

WEIGHTS AND MEASURES (PACKAGED GOODS)

No. 16 of 1970

An Ordinance to regulate the Packing and Sale of certain articles and the Marking of Packages in which certain articles are sold.

1. This Ordinance may be cited as the *Weights and Measures (Packaged Goods) Ordinance 1970*.* Short title.
2. This Ordinance shall come into operation on the first day of May, One thousand nine hundred and seventy. Commencement.
- 3.—(1.) In this Ordinance, unless the contrary intention appears— Interpretation.
- “approved brand” means a brand approved by the Superintendent under section 16 of this Ordinance;
- “article” includes quantity of a substance;
- “brand” includes any mark, name, word, letter, numeral or symbol and any combination consisting of two or more of those things;
- “inspector” has the same meaning as in the *Weights and Measures Ordinance 1929-1967*;
- “package” includes—
- (a) a container, wrapper or other thing in which an article is packed, or two or more articles are packed, for sale as a single item;
 - (b) a holder to which an article is attached for the purpose of sale; and
 - (c) a band that is fixed round an article or articles as part of the preparation of that article or those articles for sale;
- “sell” includes—
- (a) agree to sell;
 - (b) offer or expose for the purpose of selling;
 - (c) have in possession for the purpose of selling; and
 - (d) barter or exchange,
- and “sale” and “sold” have corresponding meanings;
- “the Superintendent” means a person authorized by the Minister under sub-section (2.) of section 8 of the *Weights and Measures Ordinance 1929-1967*.

* Made on 16 April 1970; notified in the *Commonwealth Gazette* on 17 April 1970.

(2.) For the purposes of this Ordinance—

- (a) an article shall be deemed to be pre-packed if it is packed before being exposed or offered for sale;
- (b) an article that is found in premises where articles of the same kind are so packed or are kept after being so packed shall, if it is contained in a package, be deemed to be pre-packed unless the contrary is shown; and
- (c) an article that is packed in premises in which articles of the same kind are in the course of the business carried on in those premises packed shall, unless the contrary is shown, be deemed to have been packed for sale.

(3.) For the purpose of paragraph (b) of the last preceding subsection, evidence that a package has not been marked in accordance with this Ordinance is not alone sufficient to show that an article contained in the package is not pre-packed.

(4.) Subject to the regulations, a reference in this Ordinance to the weight or measure of an article shall be read as a reference to the weight or measure of the article exclusive of the weight or measure of the package in which the article is contained.

(5.) A reference in this Ordinance to the measure of an article shall, in the case of an article of a kind that is ordinarily sold by number, be read as a reference to the quantity of that article expressed as a number.

(6.) For the purposes of this Ordinance, words or particulars that are marked on a label attached to a package or to an article contained in a package shall be deemed to be marked on the package.

(7.) In this Ordinance, unless the contrary intention appears—

- (a) a reference to a package containing an article or to a package in which an article is contained includes a reference to a package to which an article is attached or round which an article is wound; and
- (b) a reference to an article that is contained in a package includes a reference to an article that is attached to, or wound round, a package.

4. Subject to the regulations and to any other law in force in the Territory, a person shall not—

- (a) sell an article by weight or measure otherwise than by net weight or measure;
- (b) mark on a package a reference to the weight or measure of an article contained in the package expressed otherwise than as a reference to the net weight or measure of that article; or
- (c) sell an article in a package unless the package is marked with the net weight or measure of the article.

Penalty: Two hundred dollars.

Sales to be by net weight or measure.

5.—(1.) Where an article sold by weight or measure is delivered to the purchaser at a place other than the premises of the seller, the seller shall deliver with the article an invoice or delivery note showing the weight or measure of the article.

Invoice or delivery note to be supplied in certain cases.

(2.) The last preceding sub-section does not apply where—

- (a) the article sold is weighed or measured at the premises of the purchaser; or
- (b) the article sold is a pre-packed article that is marked in accordance with section 7 of this Ordinance.

6.—(1.) Subject to this Ordinance, a person who packs an article for sale shall mark the package containing the article—

Name, &c., of packer to be marked on packages.

- (a) with his name and address or with an approved brand approved for use by him at the place of packing; or
- (b) if—
 - (i) the article was packed for or on behalf of another person for sale by that other person; and
 - (ii) that other person has a place of business in the Territory,

with—

- (iii) the name of that other person and the address of a place of business of that other person in the Territory or with an approved brand approved for use by that other person; or
- (iv) with the name and address of the person by whom the package is packed or with an approved brand approved for use by him at the place of packing.

(2.) In the application of the last preceding sub-section to or in relation to a person or persons carrying on business under a business name registered under the *Business Names Ordinance* 1963-1966, it is a sufficient compliance with that sub-section if the name marked on the package is the business name so registered.

(3.) A person shall not sell a pre-packed article unless the package containing the article is marked in accordance with the preceding provisions of this section.

(4.) It is a defence for the person charged with an offence against the last preceding sub-section to prove that the article was packed in a State or another Territory of the Commonwealth and that the article was marked, in accordance with the law in force in that State or other Territory relating to the marking on packages of the name and address of the person by or on whose behalf it is packed.

(5.) A person who permits or suffers his name and address or an approved brand approved for use by him to be marked by another person on an article packed for sale shall take such precautions as are necessary to enable him at any time to specify correctly the place at which any articles the packages of which are so marked were so packed.

(6.) An inspector may require a person whose name and address or whose approved brand is on an article packed for sale to state to the inspector the place at which the article was packed.

(7.) A person to whom a requirement is made under the last preceding sub-section shall not—

- (a) refuse or fail to comply with the requirement; or
- (b) state as the place at which an article was packed a place other than the place at which the article was packed.

(8.) A person who contravenes or fails to comply with any of the preceding provisions of this section is, subject to sub-section (4.) of this section and to section 18 of this Ordinance, guilty of an offence against this section and is on conviction for that offence liable, subject to the next succeeding sub-section, to a fine not exceeding Two hundred dollars.

(9.) Where a person who has been convicted of an offence against this section is subsequently convicted of an offence against this section committed after the date on which he was convicted of the first-mentioned offence, that person is liable, on his subsequent conviction for such an offence, to a fine not exceeding Four hundred dollars.

Certain articles to be packed and sold in certain denominations.

7.—(1.) This section applies to such articles, and to articles included in such classes of articles, as are prescribed for the purposes of this section.

(2.) Where an article to which this section applies has been packed for sale and—

- (a) the package containing the article is not marked with a statement of the weight or measure of the article; or
- (b) there is marked on the package a weight or measure of a denomination other than a denomination of a weight or measure specified in the regulations as a weight or measure in which that article may be packed,

the person who packed the article is, subject to section 18 of this Ordinance, guilty of an offence against this sub-section.

(3.) A person who sells an article to which this section applies that has been, whether in or outside the Territory, packed for sale is, subject to section 18 of this Ordinance, guilty of an offence against this sub-section if—

- (a) the package containing the article is not marked with a statement of the weight or measure of the article; or
- (b) there is marked on the package a weight or measure of a denomination other than a denomination of a weight or measure specified in the regulations as a weight or measure in which that article may be packed.

(4.) The penalty for an offence against sub-section (2.) or (3.) of this section is, subject to the next succeeding sub-section, a fine not exceeding Two hundred dollars.

(5.) Where a person who has been convicted of an offence against sub-section (2.) or (3.) of this section is subsequently convicted of an offence against either of those sub-sections committed after the date on which he was convicted of the first-mentioned offence, that person is liable, on his subsequent conviction for such an offence, to a fine not exceeding Four hundred dollars.

8.—(1.) This section applies to all kinds of articles other than the kinds of articles that are specified in the regulations as kinds of articles to which this section does not apply.

Packages to be marked with particulars of quantity.

(2.) Where an article to which this section applies has been packed for sale in a package on which there is not marked a statement of the weight or measure of the article contained in the package, the person who packs the article is, subject to section 18 of this Ordinance, guilty of an offence against this sub-section.

(3.) A person who sells an article to which this section applies that has been, whether in or outside the Territory, packed for sale in a package on which there is not marked a statement of the weight or measure of the article contained in the package is, subject to section 18 of this Ordinance, guilty of an offence against this sub-section.

(4.) The penalty for an offence against sub-section (2.) or (3.) of this section is, subject to the next succeeding sub-section, a fine not exceeding Two hundred dollars.

(5.) Where a person who has been convicted of an offence against sub-section (2.) or (3.) of this section is subsequently convicted of an offence against either of those sub-sections committed after the date on which he was convicted of the first-mentioned offence, that person is liable, on his subsequent conviction for such an offence, to a fine not exceeding Four hundred dollars.

9.—(1.) The Minister may grant to a person a permit to sell pre-packed articles that have been packed in contravention of, or are not marked in accordance with, this Ordinance and the regulations if the Minister is satisfied that—

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

- (a) the articles were, when packed, intended to be exported from Australia but, in the circumstances, it is reasonable that the sale of the articles in the Territory be permitted;
- (b) the articles were packed outside Australia and, in the circumstances, it is reasonable that the sale of the articles in the Territory be permitted; or
- (c) the articles were packed within Australia and, having regard to the date on which the articles were packed or any

other circumstance that appears to the Minister to be relevant, it is reasonable that the sale of the articles in the Territory be permitted.

(2.) The Minister shall, in a permit granted under this section, specify the articles to which the permit relates.

(3.) The Minister may, in a permit granted under this section, specify such conditions as he thinks fit, including conditions with respect to—

- (a) the form and manner in which the weight or measure of the article contained in each package is to be indicated;
- (b) the weight or measure of the article contained in each package; and
- (c) the furnishing by the person to whom the permit is granted of returns relating to the sale of the articles.

(4.) Subject to this section, a person who sells an article in relation to which a permit has been granted under this section does not, by reason only of the sale of the article, commit an offence against a provision of this Ordinance other than this section.

(5.) The last preceding sub-section does not apply where—

- (a) conditions are specified in a permit granted under this section; and
- (b) an article to which the permit relates is sold otherwise than in accordance with those conditions.

(6.) A person to whom a permit has been granted under this section who sells an article to which the permit relates to another person for the purpose of resale shall, at the time of the sale, deliver to that person a statement in writing setting out particulars of—

- (a) the period specified in the permit as the period during which the permit is to remain in force; and
- (b) any conditions that are specified in the permit.

(7.) A person shall not—

- (a) falsely represent that a permit has been granted under this section in relation to an article; or
- (b) knowingly sell an article after a permit granted under this section in relation to that article has ceased to be in force unless the article has been packed, and the package in which the article is contained is marked, in accordance with this Ordinance.

(8.) Subject to this section, a permit granted under this section remains in force for such period as is specified in the permit.

(9.) The Minister may, at any time before a permit granted under this section ceases to be in force, by notice in writing given to the holder of the permit, direct that the permit shall remain in force until the date specified in the direction and, where such a direction is given the permit remains in force until the date specified in the direction.

(10.) The Minister may, at any time, by notice in writing given to the holder of a permit granted under this section, cancel the permit if he is satisfied that it is in the public interest that the permit be cancelled.

(11.) Where the Minister gives a direction, under sub-section (9.) of this section, that a permit granted under this section is to remain in force until the date specified in the direction, the person to whom the permit was granted shall forthwith give notice of the direction to every person to whom he has sold, for the purpose of resale, an article to which the permit relates.

(12.) Where a permit granted under this section is cancelled, the person to whom the permit was granted shall forthwith—

- (a) deliver the permit to the Superintendent; and
- (b) give to any person to whom he has sold, for the purpose of resale, an article to which the permit relates notice in writing of the cancellation of the permit.

(13.) A person who contravenes or fails to comply with any of the preceding provisions of this section is guilty of an offence against this section and is, on conviction for that offence liable, subject to the next succeeding sub-section, to a fine not exceeding Two hundred dollars.

(14.) Where a person who has been convicted of an offence against this section is subsequently convicted of an offence against this section committed after the date on which he was convicted of the first mentioned offence, that person is liable, on the subsequent conviction to a penalty not exceeding Four hundred dollars.

10.—(1.) A person who—

- (a) marks on a package containing a pre-packed article, as the weight or measure of that article, a weight or measure that is greater than the weight or measure of the article; or
- (b) packs for sale a pre-packed article in a package on which is marked, as the weight or measure of an article contained in the package, a weight or measure that exceeds the weight or measure of the first-mentioned article,

Incorrect weight or measure of pre-packed articles.

is guilty of an offence against this sub-section.

(2.) A person who sells a pre-packed article, whether packed in or outside the Territory, the weight or measure of which is less than the weight or measure marked on the package containing the article is, subject to section 18 of this Ordinance, guilty of an offence against this sub-section.

(3.) A person who delivers or sends to the purchaser of a pre-packed article an invoice or delivery note that states as the weight or measure of the article a weight or measure that is greater than the weight or measure of the article is, subject to section 18 of this Ordinance, guilty of an offence against this sub-section.

(4.) The last three preceding sub-sections apply to and in relation to a pre-packed article notwithstanding that this Ordinance does not require the package to be marked with the weight or measure of the article in the package.

(5.) Where the weight or measure marked on a package (in the succeeding provisions of this section referred to as "the relevant package") containing a pre-packed article (in the succeeding provisions of this section referred to as "the relevant article") exceeds the weight or measure of the relevant article by not more than—

(a) in the case where the relevant package containing the relevant article is a glass bottle on which is marked a weight or measure not exceeding eight ounces or, if the weight or measure is expressed in liquid measure, eight fluid ounces—seven and one-half parts per centum of the weight or measure stated on the marking on the relevant package; or

(b) in any other case—five parts per centum of the weight or measure marked on the relevant package,

the weight or measure of the relevant article shall, subject to the next succeeding sub-section, be deemed, for the purposes of this section, to be a weight or measure equal to the weight or measure marked on the relevant package.

(6.) The last preceding sub-section does not apply where—

(a) six or more packages—

(i) that are marked with the same weight or measure as the relevant package;

(ii) that contain the same article as the relevant article; and

(iii) that were packed by the person by whom the relevant package was packed,

are available for weighing or measuring; and

(b) the total of the weights or measures of the articles contained in the packages available or, if the number of packages so available exceeds twelve, the total of the weights or measures of the articles contained in twelve packages selected at random is less than the total of the weights or measures marked on those packages or those twelve packages, as the case may be.

(7.) This section does not apply to or in relation to—

(a) articles that are declared articles, or specified declared articles, within the meaning of the next succeeding section; or

(b) after regulations are made for the purposes of paragraph (a) of sub-section (1.) of section 12 of this Ordinance—
an article declared in those regulations,

unless such an article is packed in a hermetically-sealed package.

(8.) The penalty for an offence against sub-section (1.), (2.) or (3.) of this section is, subject to the next succeeding sub-section, a fine not exceeding Two hundred dollars.

(9.) Where a person who has been convicted of an offence against sub-section (1.), (2.) or (3.) of this section is subsequently convicted of an offence against any of those sub-sections committed after the date

on which he was convicted of the first-mentioned offence, that person is liable, on his subsequent conviction for such an offence, to a penalty not exceeding Four hundred dollars.

11.—(1.) In this section—

“alternative words”, in relation to an article, means the words specified in the regulations as the words with which a package containing that article may be marked in pursuance of regulations made under paragraph (b) of the next succeeding sub-section;

Articles that may be marked with the words “Net weight when packed” or alternative words.

“declared article” means an article named in the regulations made for the purposes of paragraph (a) of the next succeeding sub-section;

“specified declared article” means an article declared by the regulations made for the purposes of paragraph (b) of the next succeeding sub-section to be an article that may be marked with alternative words.

(2.) The regulations may—

(a) declare that articles named in the regulations are articles that are, for the purposes of this section, articles the weights of which are likely, by reason of climatic conditions or evaporation, to be subject to variation after the packing of the articles and that the packages in which those articles are packed may be marked with the words “Net weight when packed” or words to the like effect; and

(b) declare that an article so named is an article that may, instead of being marked with the words “Net weight when packed” or words to the like effect, be marked with such other words as are specified in the regulations in relation to that article.

(3.) The regulations may make provisions for or in relation to—

(a) the marking, and the form and manner of marking, of packages containing declared articles; and

(b) the marking, and the form and manner of marking, of packages containing specified declared articles,

and the regulations so made may include provisions requiring a package containing such an article to be marked with the date on which the article was packed or with an approved brand indicating that date.

(4.) Where—

(a) an article other than a declared article has been packed for sale in a package marked with the words “Net weight when packed” or words to the like effect; or

(b) an article other than the specified article in respect of which specified alternative words are prescribed has been packed for sale in a package marked with those alternative words,

the person who packs the article is guilty of an offence against this sub-section.

(5.) A person who sells—

- (a) an article other than a declared article that has, whether in or outside the Territory, been packed for sale in a package marked with the words “Net weight when packed” or words to the like effect; or
- (b) an article other than the specified article in respect of which specified alternative words are prescribed that has, whether in or outside the Territory, been packed for sale in a package marked with those alternative words,

is, subject to section 18 of this Ordinance, guilty of an offence against this sub-section.

(6.) Where—

- (a) a declared article has been packed for sale in a package marked with the weight of the article and with the words “Net weight when packed” or words to the like effect; or
- (b) a specified declared article has been packed for sale in a package marked with the weight of the article and with the alternative words prescribed in relation to that article,

and the weight of the article is, on the day of packing less than the weight marked on the package, the person who packed the article is guilty of an offence against this sub-section.

(7.) A person who sells, on the day on which it is packed—

- (a) a declared article that has, whether in or outside the Territory, been packed for sale in a package marked with the weight of the article and with the words “Net weight when packed” or words to the like effect; or
- (b) a specified declared article that has, whether in or outside the Territory, been packed for sale in a package marked with the weight of the article and with the alternative words prescribed in relation to that article,

is, subject to section 18 of this Ordinance, guilty of an offence against this sub-section if the weight of the article is, on that day, less than the weight marked on the package.

(8.) Where the weight marked on a package that has been marked in the manner referred to in paragraph (a) or (b) of either of the last two preceding sub-sections (in the succeeding provisions of this section referred to as “the relevant package”) containing a declared article or a specified declared article (in the succeeding provisions of this section referred to as “the relevant article”) exceeds, on the day of its packing, the weight of the relevant article by not more than five parts per centum of the weight marked on the relevant package, the weight of the relevant article shall, subject to the next succeeding sub-section, be deemed, for the purposes of the last two preceding sub-sections, to be, on the day of its packing, a weight equal to the weight marked on the relevant package.

(9.) The last preceding sub-section does not apply where—

- (a) six or more packages—
 - (i) that are marked with the same weight as the relevant package;

- (ii) that contain the same article as the relevant article;
and
 - (iii) that were packed by the person by whom the relevant package was packed,
are available for weighing; and
- (b) the total of the weights of the articles contained in the packages available, or, if the number of packages so available exceeds twelve, the total weight of the articles contained in any twelve packages selected at random, is less than the total of the weights marked on those packages or those twelve packages, as the case may be.
- (10.) Where—
- (a) the relevant article contained in the relevant package is an article declared by the regulations to be an article to which this sub-section applies; and
 - (b) the weight marked on the relevant package containing the relevant article exceeds, on any day after the day of the packing of the relevant article, the weight of the relevant article by not more than such number, being a number exceeding five, of parts per centum of the weight marked on the relevant package as is prescribed for the purposes of this paragraph in relation to that article or to articles of the class in which that article is included,

the weight of the relevant article shall, subject to the next succeeding sub-section, be deemed, for the purposes of this section, to be, on that day, a weight equal to the weight marked on the relevant package.

(11.) The last preceding sub-section does not apply where—

- (a) six or more packages—
 - (i) that are marked with the same weight as the relevant package;
 - (ii) that contain the same article as the relevant article;
and
 - (iii) that were packed by the person by whom the relevant package was packed,
are available for weighing; and
- (b) the total of the weights of the articles contained in the packages available, or, if the number of packages so available exceeds twelve, the total of the weights of the articles contained in any twelve packages selected at random, is less than the total of the weights marked on those packages or those twelve packages, as the case may be, reduced by such number of parts per centum of that last-mentioned total as is prescribed for the purposes of this paragraph in relation to that article or to articles of the class in which that article is included.

(12.) The preceding provisions of this section do not apply to or in relation to a declared article or specified declared article if the article is packed in a hermetically-sealed package.

(13.) The penalty for an offence against any of the sub-sections of this section is, subject to the next succeeding sub-section, a fine not exceeding Two hundred dollars.

(14.) Where a person who has been convicted of an offence against any of the sub-sections of this section is subsequently convicted of an offence against any of the sub-sections of this section committed after the date on which he was convicted of the first-mentioned offence, that person is liable, on his subsequent conviction, to a fine not exceeding Four hundred dollars.

Articles that may be marked with the words "Net weight at standard condition".

12.—(1.) The regulations may—

- (a) declare that an article named in the regulations made for the purposes of this section is an article that may be packed in a package marked with the words "Net weight at standard condition" or words to the like effect; and
- (b) make provision for or in relation to the marking, and the form and manner of marking, of packages containing articles so declared including provisions requiring a package containing such an article to be marked with the date on which the article was packed or with an approved brand indicating that date.

(2.) Where—

- (a) an article other than an article that is declared by the regulations referred to in paragraph (a) of sub-section (1.) of this section to be an article that may be packed in a package marked with the words "Net weight at standard condition" or words to the like effect is packed for sale in a package so marked;
- (b) a package marked with the words "Net weight at standard condition" or words to the like effect is marked otherwise than in accordance with the regulations referred to in paragraph (b) of sub-section (1.) of this section;
- (c) a package marked with the words "Net weight at standard condition" or words to the like effect contains an article referred to in regulations made for the purposes of paragraph (b) of sub-section (6.) of this section and the package is not marked with the statement required by those regulations; or
- (d) a package containing an article declared by the regulations made for the purposes of paragraph (a) of sub-section (1.) of this section is marked with the words "Net weight at standard condition" or words to the like effect and with the weight of the article and the weight of the article is less than the weight marked on the package,

the person who packed the article is guilty of an offence against this sub-section.

(3.) A person who sells a package, whether packed in or outside the Territory, marked with the words "Net weight at standard condition" or words to the like effect is, subject to section 18 of this Ordinance, guilty of an offence against this sub-section if—

- (a) the package contains an article other than an article that is declared by the regulations referred to in paragraph (a) of sub-section (1.) of this section to be an article that may be packed in a package so marked;
- (b) the marking of the words "Net weight at standard condition" or words to the like effect is made otherwise than in accordance with the regulations referred to in paragraph (b) of sub-section (1.) of this section;
- (c) the package contains an article referred to in regulations made for the purposes of paragraph (b) of sub-section (6.) of this section and the statement required by those regulations is not marked on the package; or
- (d) a package containing an article declared by the regulations made for the purposes of paragraph (a) of sub-section (1.) of this section is marked with the words "Net weight at standard condition" or words to the like effect and with the weight of the article and the weight of the article is less than the weight marked on the package.

(4.) Where—

- (a) a package is marked with the words "Net weight at standard condition" or with words to the like effect (in the succeeding provisions of this section referred to as "the relevant package");
- (b) the relevant package contains an article declared by the regulations made for the purposes of sub-section (1.) of this section (in the succeeding provisions of this section referred to as "the relevant article"); and
- (c) the weight marked on the relevant package as the weight of the relevant article exceeds the weight of the relevant article by not more than such number of parts per centum of the weight marked on the relevant package as is prescribed for the purposes of this sub-section,

the weight of the relevant article shall be deemed, for the purposes of this section, to be a weight equal to the weight marked on the relevant package.

(5.) The last preceding sub-section does not apply where—

- (a) six or more packages—
 - (i) that are marked with the same weight as the relevant package;
 - (ii) that contain the same article as the relevant article; and
 - (iii) that were packed by the person by whom the relevant package was packed,
 are available for weighing; and

- (b) the total of the weights of the articles contained in the packages available, or, if the number of packages so available exceeds twelve, the total of the weights of the articles contained in any twelve packages selected at random, is less than the total of the weights marked on those packages or those twelve packages, as the case may be, reduced by such number of parts per centum of that last-mentioned total as is prescribed for the purposes of this sub-section.

(6.) The regulations may—

- (a) in relation to an article of a specified kind, or in relation to articles that are composed of two or more different materials, make provision for or in relation to the manner in which the weight of an article declared by the regulations made for the purposes of sub-regulation (1.) of this section is to be determined; and
- (b) in relation to an article of a specified kind or an article included in a specified class of articles, being an article that is composed of two or more different materials, make provision for or in relation to the marking of a package containing such an article with a statement of the proportion by weight of the several types of material of which the article is composed.

(7.) The preceding provisions of this section do not apply to or in relation to an article named in the regulations made for the purposes of sub-section (1.) of this section as an article that may be packed in a package marked with the words "Net weight at standard condition" or with words to the like effect if the article is packed in a hermetically-sealed package.

(8.) The penalty for an offence against sub-section (2.) or (3.) of this section is, subject to the next succeeding sub-section, a fine of Two hundred dollars.

(9.) Where a person who has been convicted of an offence against sub-section (2.) or (3.) of this section is subsequently convicted of an offence against either of those sub-sections committed after the date on which he was convicted of the first-mentioned offence, that person is liable, on his subsequent conviction, to a fine not exceeding Four hundred dollars.

13. Where—

- (a) the weight or measure marked on a package as the weight or measure of the article contained in the package is expressed both in units of measurement related to the yard, the pound or the gallon and in terms of another system of units of measurement; and
- (b) the first-mentioned weight or measure is not the equivalent of the other weight or measure,

Provisions applicable where weight or measure marked in different units of measurement.

whichever of the weights or measures marked on the package is the less shall, for the purposes of sections 10, 11 and 12 of this Ordinance, be deemed to be the weight or measure of the article marked on the package.

14.—(1.) Where—

- (a) the price per unit of weight or measure of a pre-packed article is marked on the package containing the article;
- (b) a statement of the price of the article is marked on the package containing the article; and
- (c) the price so marked on the package is inconsistent with the price correctly computed from the weight or measure of the article and the price per unit of weight or measure referred to in paragraph (a) of this sub-section,

Marking of total price to be consistent with price per unit marked on package.

the person who packed the article is guilty of an offence against this sub-section.

(2.) A person who sells a pre-packed article, whether packed in or outside the Territory—

- (a) on which the price per unit of weight or measure of the article is marked; or
 - (b) on which a statement of the price of the article is marked,
- is, subject to section 18 of this Ordinance, guilty of an offence against this sub-section if the price marked on the package containing the article is inconsistent with the price correctly computed from the weight or measure of the article and the price per unit of weight or measure referred to in paragraph (a) of this sub-section.

(3.) The penalty for an offence against either of the last two preceding sub-sections is a fine of Two hundred dollars.

15.—(1.) In this section—

“prohibited expression” means—

- (a) any expression, whether consisting of one word or of several words and whether in an abbreviated form or not, that directly or indirectly relates to or qualifies a unit of measurement of a physical quantity; and
- (b) any expression declared by the regulations to be a prohibited expression for the purposes of this section;

Restriction of use of certain expressions on packages.

“restricted expression” means—

- (a) any expression, not being a prohibited expression or a statement of the weight or measure of an article marked on a package in accordance with this Ordinance, whether consisting of one word or of several words or of any word or words in combination with any figure or figures and whether in

an abbreviated form or not, that directly or indirectly relates to the size of the package containing an article; and

- (b) any expression declared by the regulations to be a restricted expression for the purposes of this section.

(2.) Except as provided by this section or the regulations, a person shall not mark on the package containing a pre-packed article a prohibited expression or a restricted expression.

(3.) Except as provided by this section or the regulations, a person shall not sell a pre-packed article contained in a package on which there is marked a prohibited expression or a restricted expression.

(4.) The last two preceding sub-sections do not apply in relation to an article contained in a package on which a restricted expression appears if—

- (a) there is marked on every part of the package on which the restricted expression appears a statement of the weight or measure of the article;
- (b) the restricted expression and that statement are so placed and so marked that both may be seen clearly at the same time; and
- (c) each of the letters or figures comprising that statement—
 - (i) is of a size not less than the minimum size prescribed by the regulations in relation to a package of the size of the package concerned;
 - (ii) is of a size not less than one-third of the size of the largest letter or figure contained in the restricted expression; and
 - (iii) is marked in a colour of a distinct contrast to the colour of its background.

(5.) A person who contravenes any of the preceding provisions of this section is, subject to section 18 of this Ordinance, guilty of an offence against this section and is, on conviction for that offence, liable, subject to the next succeeding sub-section, to a fine not exceeding Two hundred dollars.

(6.) Where a person who has been convicted of an offence against this section is subsequently convicted of an offence against this section committed after the date on which he was convicted of the first mentioned offence, that person is liable, on his subsequent conviction, to a fine not exceeding Four hundred dollars.

Approval of
brands.

16.—(1.) The Superintendent may, on application by a person, approve of the use by that person of a brand for the purpose of marking the name and address of the person on a package or marking on a package the date on which an article contained in that package was packed.

(2.) The approval of the Superintendent under the last preceding sub-section shall be in writing and shall include a description or copy of the brand to which the approval relates.

(3.) An approval granted under this section is subject to such conditions (if any) as the Superintendent thinks fit to specify in the approval.

(4.) The Superintendent may, at any time, by notice in writing given to the person to whom an approval has been granted under this section, cancel the approval.

(5.) Where, by this Ordinance the name and address of a person is required to be marked on a package, that name and address shall be deemed to be marked on the package if a brand the use of which by that person is approved under this section is marked on the package in accordance with any conditions to which the approval is subject.

(6.) Where, by this Ordinance or the regulations, the date on which an article is packed is required to be marked on the package containing the article, that date shall be deemed to be marked on the package if a brand the use of which is approved under this section and which indicates that date is marked on the package.

(7.) A person shall not mark on a package a brand to which an approval under this section relates unless he is the person to whom the approval was granted or is authorized by that person so to mark the brand.

Penalty: Two hundred dollars.

(8.) A person shall not mark on a package a brand that so nearly resembles a brand to which an approval under this section relates as to be likely to lead a person to believe that it is the brand to which the approval relates.

Penalty: Two hundred dollars.

17.—(1.) Subject to the next succeeding sub-section, a witness in proceedings in respect of an offence against this Ordinance is not excused from answering a question or producing a document on the ground that the answer to the question or the production of the document may tend to incriminate him, but the answer to the question or the document, as the case may be, is not admissible against the witness in any criminal proceedings other than proceedings for an offence arising out of the falsity of evidence given by the witness.

General provisions relating to offences.

(2.) Where—

(a) a person is charged with an offence against this Ordinance; and

(b) a person called as a witness in proceedings in respect of the offence is a person who, if the person charged is convicted, will be guilty of an offence against this Ordinance by virtue of section 19 of this Ordinance,

the witness is not bound to answer a question or produce a document if the answer to the question or the production of the document would tend to incriminate the person charged.

Defences.

18.—(1.) In proceedings in respect of an offence against sub-section (1.) of section 6 of this Ordinance, it is a defence for the person charged to prove that the article to which the proceedings relate was packed on premises for sale on those premises to a person for the purpose of consumption or use and not for the purpose of resale by that person.

(2.) In proceedings in respect of an offence against sub-section (2.) or (3.) of section 7 or sub-section (2.) or (3.) of section 8 of this Ordinance, it is a defence for the person charged to prove—

- (a) that the article to which the proceedings relate was packed for the purpose of export from Australia;
- (b) that a marking on the package containing the article clearly indicated the purpose for which the article was packed; and
- (c) in the case of an offence against sub-section (3.) of section 7 or sub-section (3.) of section 8 of this Ordinance, that the article was sold for the purpose of export from Australia.

(3.) Where a person is charged with an offence against any of the following provisions of this Ordinance:—

- (a) sub-section (3.) of section 7;
- (b) sub-section (3.) of section 8;
- (c) sub-section (2.) or (3.) of section 10;
- (d) sub-section (5.) or (7.) of section 11;
- (e) sub-section (3.) of section 12;
- (f) sub-section (2.) of section 14; or
- (g) sub-section (3.) of section 15,

it is a defence for the person charged to prove—

- (h) that the commission of the offence was due to a cause beyond his control;
- (i) that he took reasonable precautions to avoid the commission of the offence;
- (j) that he obtained the article from another person; and
- (k) that the article, when sold by him, was in the same condition as when he received it.

(4.) For the purposes of the last preceding sub-section, a cause shall not be taken to have been beyond the control of a person unless the cause was one that the person could not reasonably have been expected to foresee or for which he could not reasonably have been expected to make allowance.

(5.) Where a person is charged with an offence against any of the following provisions of this Ordinance:—

- (a) sub-section (2.) of section 10;
- (b) sub-section (5.) or (7.) of section 11; or
- (c) sub-section (3.) of section 12,

it is also a defence for the person charged—

- (d) to prove—
 - (i) that he obtained the article from another person;
 - (ii) that that other person furnished him with a written statement that the weight or measure stated on the package containing the article was the correct weight or measure of the article; and
 - (iii) that the article, when sold or delivered, was in the condition in which he received it; or
- (e) in the case of an article that is of a kind to which section 7 of this Ordinance applies, to prove—
 - (i) that he obtained the article from another person;
 - (ii) that when he obtained the article it was contained in a package that was marked in accordance with this Ordinance; and
 - (iii) that the article, when sold, was in the condition in which he received it.

(6.) A person charged with an offence against this Ordinance is not entitled to rely upon a defence provided for by sub-section (2.), (3.) or (5.) of this section unless, not later than two days before the date fixed for the hearing of the proceedings in respect of the offence or within such further time as the court allows, the person charged gives to the informant notice in writing stating that he intends to rely on the defence provided by that sub-section and, in a case where the defence is to be the defence provided for by sub-section (3.) or (5.) of this section, specifying the name and address of the person from whom he obtained the article to which the charge relates.

19.—(1.) Where—

- (a) a person is charged with an offence against sub-section (2.) of section 10, sub-section (5.) of section 11 or sub-section (3.) of section 12 of this Ordinance;
- (b) the person establishes the defence referred to in paragraph (a) of sub-section (3.) of the last preceding sub-section; and
- (c) the written statement of the weight or measure referred to in sub-paragraph (ii) of that paragraph was not, in fact, a correct statement of the weight or measure of the article,

the person who furnished the written statement to the first-mentioned person is guilty of an offence against this section.

(2.) The penalty for an offence against this section is a fine of Two hundred dollars.

Penalty for
furnishing false
statement of
weight or
measure to
purchaser.

(3.) In proceedings in respect of an offence against this section, it is a defence for the person charged to prove that the deficiency in the weight or measure of the article to which the statement related—

- (a) arose after the statement was furnished and was wholly attributable to factors for which reasonable allowance was made in stating the weight or measure of the article; or
- (b) is due to the act or default of some person after the article had ceased to be under the control of the person charged.

**Evidentiary
Provisions.**

20.—(1.) In proceedings in respect of an offence against this Ordinance in relation to a pre-packed article—

- (a) a marking on the package in which the article is contained that purports to indicate the name of the person by whom the article was packed is evidence that the article was packed by that person;
- (b) a marking on the package in which the article is contained that purports to indicate the name and address of a person for whom the article was packed is evidence that the article was packed for that person;
- (c) a marking on the package in which the article is contained that purports to indicate the place at which the article was packed is evidence that the article was packed at that place;
- (d) a marking on the package in which the article is contained that purports to indicate the date on which the article was packed is evidence that the article was packed on that date;
- (e) a document certified by the Superintendent to be a true copy of a permit granted by the Minister under section 9 of this Ordinance is evidence of the grant of the permit and of the conditions (if any) specified in the permit;
- (f) a document certified by the Superintendent to be a copy of a notice given by the Minister under sub-section (9.) of section 9 of this Ordinance is evidence of the giving of the notice and of the date on which the notice was given;
- (g) a certificate signed by the Superintendent and stating that a permit cancelled under sub-section (10.) of section 9 of this Ordinance has not been delivered to him is evidence that the permit has not been so delivered;
- (h) the fact that a brand the use of which has been approved under section 14 of this Ordinance is marked on a package is evidence—
 - (i) that an article contained in the package was packed by, or on behalf of, the person whose use of the brand was approved; and
 - (ii) where the brand includes words or figures representing a date—that the article contained in the package was packed on that date; and

- (j) a document certified by the Superintendent to be a true copy of a notice given by him under sub-section (4.) of section 14 of this Ordinance is evidence of the giving of the notice and of the date on which the notice was given.

(2.) For the purposes of the last preceding sub-section, a document that purports to be signed by the Superintendent shall, unless the contrary is proved, be deemed to be so signed.

21. Where a corporation is convicted of an offence against this Ordinance, each person who, at the time of the commission of the offence, was a director of the corporation or a member of the governing body of the corporation shall be deemed to be guilty of the offence and punishable as if the offence had been committed by a person other than a corporation unless he proves that the offence was committed without his knowledge or that he took reasonable steps to prevent the commission of the offence.

Offences by corporations.

22.—(1.) Where—

- (a) a person, at the request of another person (not being his employer), packs an article;
- (b) in connexion with the packing of the article or the marking of the package containing the article, the first-mentioned person commits an offence against this Ordinance; and
- (c) the second-mentioned person takes delivery of the article for the purpose of sale,

Liability of person for acts of packer.

without prejudice to the liability of the first-mentioned person, the second-mentioned person is guilty of an offence, and is punishable, as if the article had been packed, or the package containing the article had been marked, as the case may be, by him.

(2.) Proceedings against a person for an offence arising by virtue of the operation of the last preceding sub-section may be instituted notwithstanding that proceedings have not been instituted against the person who packed the article, or marked the package, in question.

(3.) Where—

- (a) a person who, at the request of another person, packs an article commits an offence against this Ordinance in connexion with the packing of the article or the marking of the package containing the article; and
- (b) proceedings are instituted against the second-mentioned person for an offence arising by virtue of the operation of sub-section (1.) of this section,

it is a defence for that second-mentioned person to prove—

(c) that—

- (i) he was not, at the time at which he received the article, aware of the commission of an offence by the first-mentioned person; and
- (ii) he had no reasonable means of ascertaining that such an offence had been committed; or

(d) that, after the article was received by him and before it was sold, he took reasonable precautions to ensure that the article was packed, and the package containing the article was marked, in accordance with this Ordinance.

(4.) Where a person acting in the course of his employment contravenes, or fails to comply with, a provision of this Ordinance and would, but for this section, be guilty of an offence against this Ordinance, the employer of that person shall be deemed to be guilty of the offence as if the contravention of, or failure to comply with, the provision of this Ordinance had been committed by the employer.

(5.) Where, by virtue of the last preceding sub-section, the employer of a person is to be deemed to be guilty of an offence against this Ordinance, that person is not liable to be charged with the offence.

(6.) Where, by virtue of the last two preceding sub-sections, a person is to be deemed to be guilty of an offence of which, but for those sub-sections, an employee of the person would have been guilty, the person is entitled to rely upon any defence upon which the employee would have been entitled to rely if he had been charged with the offence.

Powers of inspection.

23.—(1.) An inspector may, at any reasonable time—

- (a) enter a building or place where articles are packed for sale or pre-packed articles are sold or where he has reasonable cause to believe that such articles are packed for sale or are sold;
- (b) stop any vehicle and inspect any pre-packed article in or on the vehicle; and
- (c) inspect and weigh or measure or cause to be weighed or measured any pre-packed article for the purpose of ascertaining whether the provisions of this Ordinance have been complied with in relation to the article.

(2.) An inspector may seize and retain a pre-packed article if he has reason to believe that an offence against this Ordinance has been committed in relation to the article.

Effect of inconsistency with *Weights and Measures Ordinance 1929-1967*.

24.—(1.) This Ordinance has effect notwithstanding any provision of the *Weights and Measures Ordinance 1929-1967* and any provision of that Ordinance that is inconsistent with this Ordinance or the regulations ceases, to the extent of the inconsistency, to have effect.

(2.) Where an act or omission is an offence both against this Ordinance or the regulations and against the *Weights and Measures Ordinance 1929-1967*, a person is not liable, in respect of the act or omission, to be convicted of an offence against the *Weights and Measures Ordinance 1929-1967*.

(3.) Where, by virtue of sub-section (1.) of this section, a provision of the *Weights and Measures Ordinance 1929-1967* ceases to have effect, the *Interpretation Ordinance 1967* applies as if that provision, to the extent to which it ceases to have effect, had been repealed by this Ordinance.

25.—(1.) A person who contravenes or fails to comply with a provision of this Ordinance is guilty of an offence against this Ordinance. Penalties.

(2.) A person who commits an offence against this Ordinance for which no other penalty is provided is punishable, on conviction, by a fine of One hundred dollars.

26.—(1.) Nothing in this Ordinance applies to, or in relation to— Exemptions.

(a) an exempted article; or

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

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

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

(a) the weight or measure, or the indication of the weight or measure of the article; and

(b) the operation of weighing or measuring the article.

(4.) In this section, “exempted article” means—

(a) bread;

(b) coal;

(c) firewood; and

(d) an article, or an article included within a class of articles, that is prescribed for the purpose of this section.

27. Where, after the date of commencement of this Ordinance, a person, in selling an article, complies with the requirements of this Ordinance, whether he is obliged so to comply or not, that person is not liable, in respect of the sale, to be charged with an offence against any other Ordinance, or regulations under any other Ordinance, relating to— Exemption from liability under other laws.

(a) the denominations of weight or measure in which an article may be sold; or

(b) the marking on a package of particulars of the weight or measure of an article contained in the package.

28. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters that by this Ordinance are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and in particular for— Regulations.

(a) prescribing the manner in which any particulars required by this Ordinance to be marked on a package are to be so marked;

- (b) prescribing the weights or measures in which objects and substances to which section 7 of this Ordinance applies may be packed or sold;
- (c) prescribing the machines or classes of machines that are to be vending machines for the purposes of the regulations;
- (d) regulating the sale or supply of articles by means of vending machines and prohibiting the sale or supply of articles by such machines otherwise than in accordance with the regulations;
- (e) prohibiting the sale of articles by means of a vending machine unless there are displayed in or upon the machine, in the manner required by the regulations, such particulars as are specified in the regulations;
- (f) prescribing the units of weight or measure that may be used in marking or displaying on packages or vending machines any particulars or statements that are required by the regulations to be so marked or displayed and the manner in which those units of weight or measure are to be expressed;
- (g) the method by which, and the conditions subject to which, the weight or measure of an article is to be determined for the purpose of marking or displaying on packages or vending machines any particulars or statements that are required by the regulations to be so marked or displayed;
- (h) permitting, in the case of such articles, and in such circumstances, as are specified in the regulations, the weight or measure of any articles used in packing the first-mentioned articles to be included in the net weight or measure of the first-mentioned articles;
- (i) providing for the exemption, either wholly or partially and either unconditionally or subject to such conditions as are determined in accordance with the regulations, from any of the provisions of this Ordinance of—
 - (i) articles included within any class of articles specified in the regulations and packages containing any such articles; and
 - (ii) prescribed transactions and classes of sales;
- (j) prescribing standard specifications of capacity for packages used in the packing or sale of prescribed articles, prescribing distinctive marks for packages made to those specifications and prohibiting the sale of such articles, when packed, otherwise than in packages made to those specifications and bearing those distinctive marks;
- (k) requiring a package containing an article to be marked with a statement of the price per unit of weight or measure of the article;

- (l) regulating the packing of articles and the marking of packages in which articles are contained; and
- (m) prescribing penalties not exceeding a fine of **One hundred dollars** for offences against the regulations.

