



Western Australia

## **Western Australian Products Symbol Act 1972**

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As at 12 Sep 2003

Version 01-a0-10  
Published on [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au)



## Western Australian Products Symbol Act 1972

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### Defined terms



## Western Australian Products Symbol Act 1972

**An Act to authorise the use of a symbol to distinguish and promote the sale of products made in Western Australia.**

**1. Short title**

This Act may be cited as the *Western Australian Products Symbol Act 1972*<sup>1</sup>.

[2. *Omitted under the Reprints Act 1984 s. 7(4)(f).*]

**3. Interpretation**

In this Act —

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

***inspector*** means a person appointed as an inspector under the provisions of section 7;

***sell***, without limiting the scope of the primary meaning, includes —

- (a) placing on the market for sale;
- (b) bargaining, barter or exchange;
- (c) supply and use of any product under a contract for work and materials;
- (d) offering, exposing, receiving, supplying or possessing for the purposes of sale;
- (e) delivery for sale or on sale and with or without consideration;

- (f) wholesale, bulk, or retail trading;
- (g) disposal or offer for disposal under hire purchase or credit sale terms;
- (h) dealing in or agreeing to sell;
- (i) the supply of a substance as a sample for the purpose of inducing any person to purchase the product of which the sample consists or which it comprises; and
- (j) causing, suffering, permitting or attempting to sell.

**4. Prescribed symbol**

The form of design, irrespective of its size and colour, depicted in the Schedule is the prescribed symbol for the purposes of this Act.

**5. Authority to use prescribed symbol**

A person who sells any product the production and preparation of which is substantially carried out in the State is authorised to affix to the product or to its container a prescribed symbol.

**6. Offences**

A person who —

- (a) affixes, or causes or permits to be affixed, a prescribed symbol to any product or to the container of any product; or
- (b) sells a product to which, or to the container of which, a prescribed symbol is affixed,

knowing that such product is not a product the production and preparation of which is substantially carried out in the State, commits an offence.

Penalty: For a first offence, \$50; for a second offence, \$150; for a third or subsequent offence, \$400.

**7. Appointment of inspectors**

- (1) The Minister may appoint any person to be an inspector under this Act.
- (2) Every person appointed to be an inspector under this Act shall be furnished with a certificate in the prescribed form evidencing his appointment and shall produce such certificate whenever required so to do by any person in respect of whom he has exercised or is about to exercise any of his powers under this Act.
- (3) Production of a certificate in the prescribed form shall be conclusive proof in any court of the appointment of the inspector to whom that certificate relates and of his authority to exercise the powers conferred upon an inspector appointed under this Act.

**8. Duties of inspectors**

- (1) It is the duty of an inspector to see that the provisions of this Act relating to prescribed symbols are being observed and, subject to the approval of the Minister, to commence and conduct prosecutions for offences under this Act.
- (2) The provisions of subsection (1) do not affect the right of any other person to prosecute for an offence against this Act.

**9. Inspectors' powers**

- (1) An inspector, together with any person he thinks competent to assist him in making any inspection or examination, may during normal working hours enter any premises —
  - (a) where he has reason to believe that products to which or to the containers of which prescribed symbols are affixed are produced, prepared or kept for sale; or
  - (b) where he has reason to believe that an offence against this Act is or has been committed.

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- (2) An inspector may —
  - (a) take possession or make copies or extracts of any document that appears to him to be connected in any manner with any act or omission constituting an offence against this Act; and
  - (b) take possession of any goods or samples of goods for use as evidence in any prosecution for an offence against this Act.
- (3) If, within thirty days of the taking, no prosecution is commenced against the person from whose custody possession was taken of any document, goods or samples, or against the owner thereof, the inspector shall return them forthwith.
- (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.

**10. Occupier to allow entry and inspection**

The occupier of any premises and any person in charge or apparently in charge of any premises shall furnish to an inspector all reasonable assistance and all such information that he is capable of furnishing or as required by that inspector with respect to the exercise of his powers and the discharge of his duties under this Act.

**11. Persons obstructing execution of this Act**

- (1) A person who wilfully obstructs any person acting in the execution of this Act commits an offence against this Act.  
Penalty: \$200.
- (2) A person who fails to give to any person acting in the execution of this Act any assistance which that person may reasonably request him to give, or any information which that person is expressly authorised by this Act to call for or may reasonably



require, or who, when required to give any such information, knowingly makes any misstatement in relation thereto, shall be treated as having wilfully obstructed that person.

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

## **12. Secrecy**

A person who discloses any information relating to any manufacturing process or trade secret used in carrying on or operating any particular undertaking or equipment or plant, that has been furnished to him or obtained by him under this Act, or in connection with the execution of this Act, is, 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 execution of this Act; or
- (c) subject to the provisions of section 11(3), for the purposes of any legal proceedings arising out of this Act or of any report of such proceedings,

guilty of an offence against this Act.

Penalty: \$200.

## **13. Vicarious liability**

- (1) Where an offence under 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, any director, manager, secretary or other similar officer, of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body

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corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- (2) In the case of any prosecution in respect of an offence deemed to have been committed under the provisions of subsection (1) it shall be a defence for any person who would otherwise be liable to the penalties prescribed for that offence to prove that neither he nor any agent or servant of his did, or knew of the doing of, any act that constituted the offence or can reasonably be regarded as having been the cause or amongst the causes of it, or omitted to do, or knew of an omission to do, any act the omission whereof constituted the offence or the doing whereof can reasonably be regarded as a precaution that would have prevented it.

**14. Regulations**

The Governor may make regulations for any purpose required or permitted by this Act for carrying out or giving effect to the objects of this Act.

**Schedule**

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**Design of the prescribed symbol**



**Notes**

- <sup>1</sup> This is a compilation of the *Western Australian Products Symbol Act 1972*. The following table contains information about that Act and any reprint.

**Compilation table**

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Western Australian Products Symbol Act 1972</i>	54 of 1972	2 Oct 1972	2 Oct 1972

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**Reprint 1: The *Western Australian Products Symbol Act 1972* as at 12 Sep 2003**

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## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
container .....	3
inspector.....	3
sell.....	3