

Hon. Mr. Sullivan

STANDARDS

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A BILL INTITULED

AN ACT to promote Standardization in relation to
Commodities, Processes, and Practices, and for that
Purpose to provide for the Establishment of a
Standards Council and to define its Powers and
Functions.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Standards Act, Short Title.
1940.

Interpretation. 2. In this Act, unless the context otherwise requires,—

“Commodity” means any article, product, or thing which is the subject of trade or commerce: 5

“Council” means the Standards Council established under this Act:

“Mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof: 10

“Minister” means the Minister of Industries and Commerce:

“Sale” includes barter, and also includes offering or attempting to sell, or receiving for sale, or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or allowing to be sold, offered, advertised, or exposed for sale; and “to sell” has a corresponding meaning: 15

“Specification” means a description of any commodity, process, or practice, by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age, or other characteristics: 20

“Standard mark” means a mark registered as a certification trade-mark pursuant to section *nine* of this Act: 25

“Standard specification” means a specification which has been declared to be a standard specification pursuant to section *eight* of this Act. 30

Establishment
of Standards
Council.

3. (1) There is hereby established for the purposes of this Act a Standards Council, which shall consist of not less than twelve nor more than twenty-five members, to be appointed in that behalf by the Minister. 35

(2) The members of the Council shall be appointed for a term not exceeding *two* years. Any such member may from time to time be reappointed for a term not exceeding *two* years, or may at any time be removed from office by the Minister, or may resign his office by writing addressed to the Minister. 40

4. (1) The Minister shall from time to time appoint one of the members of the Council to be the Chairman of the Council and another member to be the Deputy Chairman. In the absence of the Chairman from any meeting of the Council the Deputy Chairman shall act as the Chairman.

Chairman
of Council.

(2) The Chairman and the Deputy Chairman shall hold office until the expiration of the period of their appointment as members of the Council, unless in the meantime they cease to be members of the Council. At the expiration of any period of office the Chairman and the Deputy Chairman or either of them may be reappointed.

(3) At any meeting of the Council the Chairman shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

5. (1) Meetings of the Council shall be held at such times and places as the Council or the Chairman may appoint.

Meetings of
Council.

(2) Save as may be provided by this Act or by regulations under this Act, the Council may regulate its procedure in such manner as it thinks fit.

6. For better enabling the Council to carry out its functions and duties under this Act, the Minister may from time to time appoint such persons as he thinks fit, whether members of the Council or not, to be a committee of the Council.

Appointment
of Committees.

7. (1) The principal function of the Council shall be to make recommendations to the Minister, after due inquiry and investigation, in respect of the following matters, namely:—

Functions of
Council.

(a) The formulation of specifications, and the promulgation and application of standard specifications:

(b) The promotion of research in relation to specifications, and provision for the examination and testing of commodities, processes, and practices:

(c) The registration and use of standard marks:

(d) Any other matters that may be referred to the Council by the Minister or that may be considered by it of its own motion.

(2) In addition to its function as an advisory body, as defined in the *last preceding* subsection, the Council shall have the following further functions, namely:—

- (a) To assist Departments of State, local authorities, and other public bodies in the preparation of any specifications required by them: 5
- (b) To co-operate with representatives of any industry, or with any Departments of State, local authorities, or other public bodies or persons with a view to securing the adoption of standards: 10
- (c) To co-operate with any persons, associations, and organizations outside New Zealand having similar functions with a view to furthering the functions of the Council: 15
- (d) To encourage or undertake educational work in connection with standardization:
- (e) Any other functions that may be lawfully conferred on it by regulations under this Act or otherwise howsoever. 20

Standard specifications.

8. (1) The Minister may declare any specification to be a standard specification for the purposes of this Act:

Provided that before so doing the Minister shall obtain from the Council, or from such committee of the Council as may be specified by it for the purpose, a report on the specification. 25

(2) If any Act other than this Act prescribes or authorizes the making of regulations prescribing any characteristics of any commodity, process, or practice, the Minister shall not declare any specification in respect of that commodity, process, or practice to be a standard specification except with the approval of the Minister who is for the time being charged with the administration of that other Act. 30 35

(3) No specification shall be declared to be a standard specification unless the Minister is satisfied that any persons who may be affected thereby have had an opportunity to consider it and to comment thereon. 40

(4) Whenever the Minister has declared any specification to be a standard specification, it shall be promulgated in such manner as the Minister shall direct or as may be prescribed.

(5) The fact that any specification has been declared to be a standard specification shall be conclusive evidence that the requirements of this section have been complied with.

5 9. (1) For the purposes of this Act the Minister, or any person acting under the authority of the Minister, may from time to time, on behalf of His Majesty the King, make application to the Commissioner of Patents, Designs, and Trade-marks for the registration of any
10 mark as a certification trade-mark under section thirty-nine of the Patents, Designs, and Trade-marks Amendment Act, 1939.

Registration of standard marks as certification trade-marks.

1939, No. 26

(2) Notwithstanding anything to the contrary in the Patents, Designs, and Trade-marks Act, 1921-22,—

See Reprint of Statutes, Vol. VI, p. 656

15 (a) A mark adapted in relation to any goods to distinguish in the course of trade goods that conform to a standard specification from goods that do not conform to that specification or from goods that do not conform
20 to any standard specification shall be registrable as a certification trade-mark under the said section thirty-nine in respect of those goods in the name, as proprietor thereof, of His Majesty the King:

25 (b) Any such certification trade-mark may contain or consist of the words or initials "New Zealand Standard", "N.Z. Standard", or "N.Z.S.", and for the purposes of any application made under the authority of this section those words and initials shall be
30 deemed, for the purposes of paragraph (a) of subsection two of the said section thirty-nine, and subject to this section, to be inherently adapted to distinguish as aforesaid:

35 (c) In relation to any application made under the authority of this section and to any certification trade-mark registered pursuant to any such application, the said section thirty-nine of the Patents, Designs, and Trade-marks
40 Amendment Act, 1939, shall have effect subject to the foregoing provisions of this section, and as if the references in the said section thirty-nine, and in the First Schedule to that Act, to regulations for governing the use of
45 certification trade-marks had been omitted:

(d) Except pursuant to an application made by the Minister under the authority of this section, or made by any other person prior to the date of the passing of this Act, or made by any such person within two years after that date in respect of a mark in *bona fide* use in New Zealand by that person or his predecessor in business at that date, no trade-mark shall be registrable under the Patents, Designs, and Trade-marks Act, 1921-22 (whether as a certification trade-mark or otherwise), if it contains or consists of the words or initials "New Zealand Standard", "N.Z. Standard", or "N.Z.S.", or if it so nearly resembles those words or initials as to be likely to deceive or cause confusion. 5 10 15

(3) Nothing in the *last preceding* subsection shall be construed as affecting the validity of any trade-mark which was on the Register of Trade-marks at the passing of this Act, or as affecting any of the rights of the proprietor of any such trade-mark. 20

Licenses to
use standard
marks.

10. (1) Any person desiring to use any standard mark in connection with any commodity, process, or practice may make application to the Minister in the prescribed manner. 25

(2) The Minister may, in his discretion, if he is satisfied that the commodity, process, or practice with respect to which the applicant desires to use a standard mark conforms to a standard specification, grant to the applicant a license to use a standard mark upon or subject to such conditions (if any) as the Minister may think fit or as may be prescribed. 30

(3) No license under this section shall be granted for any period exceeding *one* year:

Provided that so long as the terms of any such license are complied with, the license may from time to time be renewed by the Minister for such period or periods as he thinks fit, not exceeding *one* year at any time, and any such license shall be deemed to have been renewed from time to time for periods of one year unless specifically revoked. 35 40

(4) Every person to whom a license is granted under this section shall, if and whenever required by the Minister so to do, submit for examination or testing a sample of the commodity in respect of which the license has been granted, or submit any information relating to the production and testing by the licensee of that commodity or relating to the process or practice in respect of which the license has been granted.

(5) Any sample required under the *last preceding* subsection to be submitted for examination or testing may be selected at random by any person acting for the Minister.

(6) The Minister may at any time revoke any license granted under this section.

11. (1) Subject to the provisions of subsection *four* of this section, the authority to make regulations conferred by section *eighteen* of this Act shall extend to authorize the making of regulations for the purpose of preventing, either absolutely or subject to such conditions as may be prescribed, the sale of any specified commodity or class of commodities, or the use of any process or practice, in respect of which one or more standard specifications have been declared, unless the same conforms to one or other of those specifications.

Regulations may be made requiring conformity to standard specifications.

(2) Unless any such regulations as aforesaid provide to the contrary, it shall be lawful for any person, at any time within *twelve* months after the date of the commencement of the regulations, to sell any commodity the sale of which is otherwise lawful if he proves that at the said date the commodity was part of the existing stock-in-trade in New Zealand of any person carrying on business there, and that since that date no act has been done whereby the commodity fails to conform to the requirements of the regulations. For the purpose of this subsection any commodities purchased before the said date for importation into New Zealand shall be deemed to be part of the purchaser's stock-in-trade in New Zealand.

(3) Unless any such regulations as aforesaid provide to the contrary, it shall be lawful for any person, at any time within twelve months after the date of the commencement of the regulations, to use any process or practice the use of which is otherwise lawful

if he proves that at the said date the machinery or equipment used in the carrying-out of such process or practice was being used in New Zealand in connection with the process or practice, and that since that date no act has been done whereby the machinery or equipment has become incapable of being used in conformity with the requirements of the regulations. 5

(4) If any Act other than this Act prescribes or authorizes the making of regulations prescribing any characteristics of any commodity, process, or practice, this section shall not apply with respect to that commodity, process, or practice. 10

Characteristics of commodities, &c., may be prescribed under other Acts by reference to standard specifications.

12. Where any Act confers power to prescribe or define (whether by regulations or otherwise) any characteristics of any commodity, process, or practice, those characteristics, or any of them, may be prescribed or defined by reference to any standard specification. 15

Citation and proof of specifications.

13. (1) In any Act, regulation, or by-law any standard specification may, without prejudice to any other mode of citation, be cited by the title or number given to it by the Minister, and such citation shall, unless the context otherwise requires, be deemed to include and refer to the latest published standard specification. 20

(2) Without affecting any other method of proof, it is hereby declared that *prima facie* evidence of any standard specification may be given in any proceedings by the production of a copy of the specification purporting to be issued by or under the authority of the Minister, or by the Council. 25 30

Offences and penalties.

14. (1) Every person commits an offence against this Act who—

(a) Makes any statement or representation, whether in writing or not, or uses any mark with reference to any commodity, process, or practice which conveys or is likely to convey the impression that a person who is not licensed to use a standard mark with reference to that commodity, process, or practice is so licensed or is otherwise entitled to use a standard mark: 35 40

(b) Makes any statement or representation, whether in writing or not, or uses any mark which conveys or is likely to convey the impression that a commodity, process, or practice complies with a standard specification when it does not do so: 45

- (c) Without the authority of the Council or the Minister, and for the purposes of a sale, makes any statement or representation, whether in writing or not, whereby comparison is made in respect of any commodity, process, or practice with the standard provided for by any standard specification, unless he proves that he acted without intent to defraud:
- (d) Having been licensed to use a standard mark, uses the standard mark after the revocation of his license so to do, or otherwise than in accordance with the terms and conditions of his license.
- (2) Every person who commits an offence against this Act or against any regulations made under this Act for which no specific penalty is provided elsewhere shall be liable on summary conviction to a fine of *fifty* pounds, and, in the case of a continuing offence, to a further fine of *two* pounds for every day on which the offence is continued.
15. (1) Except with the consent of the Governor-General in Council, no association of persons, whether a body corporate or not, shall exercise the functions for which it is formed under a name which contains the word "Standard", or the words "New Zealand Standard", or any abbreviation of those words.
- (2) Where any Act provides for the registration of any association of persons, the registering authority may refuse registration if in its opinion the use of the name by which the association desires to be registered is prohibited by the *last preceding* subsection.
- (3) The provisions of this section shall, with the necessary modifications, apply to an individual carrying on business under any name or style other than his own.
- (4) Any association or individual who does any act in contravention of the provisions of this section commits an offence and shall be liable on summary conviction to a fine of *fifty* pounds.
- (5) Nothing in this section shall apply to the use by any association or individual of any name that was in use in New Zealand by that association or individual, or any predecessor in business of that association or individual, on the passing of this Act.

Restriction on
use of word
"Standard"
in certain
names.

Secrecy of information obtained for purposes of this Act.

16. (1) All information obtained by the Minister, or by the Council, or by any member or officer thereof, or by any other person in the course of the administration of this Act, as to any formula, process, or practice shall be treated as confidential, save for purposes connected with the administration of this Act. 5

(2) The disclosure of any information relating to any formula, process, or practice to the Minister, or to the Council, or to any member or officer thereof, or to any other person for purposes connected with the administration of this Act, shall not prejudice any application subsequently made for a patent. 10

Protection of Government and Council.

17. The fact that any commodity, process, or practice conforms, or is alleged to conform, to a standard specification, or the fact that a standard mark is used in connection with any commodity, shall not give rise to any claim against the Crown or the Council. 15

Regulations.

18. (1) The Governor-General may from time to time, by Order in Council, make all such regulations as in his opinion are necessary or desirable for the purpose of giving full effect to the intent and purposes of this Act. 20

(2) Without limiting the general authority hereinbefore conferred, it is hereby declared that regulations may be made under this section for all or any of the following purposes, namely:— 25

(a) Regulating the procedure to be adopted by the Council in respect of the exercise of any of its functions:

(b) Providing for the payment of fees and allowances and travelling and other expenses to members of the Council and to members of committees of the Council who are not employed in the service of the Government: 30

(c) Prescribing the manner in which specifications may be declared to be standard specifications: 35

(d) Regulating the promulgation of standard specifications:

(e) Providing for the variation or revocation of any standard specification or the making of any additions to any standard specification and regulating the procedure in relation thereto: 40

- 5 (f) Regulating the issue of licenses to use standard marks, prescribing terms and conditions upon or subject to which such licenses may be issued, and providing for and regulating the renewal, suspension, or revocation of licenses:
- (g) Prescribing methods of proving the existence or non-existence or the terms and conditions of any license or consent under this Act:
- 10 (h) Prescribing the forms required for the purposes of this Act:
- (i) Prescribing matters in respect of which fees are to be payable under this Act or under regulations made under this Act, the amount of the fees, and the persons liable to pay them:
- 15 (j) Authorizing the refund or remission, in such circumstances as may be prescribed, of any fees payable under this Act or under regulations made under this Act:
- 20 (k) Prescribing fines, not exceeding *fifty* pounds, for the breach of any regulation made under this Act.
- (3) All regulations made under this section shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then in session, and, if not, then within fourteen days after the commencement of the next ensuing session.
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