) If the licensing authority makes an order under this section, it shall—
  - (a) serve a copy of the order, together with a statement of its reasons for making the order, on the person to whom it relates (if the person's whereabouts are known to the licensing authority); and
  - (b) serve a copy of the order on any licensee that the licensing authority knows is employing that person when the order is made.

- (4) It is a condition of a licence that the licensee shall not employ a person in contravention of an order in force under this section.
- (5) It is the responsibility of a licensee to make due inquiry of the licensing authority before employing a person to establish whether there is an order in force under this section in respect of the person.

### **Division 6.3                      Disciplinary action against licensees**

#### **56      Grounds for disciplinary action**

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

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

#### **57      Notice to licensee of grounds for disciplinary action**

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

- (a) giving full particulars of those grounds, including particulars of the reasons for any general ground; and
  - (b) calling on the licensee to show cause within a reasonable period specified in the notice why the licensing authority should not take disciplinary action on those grounds against the licensee under section 58.
- (2) A licensee on whom such a notice is served may, within the period allowed by the notice, make written or oral submissions to the licensing authority on the matters concerned.

### **58 Taking of disciplinary action**

- (1) If, after consideration of any submissions made by the licensee within the period allowed, the licensing authority is satisfied that grounds for disciplinary action against a licensee have been established, the licensing authority may—
- (a) reprimand the licensee;
  - (b) impose a condition on the licence;
  - (c) suspend the licence for up to 12 months;
  - (d) act under any combination of 2 or more of paragraphs (a), (b) and (c); or
  - (e) cancel the licence and disqualify the former licensee permanently or for a specified period from holding a licence.
- (2) The licensing authority takes any such action by serving written notice of it on the licensee but any action taken is stayed—
- (a) until the end of the time for lodging an appeal against the decision to take the action; and
  - (b) if such an appeal has been duly lodged—until determination or abandonment of the appeal, unless the administrative appeals tribunal otherwise orders.

## Division 6.4 Appeals

### 59 Rights of appeal

- (1) A person may appeal to the administrative appeals tribunal against a decision of the licensing authority—
  - (a) under section 44 (1) to refuse the person's application for a licence; or
  - (b) under section 48 (1) to impose or vary a condition to which the person's licence is to be subject; or
  - (c) under section 55 (1) to make an order in respect of the person; or
  - (d) under section 58 (1) (a) to reprimand the person as a licensee; or
  - (da) under section 58 (1) (b) to impose a condition on the person's licence; or
  - (e) under section 58 (1) (c) to suspend the person's licence; or
  - (f) under section 58 (1) (e) to cancel the person's licence and disqualify the former licensee from holding a licence.
- (2) Where the licensing authority makes a decision of the kind referred to in subsection (1), it shall cause notice of the decision to be given to a person whose interests are affected by the decision.
- (3) A notice under subsection (2) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

## **Part 7                      Inspectors**

### **60      Powers of entry etc**

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

### **61      Powers in relation to measuring instruments**

- (1) If an inspector reasonably believes that a measuring instrument is used for trade, the inspector may—
  - (a) examine and test the instrument; and
  - (b) require a person in the building, place or vehicle where the instrument is found to answer questions, or produce records

under the person's control, concerning the instrument or its use; and

- (c) make copies of or take extracts from records so produced;

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

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

## **62 Powers in relation to articles**

- (1) If an inspector reasonably believes that an article is for sale by reference to the measurement of the article, or is a prepacked article, the inspector may—
  - (a) examine or measure the article or a package containing the article; and
  - (b) break open a package containing the article and remove the article from it; and
  - (c) require a person in the building, place or vehicle where the article is found to answer questions, or produce records under the person's control, concerning the article; and
  - (d) make copies of or take extracts from records so produced.
- (2) If an inspector reasonably believes that an offence against this Act has been committed involving an article, the inspector may—
  - (a) seize and retain the article, samples of the article, any package containing the article and any records concerning the article or package; and
  - (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) The inspector may record the details of an article that is examined or measured under this section in the way the inspector considers appropriate, including by filming or photographing.

### **63 Prepacked articles—special powers**

- (1) If a name is marked on the package containing a prepacked 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 prepacked 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 prepacked article to that person.

### **64 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 defendant is not (on the determination of those proceedings, whether or not within that period) convicted of an offence;

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

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

## **65 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; or
- (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; or
- (c) fails to comply with a requirement of an inspector made under the authority of this Act; or
- (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); or
- (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.

Maximum penalty: 100 penalty units.

## **66      Selfincrimination**

- (1) A person is not excused from answering any question or producing any record, if required to do so under this part, on the ground that the answer or record might tend to incriminate the person or make the person liable to a penalty.
- (2) An answer given or document produced by a person in compliance with a requirement of this part is not admissible against the person in any criminal proceedings other than proceedings for an offence under section 73.

## **67      Inspector's certificate of authority to be produced**

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

## Part 8                      Miscellaneous

### 69      Compensation for loss caused by offence

- (1) If a person is convicted of an offence under this Act and the court considers that the commission of the offence caused another person to suffer pecuniary loss, the court may order the convicted person to pay to the other person a specified amount of compensation for the loss.
- (2) The court may make such an order whether or not it imposes a penalty for the offence.

### 70      Recovery of compensation amount

The amount ordered to be paid under section 69 may be recovered in a court of competent jurisdiction as a debt due by the convicted person to the other person.

### 71      Offence by employee—liability of employer

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

**72 Offence by body corporate—liability of directors etc**

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

**73 False or misleading statements**

- (1) A person commits an offence if the person makes a statement that is false or misleading in a material particular in—
  - (a) an application under division 5.2, for a permit to sell a prepacked article; or
  - (b) an application under part 6 for a licence; or
  - (c) an answer to a question asked by an inspector under part 7; or
  - (d) a statement of a name or address to an inspector under part 7.

Maximum penalty: 20 penalty units.

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

**74 Evidence—signature of administering authority**

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

**75 Certificate evidence**

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

- (a) a certificate purporting to have been issued by the Minister to the effect that a person specified in the certificate is or was the administering authority at a time, or during a period, specified in the certificate;
  - (b) a certificate purporting to have been issued by the administering authority to the effect that a person specified in the certificate was or was not an inspector, or was or was not the holder of a specified class of licence, at a time, or during a period, specified in the certificate;
  - (c) a certificate purporting to have been issued by the administering authority as to the result of the examination of a measuring instrument, and the testing of its calibration under section 15 (4);
  - (d) a certificate purporting to have been issued by the administering authority under section 50 (1) (a);
  - (e) a document, issued in accordance with the regulations, that purports to be a duplicate of a certificate referred to in this subsection.
- (2) A document purporting to be certified by the administering authority as a copy of a permit under division 5.2, in force on a specified date or during a specified period and the conditions to which the permit was then subject is evidence of the matters certified.

## **76 Evidence—prepacked articles**

- (1) A marking on the package containing a prepacked 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 prepacked 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 prepacked article purporting to be the date on which the article was packed is evidence that the article was packed on that date.
- (4) The fact that an article contained in a package is found exposed for sale or in the possession of a person for sale is evidence that the article is a prepacked article.
- (5) A batch number on a prepacked 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.
- (6) In this section:

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

#### **77 Packaged article presumed to be prepacked in certain circumstances**

- (1) Unless the contrary is established, a packaged article is to be presumed to be a prepacked article for 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 prepacked article.

#### **78 Evidence—use of measuring instrument for trade**

The possession of a measuring instrument by a person carrying on trade or the presence of a measuring instrument on premises or in a

place used by a person for trade is evidence that the person uses the instrument for trade.

## **79 Records—English language**

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

## **81 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may make provision with respect to the following:
- (a) the provision, maintenance, custody and care of standards of measurement;
  - (b) regulating, prohibiting or restricting the use of measuring instruments for trade;
  - (c) limiting the purposes for which specified measuring instruments may lawfully be used or specifying the measuring instruments required to be used for specified purposes;
  - (d) the verification, reverification or certification of measuring instruments;
  - (e) the positioning of, and access to, measuring instruments in order to facilitate their use for trade, their examination by an inspector or licensee and their verification, reverification or certification;
  - (f) the provision of, and payment and recovery of the costs of, labour, materials, equipment and transportation necessary for the purpose of examining, testing, verifying or reverifying a measuring instrument;

- (g) the sealing of a certified, verified or reverified measuring instrument;
- (h) batch testing and quality assurance in relation to measuring instruments and the provision of labour, facilities and equipment for those purposes;
- (i) the provision or taking of samples of measuring instruments and the testing of the samples;
- (j) conditionally or unconditionally conferring specified functions of an inspector on a person who has similar functions under a corresponding law;
- (k) providing that the measurement of a specified article, or an article in a specified state or condition, is the measurement of the article for this Act if it is carried out in a specified manner;
- (l) matters applicable to weighbridges, whether or not public weighbridges, including their installation, functioning, operation, examination, testing, suitability and use;
- (m) the functions of operators of public weighbridges;
- (n) certificates of suitability for public weighbridges, including their issue, duration, suspension and cancellation and the keeping of a register of current certificates of suitability by the administering authority;
- (o) prohibiting, regulating or restricting the sale of specified articles, or articles of a specified class, by reference to measurement or a specified kind or unit of measurement;
- (p) the manner of and procedure for determining specified measurements or specified proportions of prepacked articles;
- (q) standard specifications of capacity in relation to packages containing specified prepacked articles and the packing and sale of articles in those packages;

- (r) the circumstances in which the mass of the package containing a specified article may be included in determining the net mass of the article;
  - (s) regulating the advertising of articles (including prepacked articles) in so far as the advertising relates to measurement;
  - (t) prohibiting, regulating or restricting the sale of articles in relation to which an offence has been committed under this Act or the regulations;
  - (u) the keeping of records relating to measuring instruments.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 20 penalty units for offences against the regulations.

## Dictionary

(see s 2)

**Note** A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

***administering authority*** means the person who, under the Administration Act, is the administering authority for this Act.

***Administration Act*** means the *Trade Measurement (Administration) Act 1991*.

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

***article*** includes substance.

***Australian legal unit of measurement***—see the National Measurement Act, section 3 (1) (Interpretation).

***certify***—see section 12 (Certification by licensees)

***class 4 measuring instrument*** means a measuring instrument of an approved pattern that—

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

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***corresponding law*** means a law of a State that corresponds to this Act.

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

***function*** includes power.

***inspector***—see the Administration Act, section 3 (1) (Interpretation).

***inspector's mark*** means—

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

***licensing authority*** means the person who, under the Administration Act, is the licensing authority for this Act.

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

***measuring instrument***—see the National Measurement Act, section 3 (1) (Interpretation).

***National Measurement Act*** means the *National Measurement Act 1960* (Cwlth).

**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.

**prepacked 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.

**public weighbridge licence** means a public weighbridge licence in force under part 6.

**purchaser** includes a person purchasing as agent for another person.

**record** includes any document.

**reference standard of measurement**—see the National Measurement Act, section 3 (1) (Interpretation).

**reverify**—see section 11 (Verification and reverification by inspectors).

**sell** includes—

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

**seller** includes a person who sells as agent for another person.

**servicing licence** means a servicing licence in force under part 6.

***State primary standard of measurement***—see the National Measurement Act, section 3 (1) (Interpretation).

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

***verify***—see section 11 (Verification and reverification by inspectors).

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

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

### 3 Legislation history

**Trade Measurement Act 1991 No 56**

notified 2 October 1991 (Gaz 1991 No S98)  
ss 1-3 commenced 2 October 1991 (s 2 (1))  
remainder (ss 4-81) commenced 1 November 1991 (s 2 (2) and  
Gaz 1991 No S125)

**Acts Revision (Position of Crown) Act 1993 No 44**

notified 27 August 1993  
commenced 27 August 1993 (s 2)

**Administration Appeals (Consequential Amendments) Act 1994  
No 60**

notified 11 October 1994  
s 1, s 2 commenced 11 October 1994  
remainder commenced 14 November 1994 (s 2 (2) and Gaz 1994  
No S250))

**Statute Law Revision (Penalties) Act 1994 No 81**

notified 29 November 1994  
s 1, s 2 commenced 29 November 1994  
remainder commenced 29 November 1994 (Gaz 1994 No S269)

**Trade Measurement (Amendment) Act 1995 No 5**

notified 9 June 1995  
commenced 9 June 1995

**Statute Law Revision (Penalties) Act 1998 No 54**

notified 27 November 1998  
s 1, s 2 commenced 27 November 1998  
remainder commenced 9 December 1998 (Gaz 1998 No 4)

**Utilities (Consequential Provisions) Act 2000 No 66**

notified 20 December 2000  
s 1, s 2 commenced 20 December 2000  
remainder commenced 1 January 2001 (Gaz 2000 No S69)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 385**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)

## Endnotes

### 4 Amendment history

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amds 1.4052, 1.4053, 1.4055-1.4058 commenced 14 September 2001  
(amds 1.4052, 1.4053, 1.4055-1.4058)  
pt 385 remainder commenced 12 September 2001 (s 2 and Gaz 2001  
No S65)

#### **Justice and Community Safety Legislation Amendment Act 2001 No 70 sch 1**

notified LR 14 September 2001  
amds commenced 14 September 2001 (s 2 (5))

## 4 Amendment history

### **Name of Act**

s 1 sub 2001 No 70 amdt 1.189

### **Dictionary**

s 2 sub 2001 No 70 amdt 1.189

### **Determining certain quantities**

s 3 hdg am 2001 No 70 amdt 1.190

sub 2001 No 70 amdt 1.193

s 3 def **Australian legal unit of measurement** om 2001 No 70  
amdt 1.191

def **corresponding law** om 2001 No 70 amdt 1.191

def **inspector** om 2001 No 70 amdt 1.191

def **measuring** om 2001 No 70 amdt 1.191

def **measurement instrument** om 2001 No 70 amdt 1.191

def **reference standard of measurement** om 2001 No 70  
amdt 1.191

def **State primary standard of measurement** om 2001 No 70  
amdt 1.191

defs reloc to dict by 2001 No 70 amdt 1.192

sub 2001 No 70 amdt 1.193

### **Application of Act to Crown**

s 5 om 1993 No 44

### **Exemptions from Act**

s 6 am 1995 No 5; 2000 No 66 sch 1 pt 16

### **Measuring instruments used for trade must be marked**

s 7 am 1994 No 81; 2001 No 70 amds 1.194-1.196, amdt 1.240

### **Use of class 4 measuring instruments**

s 7A ins 2001 No 70 amdt 1.197

### **Use of measuring instruments for prepacked articles**

s 7B ins 2001 No 70 amdt 1.197

**Unjust measurement**

s 8 am 1994 No 81; 2001 No 70 amds 1.198-1.201, amdt 1.240

**Supplying incorrect etc measuring instrument**

s 9 am 1994 No 81; 2001 No 70 amdt 1.202, amdt 1.203,  
amdt 1.240

**Provision and maintenance of standards**

s 10 am 2001 No 70 amdt 1.204, amdt 1.205

**Prohibition on use if reverification cannot be carried out**

s 16 am 1994 No 81; 2001 No 70 amdt 1.206, amdt 1.240

**Duty of repairers etc to obliterate marks**

s 18 am 1994 No 81; 2001 No 70 amdt 1.207, amdt 1.240

**Making mark without authority**

s 20 am 1994 No 81; 2001 No 70 amdt 1.208, amdt 1.240

**Other offences concerning marks**

s 21 am 1994 No 81; 2001 No 70 amdt 1.209, amdt 1.240

**Measurement must be open to scrutiny in certain cases**

s 22 am 1994 No 81; 2001 No 70 amdt 1.210, amdt 1.240

**Incorrect measurement or price calculation**

s 23 am 1994 No 81; 2001 No 70 amds 1.211-1.213

**Variation of quantity ordered**

s 24 am 1994 No 81; 2001 No 70 amdt 1.213, amdt 1.240

**Special provisions for sale of meat**

s 25 am 1994 No 81; 2001 No 70 amdt 1.214, amdt 1.240

**Articles required to be sold by specific measurement**

s 26 am 1994 No 81; 2001 No 70 amdt 1.215, amdt 1.240

**Requirements for packaging and sale of prepacked articles**

div 5.1 hdg (prev pt 5 div 1 hdg) renum R3 LA (see 2001 No 70 amdt 1.241)

**Requirements for packaging of prepacked articles**

s 28 am 1994 No 81; 2001 No 70 amdt 1.216, amdt 1.240

**Restrictions on use of certain expressions on packages**

s 30 am 1994 No 81; 2001 No 70 amdt 1.217, amdt 1.240

**Incorrect pricing of repacked article**

s 31 am 1994 No 81; 2001 No 70 amdt 1.218, amdt 1.219,  
amdt 1.240

**Offence of packing or selling short measure**

s 32 am 1994 No 81; 2001 No 70 amdt 1.219; amdt 1.240

**Permit to sell certain prepacked articles**

div 5.2 hdg (prev pt 5 div 2 hdg) renum R3 LA (see 2001 No 70 amdt 1.241)

## Endnotes

4 Amendment history

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### **Recognition of permits under corresponding laws**

s 41 sub 2001 No 44 amdt 1.4049

### **Requirements for licences**

div 6.1 hdg (prev pt 6 div 1 hdg) renum R3 LA (see 2001 No 70 amdt 1.241)

### **Requirement for servicing licence**

s 42 am 1994 No 81; 2001 No 70 amdt 1.220, amdt 1.221; R3 LA

### **Requirement for public weighbridge licence**

s 43 am 1994 No 81; 2001 No 70 amdt 1.222, amdt 1.240

### **Granting of licences**

div 6.2 hdg (prev pt 6 div 2 hdg) renum R3 LA (see 2001 No 70 amdt 1.241)

### **Application for licence**

s 44 am 2001 No 44 amdt 1.4050-1.4053; 2001 No 70 amdt 1.223, amdt 1.1224

### **Periodic licence fee**

s 52 am 2001 No 44 amdt 1.4054

### **Disciplinary action against licensees**

div 6.3 hdg (prev pt 6 div 3 hdg) renum R3 LA (see 2001 No 70 amdt 1.241)

### **Taking of disciplinary action**

s 58 am 1994 No 60

### **Appeals**

div 6.4 hdg (prev pt 6 div 4 hdg) renum R3 LA (see 2001 No 70 amdt 1.241)

### **Rights of appeal**

s 59 am 1994 No 60

### **Powers of entry etc**

s 60 am 2001 No 70 amdt 1.225

### **Powers in relation to measuring instruments**

s 61 am 2001 No 70 amdt 1.226

### **Powers in relation to articles**

s 62 am 2001 No 70 amdt 1.227, amdt 1.228

### **Obstruction etc of inspector**

s 65 am 1994 No 81; 2001 No 70 amdt 1.229, amdt 1.240

### **Increased penalty for body corporate**

s 68 om 2001 No 70 amdt 1.230

### **False or misleading statements**

s 73 am 1994 No 81; 2001 No 70 amdt 1.231, amdt 1.240

### **Evidence—prepacked articles**

s 76 am 2001 No 70 amdt 1.232

**Repeal**

s 80 om 2001 No 70 amdt 1.233

**Regulation-making power**

s 81 hdg sub 2001 No 70 amdt 1.234

s 81 am 1998 No 54; 2001 No 44 amdt 1.4055, amdt 1.4056; 2001 No 70 amdts 1.235-1.238

**Dictionary**

dict

ins 2001 No 70 amdt 1.239

am 2001 No 44 amdt 1.4057

def **administering authority** reloc from s 3 2001 No 70 amdt 1.192

def **Administration Act** reloc from s 3 2001 No 70 amdt 1.192

def **approved pattern** reloc from s 3 2001 No 70 amdt 1.192

def **article** reloc from s 3 2001 No 70 amdt 1.192

def **Australian legal unit of measurement** ins 2001 No 70 amdt 1.239

def **certify** reloc from s 3 2001 No 70 amdt 1.192

def **class 4 measuring instrument** ins 2001 No 70 amdt 1.239

def **corresponding law** ins 2001 No 70 amdt 1.239

def **document** reloc from s 3 2001 No 70 amdt 1.192

def **function** ins 2001 No 70 amdt 1.239

def **inspector** ins 2001 No 70 amdt 1.239

def **inspector's mark** reloc from s 3 2001 No 70 amdt 1.192

def **licence** reloc from s 3 2001 No 70 amdt 1.192

def **licensee's mark** reloc from s 3 2001 No 70 amdt 1.192

def **licensing authority** reloc from s 3 2001 No 70 amdt 1.192

def **measurement** ins 2001 No 70 amdt 1.239

def **measuring instrument** ins 2001 No 70 amdt 1.239

def **National Measurement Act** reloc from s 3 2001 No 70 amdt 1.192

def **package** reloc from s 3 2001 No 70 amdt 1.192

def **prepacked article** reloc from s 3 2001 No 70 amdt 1.192

def **public weighbridge** reloc from s 3 2001 No 70 amdt 1.192

def **public weighbridge licence** reloc from s 3 2001 No 70 amdt 1.192

def **purchaser** reloc from s 3 2001 No 70 amdt 1.192

def **record** reloc from s 3 2001 No 70 amdt 1.192

def **reference standard of measurement** ins 2001 No 70 amdt 1.239

def **reverify** reloc from s 3 2001 No 70 amdt 1.192

def **sell** reloc from s 3 2001 No 70 amdt 1.192

def **seller** reloc from s 3 2001 No 70 amdt 1.192

def **servicing licence** reloc from s 3 2001 No 70 amdt 1.192

def **State primary standard of measurement** ins 2001 No 70 amdt 1.239

def **this Act** om 2001 No 44 amdt 1.4058

def **vehicle** reloc from s 3 2001 No 70 amdt 1.192

## Endnotes

### 5 Earlier republications

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def **verify** reloc from s 3 2001 No 70 amdt 1.192  
def **weighbridge** reloc from s 3 2001 No 70 amdt 1.192

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Republication No	Amendments to	Republication date
1	Act 1994 No 81	28 February 1995
2	Act 1998 No 54	31 August 1999

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