

SOUTH AUSTRALIA

PACKAGES ACT, 1967

PACKAGES ACT, 1967

being

Packages Act, 1967 No. 67 of 1967
[Assented to 16 November 1967]¹

as amended by

Packages Act Amendment Act, 1969, No. 7 of 1969 [Assented to 27 February 1969]
Packages Act Amendment Act, 1972, No. 15 of 1972 [Assented to 30 March 1972]²

¹ Came into operation (except ss. 15, 21, 24, 25, 27, 33, 34 and 35) 1 October 1968, ss. 21, 24 and 25 came into operation 1 November 1969, ss. 33, 34 and 35 came into operation 1 May 1970: *Gaz.* 26 September 1968, p. 940; s. 15 came into operation 1 November 1969, s. 27 came into operation 1 May 1970: *Gaz.* 24 April 1969, p. 1175.

² Came into operation 13 April 1972: *Gaz.* 13 April 1972, p. 1428.

An Act relating to the packing of certain articles for sale, the selling of those articles and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Packages Act, 1967*.

Commencement

2. (1) Subject to subsection (3) of this section, this Act shall come into operation on a day to be fixed by proclamation.

(2) Notwithstanding subsection (1) of this section the Governor may, by proclamation, fix different days for the coming into operation of the various Parts, Divisions and sections of this Act.

(3) A proclamation shall not be made under subsection (1) of this section fixing a day on which this Act shall come into operation until the Governor is satisfied that all of the other States of the Commonwealth have enacted legislation substantially similar in effect to this Act.

Arrangement

3. This Act is arranged as follows:—

PART I—PRELIMINARY, ss. 1-5

PART II—ADMINISTRATION—

DIVISION I—INSPECTORS, ETC., ss. 6-8

DIVISION II—APPROVED BRANDS, ss. 9-13

PART III—PACKING OF ARTICLES, ETC., ss. 14-26

PART IV—SALE OF ARTICLES, ss. 27-40

PART V—MISCELLANEOUS, ss. 41-47.

Definitions

4. (1) In this Act, unless the contrary intention appears—

"address" includes—

(a) in the case of a natural person, the address of his sole or principal place of business;

(b) in the case of a business registered under a business name pursuant to the *Business Names Act, 1963*, the address of the place where the business is or principal place of business is, as the case may be;

and

3.

- (c) in the case of a corporation within the meaning of the *Companies Act, 1962-1965*, the address of the registered office, in the State, of that corporation:

"approved brand" means a brand approved under section 9 of this Act and in relation to which the approval has not been revoked under section 13 of this Act:

"article" includes, but without limiting the generality of the meaning of the expression,—

- (a) liquids;
- (b) foods;
- (c) chattels;
- (d) wares;
- (e) merchandise;

and

- (f) any other goods of any description,

normally sold by weight, measure or denomination (other than in a single denomination) but does not include an article which is for the time being exempted from the provisions of this Act by notice under section 5 of this Act:

"bottle" means a hollow vessel of glass, synthetic resin or other similar material but does not include a jar or tumbler:

"brand" includes any mark, device, name, word, letter, numeral or symbol and any combination thereof:

"Inspector" means an Inspector appointed under section 6 of this Act and includes the Warden of Standards:

"name" includes—

- (a) in the case of a natural person, the surname of that person preceded by the first letter of the christian name, or the first letters of the christian names, of that person;
- (b) in the case of a business the name of which is registered under the *Business Names Act, 1963*, that name as registered;

and

- (c) in the case of a corporation within the meaning of the *Companies Act, 1962-1965*, the name under which that corporation is incorporated;

4.

"pack" includes any thing by means of which any article is packed for sale, or any articles are packed for sale as a single item, and in particular without limiting the generality of the foregoing expression includes any wrapper or confining band or any label attached to any pack or article and the expression 'to pack' and its derivatives have a corresponding meaning:

"package" means an article and the pack containing that article:

"packer" means—

(a) a person who packs an article in the reasonable expectation that the article will be sold;

or

(b) a person who authorizes, directs, causes, suffers or permits the packing of an article in the reasonable expectation that the article will be sold:

"permit" means a permit granted under section 38 of this Act and not cancelled under that section:

"sell" includes—

(a) offer or expose for sale;

(b) keep or have in possession for sale;

(c) barter or exchange;

(d) deal in or agree to sell;

(e) send forward or deliver for sale or on sale; and

(f) the act of authorizing, directing, causing, permitting or suffering any of the acts referred to in paragraphs (a) to (e) of this definition,

and "sale" or "sold" have the like meanings:

"the Commonwealth" includes any Territory of or under the control of the Commonwealth:

"the Warden of Standards" means the Warden of Standards appointed under the *Weights and Measures Act, 1967*, and includes the Deputy Warden of Standards from time to time appointed under that Act.

(2) For the purposes of this Act, a packer who authorizes, directs, causes, suffers or permits an article to be packed shall be deemed to have packed that article.

(2a) For the purposes of this Act, an article shall be deemed to be pre-packed if it is packed in advance ready for sale.

5.

(2b) Subject to subsection (2c) of this section for the purposes of this Act, where articles of any description are packed or are kept or stored for sale after being so packed on premises and any article of that description (being an article that is contained in a pack) is found on those premises that article shall, unless the contrary is proved, be deemed to be pre-packed.

(2c) It shall not be sufficient proof to the contrary for the purposes of subsection (2b) of this section to prove that the articles in question were not packed in a pack marked in accordance with the provisions of this Act for packs of that description.

(3) Unless the contrary intention appears, a reference in this Act to the weight or measure of an article shall be construed as a reference to the weight or measure of an article excluding the weight or measure of the pack containing the article.

(4) A reference in this Act to the weight or measure of an article shall, when that article is normally sold by number, be construed as a reference to the quantity of that article sold by number.

(5) A reference in this Act, however expressed to—

(a) a pack containing an article, shall be construed as including a reference to a pack to which an article is attached or around which an article is wound or wrapped;

and

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

Exemptions

5. (1) The Minister may from time to time by notice published in the *Gazette* exempt an article from all or some of the provisions of this Act and may by a like notice revoke that exemption.

(2) Nothing in this Act or, as the case may be, in those provisions shall apply to or in relation to an article which is for the time being exempted under subsection (1) of this section.

PART II

ADMINISTRATION

DIVISION I—INSPECTORS, ETC.

Inspectors

6. The Governor may by notice published in the *Gazette* appoint any person to be an Inspector for the purposes of this Act.

Certificate of Identification

7. (1) The Minister shall provide for each Inspector a certificate of identification in the prescribed form.

(2) The production of a certificate referred to in subsection (1) of this section shall for the purposes of this Act or of any proceedings under this Act be *prima facie* evidence that the person producing that certificate is an Inspector.

(3) A person, not being an Inspector, who comes into possession of a certificate referred to in subsection (1) of this section shall forthwith forward or deliver that certificate to the Warden of Standards.

Penalty: Fifty dollars.

Powers of Inspectors

8. (1) An Inspector may—

- (a) enter or be upon any place or premises or stop and search any vehicle where he has reasonable cause to believe that articles are packed, marked, sold, or, without limiting the generality of the foregoing expressions, otherwise dealt with in order to ascertain whether the provisions of this Act have been or are being complied with;
- (b) take with him onto the place or into the premises referred to in paragraph (a) of this section a member of the police force when he has reasonable cause to believe that he may be disturbed in the execution of his powers or the performance of his functions;
- (c) require any person, whom he finds in or about the place or premises or in charge of the vehicle referred to in paragraph (a) of this section, to answer any question in relation to any article which is or which he suspects on reasonable grounds has been upon that place or those premises or in that vehicle;
- (d) examine any article he finds in the place, premises or vehicle referred to in paragraph (a) of this section and weigh or measure or cause to be weighed or measured any pack containing such an article or any such article and for that purpose after payment or tender of the current market value of the article break open a pack containing that article;
- (e) upon payment or tender of the current market value of an article he finds in the place, premises or vehicle referred to in paragraph (a) of this section remove that article from that place or those premises or that vehicle;

7.

(f) take and remove from the place, premises or vehicle any article in respect of which he has reasonable cause to believe an offence against this Act has been committed;

and

(g) exercise and perform such other powers and functions as are prescribed.

(2) A person shall not—

(a) hinder or disturb an Inspector in the exercise or performance of his powers and functions under this Act;

(b) refuse or fail to comply with any reasonable direction given by an Inspector in the exercise or performance of his powers and functions under this Act;

(c) directly or indirectly prevent a person appearing before or being questioned by an Inspector;

or

(d) falsely pretend to be engaged in or associated with the administration of this Act.

Penalty: Two hundred dollars.

DIVISION II—APPROVED BRANDS

Approval of brand

9. The Warden of Standards may, on receiving an application under and in accordance with this division, by notice in writing approve of a brand, comprised of letters or numerals or letters and numerals allocated by him, specified in the notice.

Application

10. An application for approval of a brand shall—

(a) be in the prescribed form;

(b) contain the prescribed particulars;

and

(c) be accompanied by the prescribed fee.

Conditions

11. An approval given under section 9 of this Act—

(a) shall specify the owner of the brand;

and

(b) may contain such conditions as to the use of the brand as the Warden of Standards sees fit.

Offences in relation to brands

12. (1) A person, not being, or not being authorized, by the owner of an approved brand, shall not mark or authorize, suffer or permit the marking of that brand on any article.

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

(2) A person shall not use an approved brand otherwise than in accordance with the conditions (if any) expressed in the approval under this Part given in relation to that brand.

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

Cancellation of approval

13. The Minister may after due inquiry and for good cause revoke an approval given under section 9 of this Act.

PART III

PACKING OF ARTICLES, ETC.

Non-application of this Part in relation to certain articles

14. (1) Nothing in this Part shall apply to or in relation to an article that is, otherwise than at the request of the purchaser, weighed or measured before or at the time of sale in the presence of the purchaser.

(2) For the purposes of subsection (1) of this section, an article shall be deemed not to be weighed or measured in the presence of the purchaser unless—

(a) the weight or measure or an indication of the weight or measure;

and

(b) the operation of the instrument weighing or measuring the article,

can be seen by the purchaser.

Marking of name or approved brand on pack

15. (1) A packer shall not pack an article for sale unless the pack in which the article is contained is marked—

(a) in any case where the article is being packed by the packer on his own account with—

(i) his name and address;

or

(ii) an approved brand;

or

(b) in any case where that article is being packed for or on behalf of another person—

(i) if that other person has an address within the State with the name and address of that other person or the name and address of the packer or an approved brand;

or

(ii) if that other person has not an address within the State, with the name and address of the packer or an approved brand.

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

(2) Where the regulations prescribe a manner or form of the marking, on a pack containing an article, of a name and address or approved brand, a packer shall not pack an article in a pack marked otherwise than in the prescribed manner or form.

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

(3) In proceedings for an offence that is a contravention of subsection (1) or subsection (2) of this section it is a defence if the person charged proves that the article to which proceedings relate was packed on premises for sale from those premises to some other person for the purposes of consumption and not for sale by that other person.

(4) A person shall not suffer or permit an approved brand of which he is the owner or his name and address to be marked on any pack pursuant to subsection (1) of this section unless he has the means of ascertaining, at the time of the marking and thereafter, the place where the article was packed.

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

(5) For the purposes of any proceedings for an offence that is a contravention of subsection (4) of this section evidence of the failure of the person referred to in that subsection, at the request of an Inspector, to truthfully inform that Inspector of the location of the place referred to in that subsection is evidence that at the time of the marking and thereafter he did not have the means of ascertaining that place.

(6) A person—

(a) who is the owner of an approved brand which has been marked on a pack;

or

(b) whose name and address has been marked on a pack,

pursuant to subsection (1) of this section, shall not refuse or fail, at the request of an Inspector, to truthfully inform that Inspector of the location of premises at which the article contained in the pack was packed.

Penalty: One hundred dollars.

Packing of certain articles in certain denominations

16. (1) On or after the day appointed under section 17 of this Act in respect of a prescribed article a packer shall not pack that article except in the denomination of the weight or measure prescribed in relation to that article.

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

(2) For the purpose of this section "prescribed article" means an article to which, by regulation under this Act, this section is applied.

(3) In proceedings for an offence which is a contravention of or failure to comply with subsection (1) of this section it is a defence for the person charged to prove that the article in respect of which the proceedings relate was packed for export from the Commonwealth and the markings on the pack containing the article clearly indicated this fact.

(4) Notwithstanding anything relating to the packing of articles in denominations of weight or measure contained in any Act it shall be lawful for a packer to pack a prescribed article in the denomination of weight or measure prescribed under this section before the day appointed under section 17 of this Act in relation to that article.

Appointment of a day for the purposes of s. 16

17. (1) Subject to this section, the Minister may from time to time by notice published in the *Gazette* appoint a day in respect of an article referred to in subsection (1) of section 16 of this Act.

(2) The Minister may by notice published in the *Gazette* declare a day appointed under subsection (1) of this section not to be a day appointed under this section in respect of an article referred to in subsection (1) of section 16 of this Act and thereupon the day so declared shall cease to be a day appointed under this section in respect of that article.

(3) Nothing in this section shall empower the Minister to appoint a day which occurs—

(a) before the expiration of twelve months from the day on which this Act came into operation;

or

(b) before the day of publication of the notice under subsection (1) of this section.

Marking of true weight

18. (1) On or after the day appointed under section 19 of this Act a packer shall not pack an article unless the pack containing that article is marked in the prescribed manner with a statement of the true weight or measure of that article.

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

(2) In proceedings for an offence that is a contravention of or a failure to comply with subsection (1) of this section it is a defence for the person charged to prove that the article in respect of which the proceedings relate was packed for export from the Commonwealth and the markings on the pack containing that article clearly indicated that fact.

(3) Notwithstanding any provision, relating to the marking of a pack containing an article to which this section applies with the particulars of the weight or measure of that article, contained in any Act, it shall be sufficient compliance with that provision if the pack is marked in the manner prescribed under this section with a statement of the true weight or measure of the article.

(4) The Minister may, by notice published in the *Gazette*, exempt an article or a class of articles from the provisions of this section and thereupon this section shall not apply to or in relation to that article or class of articles and the Minister may by a like notice revoke that exemption and thereupon this section shall apply to and in relation to the article or class of articles, as the case may be, in respect of which the exemption was revoked.

Appointment of a day for purposes of s. 18

19. (1) Subject to this section, the Minister may, by notice published in the *Gazette*, appoint a day for the purposes of section 18 of this Act.

(2) Nothing in this section shall empower the Minister to appoint a day under this section which occurs—

(a) before the expiration of twelve months from the day on which this Act came into operation;

or

(b) before the day of publication of the notice under subsection (1) of this section.

Incorrect weight or measure

20. (1) Subject to this section, a packer shall not pack an article the weight of which is less than the weight or measure of the article stated on the pack containing the article.

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

(2) An offence that is a contravention of subsection (1) of this section may be committed notwithstanding the fact that the pack containing the article is not, under this Act, required to be marked with a statement of the weight or measure of the article.

(3) For the purposes of this section an article will be deemed to be of the weight or measure stated on the pack containing the article if—

(a) any deficiency of weight or measure does not exceed five parts per centum of the stated weight or measure or where the article is contained in a bottle, the stated contents of which do not exceed eight fluid ounces, eight ounces, 250 millilitres or 250 grams seven and one-half parts per centum of the stated contents;

and

(b) there is no average deficiency in the contents of twelve packs containing the article selected by an Inspector from amongst the packs containing that article on the premises of the packer or where there are less than twelve such packs all the packs on those premises being not fewer than six.

(4) In any proceedings for an offence that is a contravention of subsection (1) of this section it is a defence for the person charged to prove—

(a) that the deficiency—

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

or

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

or

- (b) that the commission of the offence was due to a cause that the person charged could not reasonably have foreseen and for which he could not have reasonably made allowance,

and in either case that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Net-weight when packed

21. (1) A packer shall not pack an article, other than a prescribed article, in a pack marked with the words "net weight when packed" or other words capable of bearing a like meaning.

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

(2) A packer shall not pack an article, other than a prescribed article in relation to which there has been prescribed an alternative expression, in a pack marked with any alternative expression or words capable of bearing a like meaning.

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

(3) For the purposes of this section—

"prescribed article" means an article to which, by regulation under this Act, this section is applied:

"alternative expression" means an expression prescribed in relation to a prescribed article as an alternative to the expression "net weight when packed".

(4) For the purposes of this section the regulations may provide—

- (a) in relation to a prescribed article or a prescribed article of a class, for a permissible deficiency expressed in parts per centum of the weight of that prescribed article;

and

- (b) for the marking of a prescribed article or a prescribed article of a class, with the day on which that prescribed article was packed or an indication of that day.

Deficient weight of certain articles on day they were packed

22. (1) If at any time, on the day on which a prescribed article referred to in section 21 of this Act is packed, that article is found to be of a weight of less than the weight stated on the pack containing that article the packer of that article shall be guilty of an offence.

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

(2) For the purposes of this section an article will be deemed to be of the weight or measure stated on the pack containing it if the deficiency in the weight or measure of the article does not exceed the limits set out in paragraph (a) or (b) of subsection (3) of section 20 of this Act.

Deficient weight of certain articles after day on which they were packed

23. (1) If at any time subsequent to the day on which a prescribed article referred to in section 21 of this Act is packed is found to be of deficient weight then the packer shall be guilty of an offence.

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

(2) For the purposes of this section an article shall be deemed to be of deficient weight if—

(a) there is a deficiency of weight of the article exceeding the number of parts per centum prescribed for the purposes of this section in relation to that article;

or

(b) there is an average deficiency of weight, in twelve packs containing that article selected at random by an Inspector from amongst the articles on the premises where the article is or where there are less than twelve such packs all such packs not being less than six, exceeding the permissible deficiency prescribed under subsection (4) of section 21 of this Act in relation to that article.

Marking "net weight at standard conditions"

23a. (1) A packer shall not pack an article, other than a prescribed article, in a pack marked with the words "net weight at standard conditions" or any other words capable of bearing a like meaning.

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

(2) For the purposes of this section a "prescribed article" means an article to which, by regulation this section is applied.

Articles not of proper weight at standard conditions

23b. (1) If a prescribed article referred to in subsection (1) of section 23a of this Act when weighed, under the standard conditions prescribed in relation to that article, is not of the weight marked on the pack containing the article, the packer who packed the article shall be guilty of an offence and shall be liable to a penalty not exceeding two hundred dollars for a first offence and a penalty not exceeding four hundred dollars for a second or subsequent offence.

(2) For the purposes of this section an article will be deemed to be of the weight marked on the pack containing the article if, when weighed under the standard conditions prescribed in relation to the article—

(a) any deficiency of weight of the article does not exceed the percentage, prescribed in relation to that article, of the weight marked on the pack which contained that article;

and

(b) there is no average deficiency in the weight of twelve such articles selected by an Inspector from amongst the articles on the premises of the packer or, where there are less than twelve but not less than six such articles from amongst all the articles on those premises.

Prohibited or restricted expressions

24. (1) A packer shall not pack an article in a pack—

(a) marked with a prohibited expression;

or

(b) marked with a restricted expression in contravention of this section.

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

(2) Where a restricted expression is marked on a pack containing an article—

(a) there shall be marked on every part of the pack on which the restricted expression appears a statement of the true weight or measure of the article as provided for in section 18 of this Act, whether or not the article is an article to which that section otherwise applies;

(b) the restricted expression and the statement referred to in paragraph (a) of this subsection shall be so placed that they may be clearly seen at the same time;

and

(c) each of the letters or figures contained in the statement referred to in paragraph (a) of this subsection—

(i) shall be of a size of not less than the minimum size of print prescribed under section 18 of this Act in relation to the size of the package;

(ii) shall be, in any case, not less than one-third of the size of the largest letter or figure contained in the restricted expression;

and

(iii) shall be marked in a colour of distinct contrast to the colour of its background.

(3) For the purposes of this section—

"prohibited expression" means any expression, whether consisting of a single word or of more words than one and whether in an abbreviated form or not, that directly or indirectly relates to or qualifies a unit of measure of physical quantity and without prejudice to the generality of the foregoing includes any expression, within the meaning of this provision, prescribed as a prohibited expression for the purposes of this section:

and

"restricted expression" means any expression not being a prohibited expression, whether consisting of a single word or of more words than one and whether in an abbreviated form or not that directly or indirectly relates to the size of the pack containing the article not being a statement required by or under this Act to be marked on the pack containing the article and without prejudice to the generality of the foregoing includes any expression, within the meaning of this provision, prescribed as a restricted expression for the purposes of this section.

Statements as to reduced price

25. A packer shall not pack an article in a pack marked with any words stating or implying that the article is for sale at a price less than that of its ordinary or customary sale price.

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

Misleading size or volume of pack

26. (1) Subject to this section, a packer shall not pack an article or articles in an opaque outer pack so that the volume of the outer pack exceeds the volume of the article or the aggregate of the volume of the articles, as the case may be—

(a) in the case of an article or articles enclosed in an inner pack by more than thirty-five per centum of the volume of the outer pack;

or

(b) in any other case by more than twenty-five per centum of the volume of the outer pack.

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

(2) The Minister may by notice published in the *Gazette* exempt an article or class of articles from the provisions of this section and thereupon this section shall not apply to and in relation to that article or class of articles and the Minister may by a like notice revoke that exemption and thereupon this section shall apply to and in relation to the article or class of articles, as the case may be, in respect of which the exemption was revoked.

PART IV

SALE OF ARTICLES

Selling an article not marked with an approved brand, etc.

27. (1) A person shall not sell an article unless—

(a) where the article was packed inside the State, the pack in which the article is contained is marked in accordance with section 15 of this Act;

(b) where the article was packed outside the State but within the Commonwealth, the pack in which the article is contained is marked in accordance with the equivalent legislation of the State or Territory of the Commonwealth in which the article was packed;

or

(c) the sale of that article is authorized by a permit.

Penalty: For a first offence, one hundred dollars and for a second or subsequent offence, two hundred dollars.

(2) For the purposes of this section the expression "equivalent legislation" used in relation to an article packed in a State or Territory of the Commonwealth other than this State, means the legislation or provision of the legislation of that State or Territory for the time being specified as equivalent legislation for the purposes of this section by notice under this section.

(3) For the purposes of this section, the Minister may by notice published in the *Gazette* specify the legislation or a provision of the legislation of a State or Territory of the Commonwealth other than this State to be the equivalent legislation to this section and the Minister may by a like notice amend, vary or revoke such a notice.

(4) In proceedings for an offence that is a contravention of subsection (1) of this section, it is a defence for the person charged to prove—

(a) that the commission of the offence was due to a cause that he could not reasonably have foreseen or for which he could not reasonably have made allowance;

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

and

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

Selling an article in other than the prescribed denomination

28. (1) On or after the day appointed under section 29 of this Act in relation to a prescribed article within the meaning of section 16 of this Act, a person shall not sell that article except in the weight or measure of the denomination as is prescribed under that section in relation to that article unless the sale of that article is authorized by a permit.

Penalty: For a first offence, one hundred dollars and for a second or subsequent offence, two hundred dollars.

(2) Notwithstanding any provision relating to the denominations of weight or measure contained in any other Act, it shall be lawful for a person to sell a prescribed article within the meaning of section 16 of this Act in the denomination of weight or measure prescribed under that section, before the day appointed under section 29 of this Act in relation to that article.

(3) In proceedings for an offence that is a contravention of subsection (1) of this section it is a defence for the person charged to prove—

(a) that the commission of the offence was due to a cause that he could not reasonably have foreseen or for which he could not reasonably have made allowance;

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

and

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

Appointment of day for the purposes of s. 28

29. (1) Subject to this section, the Minister may from time to time by notice published in the *Gazette* appoint a day in respect of an article referred to in subsection (1) of section 28 of this Act.

(2) The Minister may by notice published in the *Gazette* declare a day appointed under subsection (1) of this section not to be a day appointed under this section in respect of an article referred to in subsection (1) of section 28 of this Act and thereupon the day so declared shall cease to be a day appointed under this section in respect of that article.

(3) Nothing in this section shall empower the Minister to appoint a day which occurs—

(a) before the expiration of twelve months from the day on which this Act came into operation;

or

(b) before the day of publication of the notice under subsection (1) of this section.

Selling an article without statement of true weight

30. (1) On or after the day appointed under section 31 of this Act in respect of an article to which section 18 of this Act applies, a person shall not sell that article unless—

19.

(a) the pack containing that article is marked with a statement referred to in subsection (1) of that section;

or

(b) the sale of that article is authorized by a permit.

Penalty: For a first offence, one hundred dollars and for a second or subsequent offence, two hundred dollars.

(2) Notwithstanding any provisions relating to the marking of a statement of the true weight or measure of an article contained in any Act, it shall be lawful to sell that article if the pack containing that article is marked in the manner prescribed under subsection (1) of section 18 of this Act with a statement of the true weight or measure of that article.

(3) In proceedings for an offence that is a contravention of subsection (1) of this section it is a defence for the person charged to prove—

(a) that the commission of the offence was due to a cause that he could not reasonably have foreseen or for which he could not reasonably have made allowance;

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

and

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

Appointment of day for purposes of s. 30

31. (1) Subject to this section, the Minister may, by notice published in the *Gazette*, appoint a day for the purposes of section 30 of this Act.

(2) Nothing in this section shall empower the Minister to appoint a day which occurs—

(a) before the expiration of twelve months from the day on which this Act came into operation;

or

(b) before the day of publication of the notice under subsection (1) of this section.

Selling short weight or measure

32. (1) A person shall not sell an article the weight of which is less than the weight or measure of the article stated on the pack containing the article unless the sale of that article is authorized by a permit.

Penalty: For a first offence, two hundred dollars and for a subsequent offence, four hundred dollars.

(2) An offence that is a contravention of subsection (1) of this section may be committed notwithstanding the fact that the pack containing the article is not, under this Act, required to be marked with a statement of the weight or measure of the article.

(3) For the purposes of this section an article will be deemed to be of the weight or measure stated on the pack containing the article if—

- (a) any deficiency of a weight or measure does not exceed five parts per centum of the stated weight or measure or, where the article is contained in a bottle the stated contents of which do not exceed eight fluid ounces, eight ounces, 250 millilitres or 250 grams seven and one-half parts per centum of the stated contents;

and

- (b) there is no average deficiency in the contents of twelve packs containing the article selected by an Inspector from amongst the packs containing that article on the premises of the seller or where there are less than twelve such packs, all the packs on those premises not being fewer than six.

(3a) Where the true weight or measure of an article is found by an Inspector to be less than the weight or measure stated on the pack containing that article the packer of that article—

- (a) shall be deemed to have sold that article to that Inspector at the time at which and the place where the Inspector so found that the true weight or measure of the article was less than the weight or measure on the pack containing that article;

and

- (b) shall be liable for the same penalty as he would have been if he had so sold that article to the Inspector.

(4) In proceedings for an offence that is a contravention of subsection (1) of this section it is a defence for the person charged to prove—

- (a) that the commission of the offence was due to a cause that he could not reasonably have foreseen or for which he could not reasonably have made allowance;
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of an offence in respect of the article to which the proceedings relate;

and

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

Selling article marked "net weight when packed"

33. (1) A person shall not sell an article marked "net weight when packed" or with an alternative expression within the meaning of subsection (2) of section 21 of this Act or with any words capable of bearing a like meaning to either of those expressions otherwise than under the authority of a permit unless—

(a) the article—

(i) is an article which is prescribed under subsection (3) of section 21 of this Act as an article which may be marked with either of those expressions;

and

(ii) the expression so marked is an expression prescribed in relation to that article;

and

(b) the article is not of deficient weight within the meaning of this section.

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

(2) For the purposes of this section an article will be deemed to be of "deficient weight" if—

(a) there is a deficiency of weight over and above the permissible deficiency of the article exceeding the prescribed number of parts per centum prescribed in relation to that article for the purposes of section 23 of this Act;

or

(b) there is an average deficiency in weight of twelve such articles selected at random by an Inspector from amongst such articles on the premises of the seller or where there are less than twelve such articles, of the total number of such articles on those premises not being less than six, greater than the permissible deficiency prescribed in relation to that article under subsection (4) of section 21 of this Act.

Selling articles marked "net weight under standard conditions"

33a. A person shall not sell an article, other than a prescribed article within the meaning of section 23a of this Act, in a pack marked with the words "net weight at standard conditions" or any other words capable of bearing a like meaning.

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

Selling articles marked with a prohibited or restricted expression

34. (1) A person shall not sell an article in a pack—

(a) on which is marked a prohibited expression within the meaning of section 24 of this Act;

or

- (b) on which is marked a restricted expression within the meaning of section 24 of this Act unless the pack is marked in accordance with subsection (2) of that section,

unless the sale of that article is authorized by a permit.

Penalty: For a first offence, one hundred dollars and for a second or subsequent offence, two hundred dollars.

(2) In proceedings for an offence that is a contravention of subsection (1) of this section it is a defence for the person charged to prove—

- (a) that the commission of the offence was due to a cause that he could not reasonably have foreseen or for which he could not reasonably have made allowance;

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

and

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

Selling article marked with statement as to reduced price

35. A person shall not sell an article packed in contravention of section 25 of this Act unless the sale of that article is authorized by a permit.

Penalty: For a first offence, one hundred dollars and for a second or subsequent offence, two hundred dollars.

Selling or marking an article with misleading price

36. (1) Where an article is intended to be sold at a stated price per unit of weight or measure a person shall not mark or cause, permit or suffer the pack containing that article to be marked with a price greater than the price correctly computed from the true weight or measure of the article.

Penalty: For a first offence, one hundred dollars and for a second or subsequent offence, two hundred dollars.

(2) A person shall not sell an article marked in contravention of subsection (1) of this section.

Penalty: For a first offence, one hundred dollars and for a second or subsequent offence, two hundred dollars.

(3) In proceedings for an offence that is a contravention of subsection (1) of this section it is a defence for the person charged to prove—

- (a) that the commission of the offence was due to a cause that he could not reasonably have foreseen or for which he could not reasonably have made allowance;

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

and

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

Selling an article contained in a pack of misleading size or volume

37. A person shall not sell an article not being an article which is for the time being exempted from the provisions of section 26 of this Act, contained in an opaque outer pack when the volume of that outer pack exceeds the volume of the article or the aggregate of the volume of the articles as the case may be—

- (a) in the case of an article or articles enclosed in an inner pack, by more than thirty-five per centum of the volume of the outer pack;

or

- (b) in any other case, by more than twenty-five per centum of the volume of that outer pack.

Penalty: For a first offence, one hundred dollars and for a second or subsequent offence, two hundred dollars.

Sales to be by net weight or measure

37a. Except as expressly provided by this Act, or by any other Act or regulation, a person shall not—

- (a) sell an article by weight or measure otherwise than by net weight or measure;

or

- (b) mark a pack containing an article, or cause, suffer or permit such a pack to be marked with the expression "gross weight" or any expression having a like meaning.

Penalty: Two hundred dollars.

Delivery of invoices or delivery notes

37b. (1) Except as provided in subsection (2) of this section the seller of an article shall, if the article is sold by weight or measure and is delivered to the purchaser at a place other than the premises of the seller, deliver with that article an invoice or delivery note showing the weight or measure of the article so delivered.

(2) Subsection (1) of this section does not apply to or in relation to a pre-packed article contained in a pack marked with the weight or measure of the article.

Permits

38. (1) Where in relation to any article there has been a contravention of or failure to comply with any of the provisions of this Act with respect to the packing of any article or of the marking of a pack containing any article and the Minister is satisfied that—

- (a) the articles were, when packed, intended for export from the Commonwealth and it is just and reasonable that the sale of the articles in the State should be permitted;

(b) the articles were packed outside the Commonwealth and were brought into the State in such circumstances that it is just and reasonable that the sale of the articles in the State should be permitted;

or

(c) the articles were packed within the Commonwealth and having regard to the date on which they were packed or any other relevant circumstances it is just and reasonable that the sale of those articles should be permitted,

he may, on the application of a person, grant to that person a permit authorizing the sale of the articles in the State.

(2) A permit granted under this section shall be held subject to—

(a) such conditions as are specified in the permit with respect to—

(i) the number of individual articles the sale of which is authorized by the permit;

(ii) the form and manner in which the weight or measure of the article contained in each pack shall be indicated;

and

(iii) the weight or measure of the article contained in each pack;

and

(b) such other conditions, if any, whether or not of the same kind as the conditions referred to in paragraph (a) of this section as the Minister in his discretion specifies in the permit.

(3) A person to whom a permit is granted shall deliver or forward by post to the Warden of Standards on or before the fifteenth day in each month, until all the articles specified in the permit have been sold, particulars in a form approved of by the Minister of all articles, the sale of which is authorized by the permit, sold by him during the month preceding that month.

(4) The Minister may, at any time, after due enquiry and for good cause by notice served either personally or by post on the holder of a permit cancel the permit if he is satisfied that it is in the public interest so to do and upon service of that notice that permit shall for the purposes of this Act have no further force or effect.

Permits granted under a corresponding law

39. (1) The Minister may by notice published in the *Gazette* declare a provision of the legislation of a State or Territory of the Commonwealth to be a corresponding law for the purposes of this section and may from time to time by a like notice amend, vary or revoke that declaration.

(2) For the purposes of this Act and subject to this section, articles sold under a permit granted under a provision of the legislation of a State or Territory of the Commonwealth declared to be a corresponding law under this section shall be deemed to be articles the sale of which is authorized by a permit.

(3) Notwithstanding anything in this section, the Minister may, by notice published in the *Gazette*, declare that the sale of an article under a permit granted under a provision of the legislation of a State or Territory of the Commonwealth declared to be a corresponding law for the purposes of this section shall not, for the purposes of this Act, be deemed to be a sale under a permit and thereupon such a sale shall not be a sale authorized by a permit.

Offences in relation to sales under a permit

40. (1) A person who sells an article, the sale of which is authorized by a permit to another person in the reasonable expectation that the other person will sell the articles, shall not fail to inform that other person in writing of the conditions expressed in that permit.

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

(2) A person shall not—

- (a) sell an article the sale of which is authorized by a permit otherwise than in accordance with the conditions expressed in that permit;
- (b) falsely represent that a permit has been granted or is in force or that such a permit has been granted or is in force in relation to the sale of a particular article;

or

- (c) being the holder of a permit purport to sell pursuant to that permit a greater number of articles than the number (if any) of the articles to which the permit relates.

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

(3) In proceedings for an offence that is a contravention of subsection (2) of this section it is a defence for the person charged to prove—

- (a) that the commission of the offence was due to a cause that he could not reasonably have foreseen or for which he could not reasonably have made allowance;
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of an offence in respect of the article to which the proceedings relate;

and

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

PART V

MISCELLANEOUS

Evidentiary provisions

41. In proceedings in respect of an offence which is a contravention of a provision of this Act—

- (a) the marking on the pack containing an article indicating the name and address of the person who packed that article is evidence that the article was packed by that person;
- (b) the marking on the pack containing an article indicating the name and address of a person for or on whose behalf the article was packed is evidence that the article was packed on behalf of that person;
- (c) the marking on a pack containing an article indicating directly or indirectly the name and address of the packer is evidence that the article was packed in the State or Territory of the Commonwealth indicated by that address;
- (d) the marking on the pack containing an article indicating the date on which the article was packed is evidence that the article was packed on that date;
- (e) a document purporting to be certified by the Warden of Standards to be a copy of a permit granted under subsection (1) of section 38 of this Act is evidence of the grant of that permit and of the conditions (if any) stated therein;
- (f) a certificate purporting to be signed by the Warden of Standards stating that—
 - (i) the particulars required to be supplied to him under subsection (3) of section 38 of this Act have not been so supplied;
 - (ii) the permit granted under subsection (1) of section 38 of this Act has been cancelled under subsection (4) of that section;or
 - (iii) that an approval granted under section 9 of this Act has been cancelled,is evidence of the matters stated therein;
- (fa) the fact that an article in a pack is found exposed for sale is evidence that the article was packed for sale;

and

- (g) a document purporting to be signed by the Warden of Standards and purporting to be a copy of an approval granted under section 9 of this Act of a brand for use by a person for the purpose of marking on packs containing articles is evidence of that approval and the conditions (if any) subject to which the approval was granted and the fact that such a brand is marked on the pack containing that article is evidence that—

- (i) the article was packed by or on behalf of the owner of the brand;
- (ii) the article was packed at the place the address of which is specified in the approval as the address indicated by the brand;

or

- (iii) the article was packed on the date indicated by the brand,

as the case may be.

Offences for which no other penalty is provided

42. (1) A person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act.

(2) A person who commits an offence against this Act shall, where no other penalty is specifically provided, be liable for a penalty not exceeding one hundred dollars.

General provisions as to offences

42a. (1) Where by or under this Act, an act is directed to be done or directed not to be done, a person, who fails to do that act or, as the case may be, does that act in contravention of any such direction, is guilty of an offence against this Act.

(2) A prosecution for an offence against this Act may be presented—

- (a) within the period of twelve months from the day on which the offence is alleged to have been committed;

or

- (b) within the period of six months from the day on which the alleged offence comes to the knowledge of the complainant,

whichever period is the later, but no such prosecution shall be presented more than two years after the day on which the offence is alleged to have been committed.

(3) Where it appears to the Warden of Standards that—

- (a) an offence against this Act has been committed by a person;
- (b) the offence was due to an act or default of some other person;

and

- (c) the first mentioned person could establish a defence under this Act in proceedings for that offence,

the Warden of Standards may take or cause to be taken proceedings against that other person without taking or causing to be taken proceedings against that first mentioned person and in any such proceedings that other person may be charged with the offence referred to in paragraph (a) of this subsection and on proof that the commission of the offence was due to the default of that other person that other person may be convicted of that offence and in any such proceedings that first mentioned person shall be a competent and compellable witness.

Offences by corporations

43. Where a body corporate does any act or makes any omission that is an offence against this Act—

- (a) every director;
- (b) every member of the governing body;
- and
- (c) every person concerned in the management,

of that body corporate who authorized or knowingly permitted that act or omission, as the case may be, shall, for the purposes of this Act, be deemed to have committed that offence.

Summary procedure

44. All proceedings in respect of offences against this Act shall be disposed of summarily.

Evidence of a permit to be given by defendant

45. (1) In any proceedings for an offence against this Act, the fact that an act or omission was not authorized by a permit need not be specified in the complaint.

(2) The fact that an act or omission was authorized by a permit may be proved by the defendant but, whether or not that fact is specified or negated in the complaint, no proof in relation to it shall be required on the part of the complainant.

Evidentiary provision

45a. (1) In any prosecution or legal proceedings under this Act no proof shall, unless evidence is given to the contrary, be required of the appointment of the Warden of Standards or any other officer or person employed in the administration of this Act.

- (2) Any document apparently certifying that—
 - (a) specified weights or measures in the possession of an Inspector are Inspectors' Standards within the meaning of the *Weights and Measures Act, 1971*;
 - (b) such weights or measures have been verified or reverified within a period set out in the document;

or

(c) a specified person is or was acting under this Act in the capacity stated therein,

and any other document relating to or arising out of the administration of this Act shall, if purporting to be signed by the Warden of Standards be received as evidence in all courts and be deemed to be issued or written by or under the direction of the Warden of Standards without proof unless the contrary is shown.

Compensation

46. (1) Where a court constituted by a special magistrate has convicted a person of an offence against this Act and on the application of another person the court is satisfied that the other person suffered pecuniary loss from the commission of the offence the court may in addition to any penalty that it may impose in respect of that conviction order the person convicted to pay to that other person such sum by way of compensation for that loss as to the court seems just.

(2) Nothing in subsection (1) of this section shall empower the court to order the payment or payments by way of compensation in respect of one offence exceeding in the aggregate one thousand dollars.

(3) If on an application made under subsection (1) of this section the court is of the opinion that it has not sufficient evidence to enable it to determine the liability for, or the amount of the compensation or that for any other reason it is not expedient to determine the question of compensation it may decline to consider the application and in that case the application shall not of itself be a bar to any other proceedings for compensation which may be taken by the person making the application.

Regulations

47. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed and, in particular, but without limiting the generality of the foregoing, in respect of the following matters—

- (a) for or with respect to the form and manner in which packs required or permitted by any provision of this Act to be marked with any particulars, statement or approved brand, shall or may be so marked;
- (b) for or with respect to the denominations of weight or measure in which articles of any prescribed description shall or may be packed or sold;
 - (ba) regulating, controlling and restricting the sale or supply of articles by means of a vending machine (as defined in the regulations) and prohibiting the sale or supply of articles by means of such a machine otherwise than in accordance with the regulations;
 - (bb) for ensuring that articles that are sold by means of a vending machine (as defined in the regulations) are so sold only if there is displayed in or on the machine such particulars or statements, with respect to such matters, as may be prescribed, and the manner in which the particulars or statements so prescribed shall be so displayed;

- (bc) for or with respect to the units of weight or measurement to be used in marking or displaying on packs or vending machines (as defined in the regulations) any particulars or statements required to be marked or displayed thereon, either generally or in respect of any prescribed description of articles, and the manner in which those units of weight or measurement shall or may be expressed (whether in figures or words or figures and words) and the abbreviations that may or may not be used for the purposes of expressing those units;
 - (bd) for or with respect to the method in which, and the conditions under which, the weight or measure of articles is to be determined in connection with the marking or displaying on packs or on vending machines (as defined in the regulations) of any particulars or statements referred to in the foregoing provisions of this subsection;
 - (be) permitting, in the case of such articles and in such circumstances as may be specified in the regulations, the weight or measure of any articles used in packing the first mentioned articles for sale as may be so specified to be included in the net weight or measure of the first mentioned articles;
 - (bf) exempting (either wholly or to such extent as may be prescribed) or authorizing a prescribed person to exempt (either unconditionally or subject to such conditions and restrictions as that person may determine) from all or any of the provisions of this Act—
 - (i) articles of any description prescribed or referred to in the regulations and packs containing any such articles;

or

 - (ii) prescribed transactions or sales of a prescribed class.
 - (c) prescribing standard specifications of capacity for or in relation to packs used in the packing or sale of prescribed articles, prescribing distinctive marks for packs made to those specifications, and providing that any such articles, when packed, shall be sold only in prescribed packs made to those specifications and bearing the prescribed distinctive marks;
 - (ca) prescribing standard conditions in relation to any prescribed article within the meaning of section 23a of this Act;
 - (d) requiring packs containing articles of a prescribed description to be marked with a statement of the sale price per unit of weight or measure of the articles;
 - (e) generally regulating and controlling the packing of articles or of articles of prescribed descriptions and the marking of packs in which articles are contained;
- and
- (f) imposing penalties, not exceeding one hundred dollars, for offences against the regulations.

(2) The regulations—

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

and

- (d) may differ according to differences in time, locality, place or circumstance.

(3) The regulations shall not be regarded as invalid on the ground that they delegate to or confer on a person a discretionary authority.