

SOUTH AUSTRALIA

TRADE MEASUREMENTS ACT, 1971

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **15 January 1992**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

PART I PRELIMINARY

- Section
1. Short title
 2. Commencement
 4. Repeal and Savings Schedule
 5. Interpretation

PART II STANDARDS OF MEASUREMENT

6. Uniformity of masses and measures
7. Provision and maintenance of standards of measurement
11. Verification of standards
12. Damaging or destroying standards

PART III ADMINISTRATION

DIVISION II—GENERAL

19. Officers, etc.
20. Commissioner for Standards
21. Secrecy, etc.

PART IV INSPECTION, VERIFICATION AND STAMPING

22. Powers of Inspectors
23. Additional powers of Inspectors
24. Stamping of measuring instruments
25. Approval of measuring instruments
- 25a. Validation of certain purported stamping and verifications
26. Stamping and verification of measuring instruments, etc.
27. Only stamped measuring instrument, etc., to be used
28. Defective measuring instruments, etc., not to be used
29. Offences in connection with masses, etc.

PART V SALE OF GOODS

31. Trade, etc., to be in terms of standard masses and measures
32. Sales to be by net mass or measure
34. Sales by short mass or measure or different quality
36. Sales of coal and firewood

PART VI
MISCELLANEOUS

- 38. General penalty for offences
- 39. Onus of proof
- 40. Evidentiary provision
- 41. Defence to proceedings for offence
- 42. Preservation of civil rights
- 43. Commencement of prosecutions
- 44. Evidentiary provision
- 45. Evidence as to possession
- 46. Forfeiture
- 47. Provision as to forfeited measuring instruments, etc.
- 48. Recovery of fees, etc.
- 49. Offences
- 50. Regulations

SCHEDULE

APPENDIX
LEGISLATIVE HISTORY

TRADE MEASUREMENTS ACT, 1971

being

Weights and Measures Act, 1971, No. 115 of 1971
[Assented to 16 December 1971]¹

as amended by

Weights and Measures Act Amendment Act, 1973, No. 15 of 1973 [Assented to 6 September 1973]
Weights and Measures Act Amendment Act, 1975, No. 33 of 1975 [Assented to 3 April 1975]²
Trade Measurements Act Amendment Act, 1976, No. 102 of 1976 [Assented to 16 December 1976]³
Trade Measurements Act Amendment Act, 1982, No. 45 of 1982 [Assented to 22 April 1982]
Trade Measurements Act Amendment Act, 1987, No. 9 of 1987 [Assented to 9 April 1987]⁴
Statutes Amendment (Fair Trading) Act, 1987, No. 43 of 1987 [Assented to 30 April 1987]⁵

¹ Came into operation 28 February 1972: *Gaz.* 24 February 1972, p. 655.

² Came into operation 10 April 1975: *Gaz.* 10 April 1975, p. 1436.

³ Came into operation 20 January 1977: *Gaz.* 20 January 1977, p. 100.

⁴ Came into operation 21 May 1987: *Gaz.* 21 May 1987, p. 1329.

⁵ Came into operation 26 October 1987: *Gaz.* 24 September 1987, p. 940.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to repeal the Weights and Measures Act, 1967-1968; to consolidate and amend the law relating to trade measurements; 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 *Trade Measurements Act, 1971*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

* * * * *

Repeal and Savings Schedule

4. (1) The Acts specified in the first schedule to this Act are repealed.

(2) Notwithstanding such repeal—

(a) all regulations made under the repealed Act and in force immediately before the commencement of this Act shall be deemed to have been made under this Act and to have effect as if the necessary power to make them had been enacted by this Act;

and

(b) such regulations may be amended or revoked by regulations under this Act.

(3) Except as expressly provided in this Act, such repeal shall not affect any rights accrued under the repealed Act.

(4) Where in any other Act, or in any document, rule or regulation a reference is made to the repealed Act or any provision thereof, that reference shall, so far as it is applicable be read as a reference to this Act or to the corresponding provisions, if any, of this Act.

(5) The mention of particular matters in this section or in any other section of this Act shall not affect the general application of the *Acts Interpretation Act, 1915*, as amended, to this Act except to the extent that that Act is inconsistent with this Act.

Interpretation

5. In this Act, unless the contrary intention appears—

* * * * *

"article" includes, but without limiting the generality of the meaning of that term, liquids, foods, chattels, wares, merchandise and other goods of any and every description and, where necessary, any article and its package:

3.

"Australian legal unit of measurement" means a unit of measurement prescribed by the Commonwealth Regulations:

"Australian primary standard of measurement" and "Australian secondary standard of measurement" have the same meanings, respectively, as in the Commonwealth Act:

"certifying certificate" means any certificate in the form prescribed issued by an Inspector in respect of any measuring instrument exempted by the regulations from being stamped with a certifying stamp by reason of the impracticability of stamping the same, for the purpose of signifying that the measuring instrument has been found upon inspection to be in accordance in every respect with the requirements of this Act:

"certifying stamp" means any stamp prescribed for use by an Inspector for stamping pursuant to this Act any measuring instrument for the purpose of signifying that the measuring instrument has been found upon inspection to be in accordance in every respect with the requirements of this Act:

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"coal" includes coal, coke, briquettes, slack and charcoal of any and every description:

"Commission" means the National Standards Commission continued in existence by the Commonwealth Act:

"Commissioner for Standards" means the person appointed or deemed to have been appointed Commissioner for Standards pursuant to section 19 of this Act and includes any person for the time being acting in the office of the Commissioner for Standards:

"Commonwealth Act" means the *National Measurement Act 1960* of the Commonwealth:

* * * * *

"Commonwealth Regulations" means the regulations in force from time to time under the Commonwealth Act:

* * * * *

"contract" includes any agreement, bargain, sale, purchase, dealing and any other transaction on which payment in money or kind depends:

* * * * *

"Deputy Commissioner for Standards" means the person appointed or deemed to have been appointed the Deputy Commissioner for Standards pursuant to section 19 of this Act and includes any person for the time being acting in the office of the Deputy Commissioner for Standards:

"driver" in relation to a vehicle includes a person in charge of that vehicle:

* * * * *

"firewood" means any firewood in billets or lengths not over 1.5 metres and includes woodettes, mallee roots, millends, dockings, off-cuts, edgings and any other forest product that may be used for fuel:

"inspection" in relation to any measuring instrument includes the examination, testing, verification, reverification, comparison, adjustment and stamping under this Act by an Inspector:

"Inspector" means an inspector of standards appointed or deemed to have been appointed under this Act:

"mass" means—

- (a) the quantity of matter contained in an object;
- or
- (b) an object of known quantity of matter used to determine the quantity of matter contained in another object:

"measuring instrument" means a thing or combination of things by means of which a measurement of physical quantity may be made and includes a thing, or combination of things, by means of which a grading or counting may be affected by reference to the measurement of a physical quantity:

* * * * *

"package" includes any form of packaging of goods for sale as a single item, whether by way of wholly or partly enclosing the goods or by way of attaching the goods to or winding them round some other article, and, in particular, includes a wrapper or confining band:

"place" includes any shop, factory, and any house and any other place whatsoever, whether a building or in the open air, whether open or enclosed, and whether a public place or a place of public resort, or not:

* * * * *

"purchaser" includes a person purchasing as agent for any other person:

"reference standard of measurement" has the same meaning as in the Commonwealth Act:

"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;

5.

(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:

"stamp" means stamp, impress, engrave, etch, brand, seal, or otherwise mark in such manner as to be, so far as practicable, indelible:

"State primary standard of measurement" has the same meaning as in the Commonwealth Act:

* * * * *

"the repealed Act" means the *Weights and Measurements Act, 1967-1968*:

"use for trade" means use in connection with or with a view to a transaction for—

(a) the transferring or rendering of money or money's worth in consideration of money's worth or money;

or

(b) the making of a payment in respect of any tax, rate, toll, duty or impost, where—

(i) the transaction is by reference to quantity in terms of measurement of a physical quantity, or is a transaction for the purpose of which there is made or implied a statement of the quantity in such terms of goods to which the transaction relates;

and

(ii) the use is for the purpose of determination or statement of that quantity,

and the expression "have in possession for trade" has a corresponding meaning and a mass, measure or measuring instrument that—

(c) is used in relation to such a transaction;

or

(d) is made available for use by or on behalf of the public, whether on payment or otherwise, for making measurements of a physical quantity or for the grading of articles by reference to the measurement of a physical quantity,

shall for the purposes of this Act be deemed "in use for trade":

6.

"vehicle" means any conveyance used on land whether self-propelled or not:

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"weigh" means to determine the mass of an object.

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PART II

STANDARDS OF MEASUREMENT

Uniformity of masses and measures

6. The same denominations of masses and measures shall be used throughout the State.

Provision and maintenance of standards of measurement

7. The Commissioner for Standards shall arrange for the provision, custody and maintenance of such State primary standards of measurement and such classes of reference standards of measurement as are necessary to provide means by which, for the purposes of this Act, measurements may be made in terms of Australian legal units of measurement.

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Verification of standards

11. (1) A standard of measurement provided and maintained under section 7 of this Act which has not been verified, or has not been reverified, as provided by section 9 of the Commonwealth Act or regulation 80 of the Commonwealth regulations, as the case may be, shall not be used for the purposes of this Act.

(2) A standard so provided and maintained which has become defective through use or accident or which has been broken or repaired shall not be used for the purposes of this Act until it has been reverified as mentioned in subsection (1) of this section.

(3) Any certificate of endorsement, if purporting to be signed by the Commissioner for Standards, shall be *prima facie* evidence of the verification or reverification of the masses, measures and instruments therein referred to.

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Damaging or destroying standards

12. Any person who falsifies or wilfully or maliciously damages or destroys any standard provided and maintained under this Act shall be guilty of an offence.

PART III

ADMINISTRATION

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DIVISION II—GENERAL

Officers, etc.

19. (1) The Governor may appoint—

(a) a Commissioner for Standards;

(b) a Deputy Commissioner for Standards;

and

(c) such Inspectors as are necessary for the purposes of this Act.

(2) The Deputy Commissioner for Standards shall have and may exercise all the powers and functions of the Commissioner for Standards during the absence from duty for any reason of the Commissioner for Standards.

(3) The Warden of Trade Measurements and the Deputy Warden of Trade Measurements in office immediately before the commencement of the *Trade Measurements Act Amendment Act, 1976*, shall be deemed to be respectively a Commissioner for Standards and a Deputy Commissioner for Standards appointed under subsection (1) of this section.

(4) Any Government Inspector or Assistant Government Inspector appointed under the repealed Act shall be deemed to have been appointed an Inspector under subsection (1) of this section.

(5) The Commissioner for Standards and the Deputy Commissioner for Standards shall be Inspectors for the purposes of this Act.

Commissioner for Standards

20. (1) Subject to this section, the Commissioner for Standards shall have the general administration of this Act.

(2) In the exercise of the powers and functions conferred on him by this section the Commissioner for Standards shall be subject to the general control and direction of the Minister.

(3) The Commissioner for Standards may delegate any of the Commissioner's powers under this Act or any other Act.

(4) A delegation under this section—

(a) must be in writing;

(b) may be made subject to such conditions as the Commissioner for Standards considers appropriate;

9.

(c) if made to the holder of a specified office or position, empowers any person for the time being holding or acting in that office or position to exercise the delegated powers;

(d) is revocable at will;

and

(e) does not prevent the Commissioner for Standards from acting personally in any matter.

Secrecy, etc.

21. An Inspector shall not—

(a) otherwise than in the performance of his duties disclose or cause or permit directly or indirectly to be disclosed any information that comes to his knowledge in the course of the performance of his duties;

or

(b) stamp any measuring instrument otherwise than in compliance with the provisions of this Act.

PART IV

INSPECTION, VERIFICATION AND STAMPING

Powers of Inspectors

22. (1) An Inspector may at all reasonable times—

- (a) enter and search any building or place or stop and inspect any vehicle wherein or in connection with which measuring instruments are used for trade;
- (b) inspect any measuring instruments in the possession of any person having a pack, basket or other receptacle containing goods for sale;
- (c) examine and test such measuring instruments;
- (d) examine any pack, basket or other receptacle in which goods are being conveyed;
- (e) examine any goods kept or exposed for sale or in course of delivery in or on any such building, place, vehicle, pack, basket or receptacle;
- (f) in the presence of the person in charge thereof if such person desires to be present weigh, or measure or count or cause to be weighed or measured or counted any such goods and ascertain whether or not the provisions of this Act are being complied with;
- (g) on payment or tender to the person in charge thereof of the current market value or of the rate prescribed, demand and procure any such goods;
- (h) inspect all markings upon articles or packages containing articles for sale or upon labels affixed to articles or packages containing articles for sale, and for that purpose enter and search any place where there is or he has reasonable cause to believe there is any article or package containing any article for sale, and, on payment or tender to the person apparently in charge of the place in question of the current market value or at the rate prescribed, demand, select and take any such article or package;

and

- (i) seize and detain any article or any package containing any article or any goods in respect of which a contravention of this Act appears to have been committed.

(2) An Inspector may seize and detain any measuring instrument which—

- (a) is not stamped as required by or under this Act;

or

- (b) is incorrect or unjust.

Additional powers of Inspectors

23. (1) If upon inspection at any time of any measuring instrument, it appears to an Inspector that—

- (a) the measuring instrument is not stamped with a certifying stamp as required by this Act;
- (b) where the measuring instrument is exempted by the regulations from being stamped with a certifying stamp by reason of the impracticability of stamping the same, that a certifying certificate has not been issued in respect thereof;

or

- (c) a mass is light or otherwise unjust or that a measure is incorrect or otherwise unjust or that the measuring instrument is unjust,

the Inspector may—

- (d) seize the mass, measure or measuring instrument or any part thereof;
- (e) give to the owner of or to the person found in possession of the same, notice in writing to have the same corrected, and made true and just within fourteen days of the day of the giving of such notice or within such shorter period as the Inspector deems fit and in the meantime to cease to use the same;

or

- (f) if the Inspector is empowered by the Minister to adjust the same, adjust the same.

(2) Where any notice given under paragraph (e) of subsection (1) of this section is complied with to the satisfaction of the Inspector, he shall not take any further action under this section, but, if such notice is not complied with, the Inspector may, at the expiration of the time specified in the said notice, seize the measuring instrument in question or any part thereof.

Stamping of measuring instruments

24. Every measuring instrument used for trade and every public weigh-bridge shall be stamped with a mark of verification as prescribed.

Approval of measuring instruments

25. (1) A measuring instrument shall not be verified and stamped in pursuance of this Act unless—

- (a) it is of a pattern approved by or on behalf of the Commission under the Commonwealth regulations;

or

- (b) it is of a type and design in respect of which there is in force an approval given—
- (i) before the first day of January, 1966;
- or
- (ii) in the case of an application for approval that was pending at that date, after that date,
- by the Commissioner for Standards under the regulations.

(2) Notwithstanding that any such approval has been given, the Minister may, if he has reasonable grounds for believing that the use of a measuring instrument for trade might facilitate fraud, by notice in writing served by registered post upon the person using it or having it in his possession for the purposes of trade, specify the period, the purposes and the circumstances in which the measuring instrument may be used for trade.

(3) Any person who contravenes or fails to comply with any specification in any such notice which is applicable to him shall be guilty of an offence.

Validation of certain purported stamping and verifications

25a. Where on and after the first day of January, 1966, and before the day of commencement of the *Weights and Measures Act Amendment Act, 1973*—

- (a) a weight, measure, weighing instrument or measuring instrument, not being of such a type or design as was referred to in paragraph (b) of subsection (1) of section 37 of the repealed Act, purported to have been verified and stamped under the repealed Act;
- or
- (b) a measuring instrument, not being of such a type or design as is referred to in paragraph (b) of subsection (1) of section 25 of this Act, purported to have been verified and stamped under this Act,

then each of those weights, measures, weighing instruments or measuring instruments shall for all purposes be deemed to be and always to have been validly and effectually verified and stamped under the repealed Act or under this Act, as the case may be, notwithstanding the fact that that weight, measure, weighing instrument or measuring instrument is or was not of a pattern approved by or on behalf of the Commission under the Commonwealth regulations.

Stamping and verification of measuring instruments, etc.

26. (1) Subject to subsection (2) of this section, every measuring instrument used for trade shall be verified and stamped so often as may be required by the Commissioner for Standards.

(2) The regulations may, subject to such conditions as may be prescribed, exempt wholly or in part from this Part measuring instruments of such classes of measuring instruments as are prescribed.

Only stamped measuring instrument, etc., to be used

27. A person shall not use or have in his possession for use for trade any measuring instrument which—

(a) is not stamped as prescribed;

or

(b) is incorrect or unjust.

Penalty: \$2 000.

Defective measuring instruments, etc., not to be used

28. (1) A person shall not use for trade any measuring instrument (not being an instrument exempted by the regulations from stamping) which—

(a) has become defective;

or

(b) has been mended or repaired,

until the same has been re-stamped pursuant to this Act.

Penalty: \$2 000.

(2) Any person mending or repairing such a measuring instrument shall obliterate any existing stamp thereon.

Penalty: \$2 000.

(3) Notwithstanding anything in the foregoing provisions of this section a person may, as prescribed by the regulations, use temporarily such a measuring instrument which has been repaired but not re-stamped.

Offences in connection with masses, etc.

29. (1) A person shall not—

(a) use or have in his possession for use for trade a mass or measure which is not of a denomination authorized by this Act to be used but this paragraph shall not apply in connection with the import or export of goods from or to a place outside the State where other than the standard masses or measures ascertained in accordance with this Act are used;

(b) forge or counterfeit or cause to be forged or counterfeited, or assist in forging or counterfeiting or unlawfully have in his possession, any stamp used for stamping under this Act, any measuring instrument or, unless duly authorized under this Act, make on any measuring instrument any impression purporting to be the impression of any such stamp or alter any date mark used in connection with the impression of any such stamp;

- (c) in any way alter or tamper with so as to cause it to weigh or measure incorrectly or unjustly any measuring instrument which has been stamped;
- (d) use, sell, dispose of, or expose for sale any measuring instrument so altered, or tampered with or any measuring instrument with a forged or counterfeit stamp thereon;
- (e) make, or sell, or cause to be made or sold any measuring instrument which is false or unjust;

or

- (f) increase or diminish any stamped mass or measure or use, sell, dispose of or expose for sale any increased or diminished mass or measure but nothing in this subsection shall apply to any person who increases or diminishes any stamped mass or measure when he adjusts the same to standard and entirely obliterates the stamp thereon.

Penalty: \$5 000.

(2) Any bargain, sale or contract made in reference to any false or unjust measuring instrument shall be void: but in any proceedings in which the validity of any such bargain, sale or contract comes into question it shall not be held to be void if it is proved to the satisfaction of the court that the use of the false or unjust measuring instrument was due to a *bona fide* mistake or any accident or to any other cause beyond the control of the parties thereto and in spite of all reasonable precautions being taken and all due diligence exercised by them or was due to a person over whom the parties had no control.

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PART V

SALE OF GOODS

Trade, etc., to be in terms of standard masses and measures

31. (1) Every contract, bargain, sale, purchase, transaction, or dealing, made or entered into in the State for any work, goods, wares, or merchandise, or other thing that has been or is to be done, sold, purchased, delivered, carried, or agreed for by measurement of a physical quantity, shall be made or entered into by reference to Australian legal units of measurement of that physical quantity, and if not so made or had shall be void.

(2) Any person who sells by a denomination of mass or measure other than one of the Australian legal units of measurement, shall be guilty of an offence.

(3) This section shall not apply—

(a) to any contract, bargain, sale, purchase or dealing made or had by any person in the State with any person carrying on business in any other State or country in the course of such business according to the legal masses and measures of such State or country;

or

(b) to or in connection with timber in the log.

Sales to be by net mass or measure

32. (1) No person shall sell any article by mass or measure otherwise than by net mass or measure.

(2) Where any person offers or exposes for sale by mass or measure any article in a shop or other place or in any vehicle, pack, basket, or other receptacle, that person shall have suitable measuring instruments for weighing or measuring the article located in a convenient place so as to be easily seen by a purchaser.

Penalty: \$500.

(3) Any person to whom subsection (2) applies shall, at the request of a purchaser of any article sold by mass or measure, weigh or measure the article in the presence of the purchaser.

(4) If the article is less than the due mass or measure the person selling the same shall be guilty of an offence.

Penalty: (a) for a first offence, \$1 000;

(b) for a second or subsequent offence, \$2 000.

(5) Subsections (2), (3) and (4) of this section shall not apply to bread when offered or exposed for sale in any vehicle, pack, basket or other receptacle.

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Sales made by short mass or measure or different quality

34. (1) If any article sold by mass, measure, or number is upon sale or for the purpose of sale delivered to the purchaser or to some person on behalf of the purchaser short of the mass, measure or number purporting to be sold or delivered, the person selling the article or causing the same to be delivered shall be guilty of an offence against this section.

- Penalty: (a) for a first offence, \$2 000;
- (b) for a second or subsequent offence, \$5 000.

(1a) If any article offered or exposed for sale by reference to its nature, quality, purity, class, grade, gauge, size or octane rating is upon sale or for the purposes of sale delivered to the purchaser or to some person on behalf of the purchaser and on delivery or sale is of different nature, quality, purity, class, grade, gauge, size or octane rating to that offered or exposed for sale, the person selling the article or causing the same to be delivered shall be guilty of an offence against this section.

- Penalty: (a) for a first offence, \$2 000;
- (b) for a second or subsequent offence, \$5 000.

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Sales of coal and firewood

36. (1) A person shall not sell coal or firewood otherwise than by net mass.

Penalty: \$500.

(1a) In any proceedings for an offence against subsection (1), it is a defence for the defendant to prove that the sale was not made in the course of carrying on the business of selling coal or firewood.

(2) Any person who—

(i) sells coal or firewood by description which is false as to the sort of coal or firewood sold;

or

(ii) sells or delivers wet coal or firewood with intent to defraud the purchaser as to the mass of coal or firewood sold or delivered,

shall be guilty of an offence against this Act.

(3) Any seller, or purchaser of coal or firewood, or any person in charge of a vehicle in or on which coal or firewood is carried or any Inspector may require that coal or firewood or any vehicle used for the carriage of coal or firewood be weighed or re-weighed, in his presence, or that any firewood sold by measure be measured or re-measured in his presence.

17.

(4) Save as herein expressly provided, the provisions of this section are in addition to and not in derogation of any other section of this Act relating to the sale of articles.

PART VI

MISCELLANEOUS

* * * * *

General penalty for offences

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

(2) Where anything is by or under this Act directed or forbidden to be done or where by or under this Act authority is given to any person to direct anything to be done or to forbid anything to be done and anything so directed to be done is not done or anything so forbidden to be done is done every person who offends against any such direction or prohibition shall be guilty of an offence against this Act.

(3) Any person guilty of an offence against any provision of this Act shall be liable, if no specific penalty is provided for that offence, to a penalty not exceeding \$1 000.

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(5) Where a person is convicted of any offence against this Act and the court by which he is convicted is of opinion that such offence was committed with intent to defraud, he shall be liable in addition to or in lieu of any penalty, to be imprisoned for any term not exceeding six months.

(6) Where a person is convicted of any offence against this Act and the court by which he is convicted is of opinion that some person was defrauded or suffered pecuniary loss by reason of the commission of the offence the court may, in addition to imposing any penalty, order that the defendant shall pay to such last-mentioned person by way of recoupment of his loss such sum as the court thinks fit.

(7) Proceedings under this Act for a penalty for any offence by a body corporate may be taken against any person who is the manager or who acts in the management of such body corporate and such person shall be personally liable in such proceedings for such offence.

Onus of proof

39. In any proceedings for an offence against this Act in respect of any measuring instrument the onus shall be on the defendant to prove that the measuring instrument was tested, verified, reverified or stamped as required by this Act.

Evidentiary provision

40. (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 person purporting to have been appointed under this Act.

(2) Any document certifying that—

(a) specified masses or measures in the possession of an Inspector are Inspectors' Standards;

(b) such masses or measures have been verified or reverified within the prescribed period;

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 Commissioner for Standards be received as evidence in all courts and be deemed to be issued or written by or under the direction of the Commissioner for Standards without proof unless the contrary is shown.

(3) In any proceedings an apparently genuine document purporting to be signed by the Commissioner for Standards containing particulars of a delegation under this Act shall, in the absence of proof to the contrary, be accepted as proof of the particulars.

Defence to proceedings for offence

41. It shall be a sufficient defence in any proceedings under this Act if the defendant proves to the satisfaction of the court that the offence was due to a *bona fide* mistake or an accident or to any other cause beyond his control and in spite of all reasonable precautions being taken and all due diligence exercised by him to prevent the occurrence of the offence or was due to the action of a person over whom the defendant had no control.

Preservation of civil rights

42. No proceeding or conviction for any offence against this Act shall affect any civil right or remedy to which any person aggrieved by the offence may be entitled.

Commencement of prosecutions

43. (1) Proceedings for an offence against this Act—

(a) must be disposed of summarily;

(b) must be commenced within three years of the day on which the offence is alleged to have been committed or within one year of the day on which the alleged offence came to the knowledge of the complainant or any Inspector, whichever period first expires;

and

(c) must not be commenced by a person other than the Commissioner for Standards or an Inspector except with the consent of the Minister.

(2) In any proceedings an apparently genuine document purporting to be signed by the Minister certifying the Minister's consent to the commencement of proceedings for an offence against this Act shall, in the absence of proof to the contrary, be accepted as proof of the matter so certified.

Evidentiary provision

44. Judicial notice shall be taken of every notification or proclamation published in the *Gazette* under this Act.

Evidence as to possession

45. When any measuring instrument is found in the possession of any person carrying on trade or on the premises of any person which, whether a building or in the open air, whether open or closed, are used for trade such person shall be deemed for the purposes of this Act, until the contrary is proved, to have that measuring instrument in his possession for use for trade.

Forfeiture

46. (1) Any measuring instruments or goods in connection with which any offence against this Act or regulations is committed may on conviction of any person guilty of the offence be forfeited by order of the court.

(2) Such forfeiture may extend to the whole of any similar goods in similar packages found on the defendant's premises or in his possession at the time the offence was committed.

(3) If the court does not convict any such person all such measuring instruments and goods shall be returned to the owner thereof.

(4) The Commissioner for Standards may without instituting any prosecution apply to a court for the forfeiture of any measuring instruments or goods seized and detained under this Act, and the court in its discretion may make such an order but if the court declines to make such an order the Commissioner for Standards shall return them to the owner thereof immediately.

(5) Where any measuring instruments or goods have been seized and detained under this Act and at the expiration of two months from such seizure—

(a) no prosecution has been instituted in relation thereto;

and

(b) no application has been made for an order under the last preceding subsection,

the Commissioner for Standards shall return them to the owner thereof.

Provision as to forfeited measuring instruments, etc.

47. All measuring instruments and goods forfeited under this Act shall become the property of the Crown and (save where other provision is made by or under this Act) may be disposed of as the Minister thinks fit.

Recovery of fees, etc.

48. Any amount of fees, charges or expenses payable under this Act and not paid shall be recoverable by the Minister by action as for a debt due to the Crown in any court of competent jurisdiction.

Offences

49. Any person who—

(a) hinders or obstructs an Inspector in the execution of his duty;

(b) does not when requested by an Inspector produce all measuring instruments in his possession for examination or testing;

- (c) refuses on request to state his name and address to an Inspector or states to an Inspector a false name or address;
- (d) uses abusive language to or directly or indirectly threatens an Inspector;
- (e) assaults an Inspector while executing his duties under this Act;
- (f) impersonates an Inspector;

or

- (g) falsely pretends to be engaged in or associated with the administration of this Act,

shall be guilty of an offence against this Act.

Penalty: \$2 000.

Regulations

50. (1) The Governor may from time to time make regulations providing for all or any purposes, whether general or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or expedient to carry out the objects and purposes of this Act and, without limiting the generality of the foregoing provisions of this section, regulations may be made for or in respect of all or any of the following purposes, matters and things:

- (a) the supply, custody, care and verification of State primary standards of measurement and reference standards of measurement; the certifying of such verification; and the fees chargeable for such verification;
- (b) prescribing conditions relating to the duties, responsibilities, qualifications, appointment and dismissal of Inspectors and the provision of identification certificates;
- (c) prescribing conditions under which measuring instruments may be repaired or adjusted; and providing for the qualifications, registration, supervision and control of repairers and adjusters of measuring instruments, including the prohibition of the use of the designation of repairer and adjuster of such measuring instruments or any like designation by persons not so registered;
- (d) the fixing of times and places for the submitting for verification or reverification and the testing, verifying, reverifying and stamping of measuring instruments;
- (e) regulating and controlling the inspecting, examining, testing, verification, reverification, comparison and stamping of measuring instruments for the purposes of this Act and without limiting the generality thereof prescribing any method or methods by which or the manner in and the means by which and the persons by whom all or any of the those things shall or shall not be done, prescribing stamps including certifying stamps and rejection stamps for the purposes of this Act, prescribing the circumstances and conditions under which and the manner in which and the persons by whom stamps may be obliterated or defaced;

- (*ea*) regulating—
- (i) to declare any area described in the regulations to be a metric conversion zone either generally or in respect of a specified trade or trades;
 - (ii) to specify additional trades in respect of which a declared area shall be a metric conversion zone;
 - (iii) to specify the period or periods during which a declared area shall remain a metric conversion zone either generally or in respect of a specified trade or trades;
- and
- (iv) to extend any such period or periods;
- (*eb*) regulating—
- (i) to declare any area to be a sole metric zone either generally or in respect of a specified trade or trades as from a date specified in the regulation;
 - (ii) to specify additional trades in respect of which a declared area shall be a sole metric zone as from a date specified in the regulation;
- and
- (iii) to substitute a later date or dates for any date so specified;
- (*ec*) regulating in or in relation to metric conversion zones and sole metric zones the display of or written statement of the price of goods in relation to—
- (i) the system or systems of mass or measure which is or are to be or may be used in such display or statements;
- and
- (ii) the unit or units of mass or measure which is or are to be or may be used in such display or statement;
- (*ed*) prohibiting in sole metric zones the use by any person carrying on a trade of masses, measures and instruments not denominated or graduated in terms of the metric system;
- (*f*) prescribing fees chargeable for testing, verifying, adjusting or stamping measuring instruments, the registration of public weighbridges, weighmen, the registration of principals in the business of repairing measuring instruments and of employees in that business;
- (*g*) the payment of the fees prescribed for the testing, verifying, adjusting or stamping of measuring instruments;

- (h) the shape, dimensions and proportions to be required in measuring instruments and the materials of which they shall be made;
- (i) prescribing what measuring instruments shall or shall not be admitted to verification and the tests to be applied to ascertain their accuracy and efficiency;
- (j) prescribing the amount of error which may be tolerated in measuring instruments;
- (k) prescribing instruments for testing and verifying measuring instruments;
- (l) limiting the purposes or trades for or in which prescribed measuring instruments may lawfully be used, and prescribing the classes of measuring instruments to be used in prescribed trades;
- (m) prescribing the method of use and limiting or regulating the use in trade of prescribed measuring instruments;
- (n) the marking on masses and measures of their several denominations and on measuring instruments of their capacities and other markings and the obliteration of stamps in masses, measures and measuring instruments found to be incorrect or not in accordance with the regulations;
- (o) prescribing the denominations of masses and measures permissible for use in trade;
- (p) providing the classes of masses to be used in connection with prescribed measuring instruments;
- (q) the registration of public weighbridges by the owners thereof; and the registration of weighmen;
- (r) the conditions to be observed in the giving and taking of mass tickets; and the procedure to be followed in the weighing of goods;
- (s) the taking of tare masses of any vehicle used for the conveyance of goods sold or carried by mass; the issue and production of tickets showing such mass or the mass of the loading on such vehicle or the mass of the loading and the vehicle; providing for such weighing on demand by a purchaser or an inspector and for preventing frauds in connection with goods conveyed on vehicles and sold or carried by mass;
- (t) providing that where goods in packages are sold, offered or exposed or had in possession for sale, the net mass of the goods in the packages shall, in the circumstances prescribed by regulation, be one or other of the masses prescribed by regulation;
- (u) prohibiting the sale of prescribed goods by measure of capacity and prescribing the method by which prescribed classes of goods shall be sold;

- (v) regulating and controlling the marking upon articles or packages or labels affixed to articles or packages—
 - (i) of the net mass, measure or number of the article or contents of the package;
 - (ii) of any matter stating or representing by implication that the article or package and its contents is for sale at a price lower than the ordinary and customary sale price or, in the case of a package, that a sale price advantage is accorded to purchasers thereof by reason of the size of the package or the quantity of its contents;and
 - (iii) prescribing the means or method or means and method of any such marking;
 - (w) regulating and controlling the size of packages by reference to the volumes respectively of the package and of its contents and, where the package containing any article is packed in an outer package or container, regulating and controlling the size of the outer package or container by reference to the volumes respectively of the outer package or container and of the article;
 - (x) providing for exemptions in pursuance of this Act;
 - (y) for imposing penalties not exceeding \$500 for any breach of any regulation;
- and
- (z) generally for other matters for carrying out the provisions of this Act.

(2) Any regulation purporting to be made on or after the thirty-first day of July, 1975, under this section as in force before the commencement of the *Trade Measurements Act Amendment Act, 1976*, shall be and be deemed always to have been as valid and effectual as it would have been if that Act had been in operation at the time the regulation was purported to be made.

FIRST SCHEDULE

Weights and Measures Act, 1967.

Weights and Measures Act Amendment Act, 1968.

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APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 11 of The Public General Acts of South Australia 1837-1975 at page 109.

Section 3:	amended by 45, 1982, s. 2; repealed by 9, 1987, s. 3
Section 5:	definition of "Advisory Council" repealed by 45, 1982, s. 3(a)
	definition of "Australian legal unit of measurement" inserted by 9, 1987, s. 4(a)
	definition of "Australian primary standard of measurement" and "Australian secondary standard of measurement" inserted by 9, 1987, s. 4(a)
	definition of "Chairman" repealed by 45, 1982, s. 3(b)
	definition of "Commissioner for Standards" inserted by 102, 1976, s. 3(a)
	definition of "Commonwealth Act" substituted by 9, 1987, s. 4(b)
	definition of "Commonwealth legal unit of measurement" repealed by 9, 1987, s. 4(c)
	definition of "Commonwealth Standard of Measurement" repealed by 9, 1987, s. 4(d)
	definition of "Council" repealed by 45, 1982, s. 3(c)
	definition of "Deputy Warden of Trade Measurements" repealed and definition of "Deputy Commissioner for Standards" inserted in its place by 102, 1976, s. 3(b)
	definition of "inspection" amended by 9, 1987, s. 4(e)
	definition of "Inspector" amended by 102, 1976, s. 3(c)
	definition of "member" repealed by 45, 1982, s. 3(d)
	definition of "reference standard of measurement" inserted by 9, 1987, s. 4(f)
	definition "subsidiary standard of measurement" repealed and definition of "State primary standard of measurement" inserted in its place by 9, 1987, s. 4(g)
	definition of "the Commissioner" repealed by 102, 1976, s. 3(d)
	definition of "Warden of Trade Measurements" repealed by 102, 1976, s. 3(e)
	definition of "working standard of measurement" repealed by 9, 1987, s. 4(h)
Section 7:	substituted by 9, 1987, s. 5
Section 8:	repealed by 9, 1987, s. 5
Section 9:	amended by 102, 1976, s. 4; repealed by 9, 1987, s. 5
Section 10:	repealed by 9, 1987, s. 5
Section 11(3):	amended by 102, 1976, s. 5
Section 11(4):	amended by 102, 1976, s. 5; repealed by 9, 1987, s. 6
Section 12:	amended by 9, 1987, s. 7
	Division I of Part III comprising ss. 13 - 18 and heading amended by 102, 1976, s. 6; repealed by 45, 1982, s. 4
Section 19(1):	amended by 102, 1976, s. 7(a), (b)
Section 19(2):	amended by 102, 1976, s. 7(c), (d)
Section 19(3):	substituted by 102, 1976, s. 7(e)
Section 19(5):	amended by 102, 1976, s. 7(f), (g)
Section 20(1) and (2):	amended by 102, 1976, s. 8

Section 20(3) and (4):	inserted by 9, 1987, s. 8
Section 21:	amended by 9, 1987, s. 9
Section 25(1):	amended by 102, 1976, s. 9
Section 25(3):	amended by 9, 1987, s. 10
Section 26(1):	amended by 102, 1976, s. 10
Section 27:	amended by 9, 1987, s. 11
Section 28(1):	amended by 9, 1987, s. 12(a)
Section 28(2):	amended by 9, 1987, s. 12(b)
Section 29(1):	amended by 9, 1987, s. 13
Section 30:	repealed by 9, 1987, s. 14
Section 31(1):	amended by 9, 1987, s. 15(a)
Section 31(2):	amended by 9, 1987, s. 15
Section 32(2) and (3):	substituted by 9, 1987, s. 16(a)
Section 32(4):	amended by 9, 1987, s. 16(b), (c)
Section 33:	amended by 102, 1976, s. 11; 9, 1987, s. 17; repealed by 43, 1987, s. 23
Section 34(1):	amended by 9, 1987, s. 18(a)
Section 34(1a):	inserted by 102, 1976, s. 12(a); amended by 9, 1987, s. 18(b)
Section 34(2):	amended by 102, 1976, s. 12(b), (c); repealed by 9, 1987, s. 18(c)
Section 36(1):	substituted by 9, 1987, s. 19
Section 36(1a):	inserted by 9, 1987, s. 19
Section 37:	repealed by 9, 1987, s. 20
Section 38(3):	amended by 9, 1987, s. 21(a)
Section 38(4):	repealed by 9, 1987, s. 21(b)
Section 40(2):	amended by 102, 1976, s. 13
Section 40(3):	inserted by 9, 1987, s. 22
Section 43:	substituted by 9, 1987, s. 23
Section 46(4) and (5):	amended by 102, 1976, s. 14
Section 49:	amended by 9, 1987, s. 24
Section 50:	amended and redesignated as s. 50(1) by 102, 1976, s. 15
Section 50(1):	amended by 9, 1987, s. 25
Section 50(2):	inserted by 102, 1976, s. 15(b)
Second schedule:	repealed by 9, 1987, s. 26