NORTHERN TERRITORY OF AUSTRALIA

NORTHERN TERRITORY PRODUCTS SYMBOL ACT

As in force at 15 November 1995

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 15 November 1995. Any amendments that commence after that date are not included.

NORTHERN TERRITORY PRODUCTS SYMBOL ACT

An Act to authorize the use of a products symbol to distinguish and promote the sale of products made in the Territory

1 Short title

This Act may be cited as the *Northern Territory Products Symbol Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

container includes a basket, tray, packaging, wrapper, bottle or receptacle of any kind, whether open or closed, in or with which a product is or is intended to be contained, covered, enclosed or packed.

inspector means a person appointed under section 8(1).

product includes an article resulting from agriculture, horticulture, forestry, a rural industry, an extractive industry, fishing, aquaculture, and an article declared by the Minister, by notice in the *Gazette*, to be a product for the purposes of this Act.

sell includes:

(a) sell (whether by wholesale or retail), barter or exchange;

(b) agree to sell or offer or expose for sale;

(c) receive, keep or have in possession for sale; and

(d) send, forward or deliver for or on sale;

symbol means the form of design, irrespective of its size and colour, depicted in the Regulations.

(2) For the purposes of this Act, a product is made in the Territory where:

(a) not less than half of the constituents of the product are of Territory origin and not less than half of the preparation, if any, carried out in respect of that product has been carried out in the Territory; or

(b) the preparation of the product has been carried out entirely in the Territory.

4 Authority and notice of intention to use symbol

(1) Subject to this section and sections 5 and 7, a person who manufactures or sells a product which is made in the Territory is authorized to affix to the product or to a container of that product the symbol.

(2) Subject to subsection (3), a person shall, not later than 28 days before commencing to affix the symbol to a particular product, or to the container of that product, made in the Territory, give written notice to the Minister of:

(a) his name and business address; and

(b) that product, including particulars of the grounds relied upon in section 3(2) for considering that product to be a product made in the Territory.

Penalty: $200.

(3) A person who, within the 6 months immediately before the commencement of this Act, used the symbol in relation to a particular product made in the Territory and who, not later than 7 days after that commencement, gave to the Minister written notice of his name and business address and, in relation to the product, the information referred to in subsection (2)(b), is not guilty of an offence against subsection (2) in respect of the affixing of the symbol after the commencement of this Act to that product or a container of that product.

5 Minister may issue directions

(1) The Minister may, by notice in the *Gazette*, issue directions in respect of:

(a) the size and colour of, and any wording to appear with, the symbol to be affixed to a product or to a container of the product;

(b) the manner in which the symbol shall be used in respect of advertising carried out for a product made in the Territory; and

(c) the manner in which a symbol shall be affixed to a product or a container of the product.

(2) A person referred to in section 4(1) who:

(a) affixes to a product, or to a container of a product, made in the Territory; or

(b) advertises or causes to be advertised for sale a product made in the Territory,

otherwise than in accordance with directions, if any, issued under subsection (1), is guilty of an offence.

Penalty: $200.

6 Offences

Subject to section 7, a person shall not:

(a) affix, or cause or permit to be affixed:

(i) the symbol;

(ii) a design that is capable of being mistaken for the symbol; or

(iii) a design so nearly resembling the symbol as to be capable of being mistaken for the symbol,

to a product or to a container of the product; or

(b) manufacture or sell a product to which, or a container of the product to which, is affixed:

(i) the symbol;

(ii) a design that is capable of being mistaken for the symbol; or

(iii) a design so nearly resembling the symbol as to be capable of being mistaken for the symbol,

if the product is a product which is not made in the Territory.

Penalty: For a first offence – $250;

for a second offence – $500; and

for a third or subsequent offence – $1,000.

7 Minister may authorize use of symbol

(1) The Minister may, upon such terms and conditions as it thinks fit, by instrument in writing, authorize a person to affix the symbol to a product, or to a container of the product, which is not a product made in the Territory.

(2) For the purposes of sections 4(2), (3) and 6, a product referred to in subsection (1) shall be deemed to be a product which is made in the Territory.

8 Appointment of inspectors

(1) The Minister may, by notice in the *Gazette*, appoint a person to be an inspector for the purposes of this Act.

(2) The Minister shall cause to be issued to each inspector a certificate signed by the Minister, in accordance with the form set out in Schedule 2, evidencing his appointment and the inspector shall produce the certificate whenever required so to do by a person in respect of whom he has exercised or is about to exercise any of his powers under this Act.

(3) In proceedings for an offence against this Act, the production of a certificate referred to in subsection (2) shall be conclusive proof of the appointment of the inspector to whom that certificate relates.

9 Duties of inspectors

(1) An inspector shall ensure that the provisions of this Act relating to the symbol are being observed and, subject to the approval of the Minister, may commence and conduct prosecutions for offences against this Act.

(2) Subsection (1) does not affect the right of a person other than an inspector to prosecute for an offence against this Act.

10 Powers of inspectors

(1) An inspector may, with such assistance as he considers necessary, during normal working hours, enter premises in or on which he believes, on reasonable grounds:

(a) that a product to which, or a container of the product to which, the symbol is affixed is produced, prepared or kept for sale; or

(b) that an offence against this Act is being or has been committed.

(2) An inspector may:

(a) take possession or make copies of or take extracts from documents that appear to him to be connected in any manner with an act or omission constituting an offence against this Act; and

(b) take possession of goods or samples of goods for use as evidence in a prosecution for an offence against this Act.

(3) Where, within 30 days after action has been taken under subsection (2), and a prosecution has not been commenced against the person from whose custody possession was taken of any documents, goods or samples, or against the owner of those documents, goods or samples, the inspector shall return those documents, goods or samples, forthwith to the person from whose custody they were taken.

(4) In the exercise of his powers under this section an inspector shall conform so far as is practicable to such reasonable requirements of the person owning or using the premises in question as are necessary to prevent the working of the business or the conduct of operations on the premises being obstructed.

11 Occupier to give assistance

The occupier of premises and a person in charge or apparently in charge of premises shall give an inspector all reasonable assistance and all such information that he is capable of giving or is required by the inspector to give with respect to the exercise of that inspector's powers, and the discharge of that inspector's duties, under this Act.

11A Delegation by Minister

(1) The Minister may, by instrument in writing, delegate to a person any of his powers and functions under this Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister.

12 Person obstructing operation of Act

(1) A person shall not obstruct a person acting under and in accordance with this Act.

Penalty: $500.

(2) Subject to subsection (3), for the purposes of subsection (1), a person who fails to give to a person acting under and in accordance with this Act any assistance which that second-mentioned person reasonably requests him to give, or information which that second-mentioned person is expressly authorized by this Act to call for or reasonably require, or who, when required to give such information, knowingly makes a misstatement in relation thereto, shall be treated as having obstructed that second-mentioned person.

(3) A statement made pursuant to a requirement made under this section, shall not, if the person making the statement, at the time of making it, objected to doing so on the ground that it might tend to incriminate him, be admissible in evidence in a prosecution against the person for an offence not being the offence of contravening or failing to comply with this section.

13 Secrecy

A person shall not disclose information relating to a manufacturing process or trade secret used in carrying on or operating an undertaking, equipment or plant, that has been given to him or obtained by him under this Act, or in connection with the operation of this Act, unless the disclosure is made:

(a) with the written consent of the person carrying on or operating the undertaking, equipment or plant;

(b) in connection with the operation of this Act; or

(c) subject to section 12(3), for the purposes of a legal proceeding arising out of this Act or of a report of such proceedings.

Penalty: $500.

14 Vicarious liability

(1) Subject to subsection (2), where an offence against this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a person who is or was a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in such capacity, that person as well as that body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In respect of a prosecution for an offence deemed to have been committed against this Act, it shall be a defence for a person who would otherwise be liable to the penalties provided for the offence to prove that neither he nor an agent or servant of his did, or knew of the doing of, an act that constituted that offence or can reasonably be regarded as having been the cause or amongst the causes of that offence, or omitted to do, or knew of an omission to do, an act the omission whereof constituted that offence or the doing whereof can reasonably be regarded as a precaution that would have prevented that offence.

15 Protection of certain persons

No action or proceeding, civil or criminal, shall lie against a person for or in respect of an act or thing done in good faith by the person for the purposes of this Act.

16 Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Regulations may provide for:

(a) the form and design of the symbol and other matters relating to the symbol;

(b) the payment of a prescribed amount in lieu of a penalty which may otherwise be imposed for an offence against this Act; and

(c) the service of notices on persons alleged to have infringed this Act and particulars to be included in such notices.

Schedule 2

NORTHERN TERRITORY OF AUSTRALIA

NORTHERN TERRITORY PRODUCTS SYMBOL ACT

section 8(2)

CERTIFICATE

This is to certify that .....…….. was
(name)

on .....…….. 19….., appointed to be an inspector for the purposes of the *Northern Territory Products Symbol Act*.

.....
Minister

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Northern Territory Products Symbol Act 1982 (Act No. 34, 1982)

Assent date	23 June 1982
Commenced	1 October 1982 (*Gaz* G36, 10 September 1982, p 9)

Statute Law Revision Act 1986 (Act No. 64, 1986)

Assent date	19 December 1986
Commenced	19 December 1986

Northern Territory Symbol Amendment Act 1995 (Act No. 45, 1995)

Assent date	15 November 1995
Commenced	15 November 1995

3 LIST OF AMENDMENTS

s 3	amd No. 64, 1986, s 3; No. 45, 1995, s 3
ss 4 – 5	amd No. 64, 1986, s 3
s 6	amd No. 45, 1995, s 4
s 7	amd No. 64, 1986, s 3
s 11A	ins No. 64, 1986, s 3
s 12	amd No. 45, 1995, s 5
s 16	ins No. 45, 1995, s 6
sch 1	rep No. 45, 1995, s 7