

Chapter 285.
Packaging Act 1974.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 285.

Packaging Act 1974.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Packaging Act 1974,

Being an Act relating to the packing of, and to the marking of packages in which, certain articles are sold and the sale of those articles, and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

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

“**approved brand**” means a brand approved under Section 7;

“**article**” includes any liquid, food, chattel, wares, merchandise and goods of every description normally sold by weight, measure or number (otherwise than singly), and includes a quantity of a substance;

“**authorized officer**” means–

(a) the Chief Inspector of Weights and Measures, a Deputy Chief Inspector of Weights and Measures or an inspector appointed under the *Trade Measurement Act 1973*; or

(b)¹ the Commissioner, an Associate Commissioner or an authorized officer appointed under the *Prices Regulation Act 1949*;

“**brand**” includes a mark, name, word, letter, numeral or symbol, and any combination of any of them, used as a brand;

“**commencement date**” means 1 January 1976 (being the date of commencement of the pre-Independence *Packaging Act 1974*);

¹ Section 1 Subsection (1) amended by No. 6 of 2002.

“pack” includes anything by means of which an article is packed for sale as a single item or a number of articles are packed for sale as a single item, and includes—

- (a) a wrapper or confining band; and
- (b) a label attached to any pack; and
- (c) a holder to which an article is attached for the purposes of sale;

“package” means an article together with the pack containing the article;

“packer” means a person who packs an article or authorizes, directs, causes, suffers or permits the packing of an article knowing or having reason to believe that it will be sold;

“permit” means a permit under Section 24;

“purchaser” includes a person purchasing as an agent for any other person and an intending purchaser or a person making enquiries with a view to possible purchase;

“the regulations” means any regulations made under this Act;

“sell” includes—

- (a) offer or expose for sale; and
- (b) keep or have in possession for sale; and
- (c) barter or exchange; and
- (d) deal in or agree to sell; and
- (e) send, forward or deliver for sale or on sale; and
- (f) authorize, direct, cause or permit any of the acts specified in Paragraphs (a) to (e);

“this Act” includes the regulations;

“vehicle” means any conveyance used on land, whether self-propelled or not.

(2) For the purposes of this Act—

- (a) a reference to the weight or measure of an article is a reference to the weight or measure of the article excluding the weight or measure of the pack containing the article; and
- (b) a reference to a pack containing an article includes a reference to a pack to which an article is attached or around which an article is wound or wrapped; and
- (c) a reference to an article contained in a pack includes a reference to an article that is attached to, wound around or wrapped around a pack; and
- (d) a reference to the measure of an article is, in the case of an article of a kind that is ordinarily sold by number, a reference to the quantity of the article expressed as a number; and

(e) an article is pre-packed if it is packed in advance ready for sale.

2. APPLICATION TO STATE.

This Act binds the State.

3. SAVING OF CUSTOMARY PACKS AND PACKAGES.

Except as provided by the regulations, this Act does not apply to or in relation to local or customary packs or packages in use by automatic citizens immediately before the commencement date.

4. SAVING OF OTHER LAWS.

Except where otherwise specifically stated, this Act does not derogate any power granted under, or relieve a person from any liability or duty under, any other law.

5. EXEMPTION.

The Minister may, by notice in the National Gazette, exempt on such terms and conditions as he thinks proper, any article or class of article, from all or any of the provisions of this Act.

PART II. – ADMINISTRATION.

6. POWERS OF AUTHORIZED OFFICERS.

(1) An authorized officer may, at all reasonable times—

(a) enter a building or place where—

(i) articles are packed for sale or pre-packed articles are sold; or

(ii) he has reasonable cause to believe that articles are packed for sale or pre-packed articles are sold; and

(b) stop any vehicle and inspect any pre-packed article in or on the vehicle; and

(c) inspect and weigh or measure, or remove for weighing or measuring, any article in respect of which he has reasonable grounds for suspecting that an offence against this Act has been committed; and

(d) seize and retain a pre-packed article in respect of which he has reason to believe that an offence against this Act has been committed.

(2) A person who hinders or obstructs an authorized officer in the exercise of his powers or the performance of his functions under this Act is guilty of an offence.

Penalty: A fine not exceeding K200.00.

PART III. – BRANDS.

7. APPROVAL OF BRANDS.

The Minister may, on application under Section 8, approve a brand by notice in the National Gazette.

8. APPLICATION FOR APPROVAL OF BRAND.

An application for approval of a brand shall be–

- (a) in the prescribed form; and
- (b) accompanied by the prescribed fee.

9. NOTICE OF APPROVAL TO CONTAIN CERTAIN PARTICULARS.

A notice under Section 7–

- (a) shall specify the owner of the brand; and
- (b) may contain such conditions as to the use of the brand as the Minister thinks proper.

10. OFFENCES IN RELATION TO BRANDS.

(1) A person who, not being the person to whom the approval was granted, or a person authorized by that person to mark the brand, marks on a package an approved brand is guilty of an offence.

(2) A person who uses an approved brand otherwise than in accordance with the conditions (if any) expressed in the approval given in relation to the brand is guilty of an offence.

(3) A person who marks on a package a brand that so nearly resembles an approved brand as to be likely to lead a person to believe that it is that brand, is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K200.00.

For a second or subsequent offence—a fine not exceeding K400.00.

PART IV. – PACKING OF ARTICLES.

11. APPLICATION OF PART IV.

(1) This Part does not apply to or in relation to an article that is, otherwise than at the request of the purchaser, weighed or measured before or at the time of sale in the presence of the purchaser.

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

- (a) the weight or measure, or an indication of the weight or measure; and
- (b) the operation of the instrument weighing or measuring the article,

can be seen by the purchaser.

12. REFERENCE TO PACKER, ETC., ON PACKAGES.

(1) A packer who packs an article the package containing which is not marked in the prescribed manner with—

- (a) an approved brand, or the name and address of the person on whose behalf the article was packed; and
- (b) the name and address of the packer,

is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K200.00.

For a second or subsequent offence—a fine not exceeding K400.00.

(2) In proceedings for an offence against Subsection (1), it is a defence if the person charged proves that the article in respect of which the proceedings relate was packed on premises for sale from those premises to a person for the purposes of consumption, and not for sale, by that person.

13. PACKING OF CERTAIN ARTICLES IN CERTAIN DENOMINATIONS.

(1) In this section, “**prescribed article**” means an article to which this section is applied by the regulations.

(2) For the purposes of this section the Minister may, by notice in the National Gazette, appoint a day in respect of a prescribed article.

(3) On or after the day appointed under Subsection (2) in respect of a prescribed article, a packer who packs the article otherwise than in the denomination of the weight or measure prescribed in relation to it is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K200.00.

For a second or subsequent offence—a fine not exceeding K400.00.

14. MARKING OF TRUE WEIGHT.

(1) For the purposes of this section, the Minister may, by notice in the National Gazette, appoint a day in respect of the packing of an article.

(2) On or after the day appointed under Subsection (1), a packer who packs an article the pack containing which is not marked in the prescribed manner with a statement of the true weight or measure of the article is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K200.00.

For a second or subsequent offence—a fine not exceeding K400.00.

15. INCORRECT WEIGHT OR MEASURE.

(1) A packer who packs an article the weight or measure of which is less than its weight or measure as stated on the pack containing the article is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K200.00.

For a second or subsequent offence—a fine not exceeding K400.00.

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

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

- (a) any deficiency of weight or measure does not exceed 5% of the stated weight or measure or, where the article is contained in a bottle the stated contents of which do not exceed 227.3 ml or 226.79 g per 7½% of the stated contents; and
- (b) there is no average deficiency in the contents of—
 - (i) 12 packs containing the article, selected at random by an authorized officer from amongst the packs containing the article on the premises of the packer; or
 - (ii) where there are less than 12 such packs—all the packs (being not fewer than six) on the premises.

(4) In any proceedings for an offence against Subsection (1), it is a defence if the person charged proves—

- (a) that the deficiency—
 - (i) arose after the packing of the article and was attributable wholly to factors for which reasonable allowance was made in stating the weight or measure of the article; or
 - (ii) was attributable wholly to the taking of measures reasonably necessary in order to avoid the commission of an offence in

respect of a deficiency in the weight or measure of any other article; or

- (b) that the commission of the offence was due to a cause that the person charged could not reasonably have foreseen and for which he could not reasonably have made allowance, and that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

16. WEIGHT AND MARKING OF WEIGHT OF CERTAIN ARTICLES.

(1) In this section—

“**prescribed article**” means an article to which this section is applied by the regulations;

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

(2) A packer who packs an article, other than a prescribed article, in a pack marked with the words “net weight when packed” or other words capable of bearing a like meaning, is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K200.00.

For a second or subsequent offence—a fine not exceeding K400.00.

(3) A packer who packs an article, other than a prescribed article in relation to which there is prescribed an alternative expression or words capable of bearing a like meaning is guilty of an offence.

(4) For the purposes of this section, there may be prescribed in relation to each prescribed article a permissible deficiency expressed in parts per centum of the weight when packed of that article.

17. DEFICIENCY IN WEIGHT OF CERTAIN ARTICLES.

(1) If at any time after the day on which it is packed an article to which Section 16 applies is found to be of deficient weight, the packer is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K200.00.

For a second or subsequent offence—a fine not exceeding K400.00.

(2) For the purposes of this section, an article is of deficient weight if—

(a) there is a deficiency of weight of the article exceeding the percentage prescribed for the purposes of this section in relation to that article; or

(b) there is an average deficiency of weight in—

- (i) 12 packs containing the article, selected at random by an authorized officer from amongst the articles on the premises where the article is; or

- (ii) where there are less than 12 such packs—all the packs (being not fewer than six),

exceeding the permissible deficiency prescribed under Section 16 in relation to that article.

18. PROHIBITED AND RESTRICTED EXPRESSIONS.

(1) For the purposes of this section—

“prohibited expression”—

- (a) means any expression that directly or indirectly relates to or qualifies a unit of measure of physical quantity; and
- (b) includes any expression prescribed as a prohibited expression for the purposes of this section;

“restricted expression”—

- (a) means any expression other than a prohibited expression that directly or indirectly relates to the size of the pack containing the article, not being a statement required by or under this Act to be marked on the pack containing the article; and
- (b) includes any expression prescribed as a restricted expression for the purposes of this section.

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

- (a) there must be marked on every part of the pack on which the restricted expression appears a statement of the true weight or measure of the article as provided for in Section 14, whether or not the article is an article to which that section otherwise applies; and
- (b) the restricted expression and the statement referred to in Paragraph (a) must be so placed that they may be clearly seen at the same time; and
- (c) each of the letters or figures comprising the statement shall be—
 - (i) of a size not less than the minimum size prescribed in relation to a package of the size of the package concerned; and
 - (ii) of a size not less than one-third of the size of the largest letter or figure contained in the restricted expression; and
 - (iii) marked in a colour in distinct contrast to the colour of its background.

(3) A packer who packs an article in a pack that is—

- (a) marked with a prohibited expression; or
- (b) marked with a restricted expression in contravention of Subsection (2),

is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K200.00.

For a second or subsequent offence—a fine not exceeding K400.00.

19. STATEMENTS AS TO REDUCED PRICE.

A packer who packs an article in a pack marked with any words stating or implying that the article is for sale at a price less than that of its ordinary or customary sale price is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K200.00.

For a second or subsequent offence—a fine not exceeding K400.00.

20. MISLEADING SIZE OR VOLUME OF PACK.

A packer who packs an article or articles in an opaque outer pack so that the volume of the outer pack exceeds the volume of the article or the aggregate of the volume of the articles, as the case may be—

(a) in the case of an article or articles enclosed in an inner pack—by more than 35% of the volume of the outer pack; or

(b) in any other case—by more than 25% of the volume of the outer pack,

is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K200.00.

For a second or subsequent offence—a fine not exceeding K400.00.

21. MARKING AN ARTICLE WITH MISLEADING PRICE.

(1) Where an article is intended to be sold at a stated price per unit of weight or measure, a person who marks the pack containing the article, or causes or allows it to be marked with a price greater than the price correctly computed from the true weight or measure of the article is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K100.00.

For a second or subsequent offence—a fine not exceeding K200.00.

(2) In proceedings for an offence against Subsection (1), it is a defence if the person charged proves—

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

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

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

PART V. – SALE OF ARTICLES.

22. SELLING AN ARTICLE NOT MARKED WITH AN APPROVED BRAND, ETC.

(1) A person who sells an article that was packed in contravention of Part IV is guilty of an offence unless the sale of the article is authorized by a permit.

Penalty: For a first offence—a fine not exceeding K100.00.

For a second or subsequent offence—a fine not exceeding K200.00.

(2) In proceedings for an offence against Subsection (1), it is a defence if the person charged proves—

- (a) that the commission of the offence was due to a cause that he could not reasonably have foreseen or for which he could not reasonably have made allowance; and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of an offence in respect of the article to which the proceedings relate; and
- (c) that he purchased the article from another person and sold or delivered it in the same state as it was in when delivered to him.

23. SELLING ARTICLE MARKED “NET WEIGHT WHEN PACKED”.

(1) A person who sells an article marked “net weight when packed” or with an alternative expression within the meaning of Section 16, or with any words capable of bearing a like meaning to either of those expressions, is guilty of an offence unless—

- (a) the sale of the article is authorized by a permit; or
- (b) the article—
 - (i) is an article to which Section 16 applies and in relation to which there is prescribed an alternative expression and the expression marked is an expression prescribed in relation to that article; and
 - (ii) is not of deficient weight within the meaning of Subsection (2).

Penalty: For a first offence—a fine not exceeding K200.00.

For a second or subsequent offence—a fine not exceeding K400.00.

(2) For the purposes of this section, an article is of deficient weight if—

- (a) there is a deficiency of weight over and above the permissible deficiency of the article exceeding the percentage prescribed for the purposes of Section 17(2) (a) in relation to the article; or
- (b) there is an average deficiency in weight of—

- (i) 12 such articles, selected at random by an authorized officer from amongst such articles on the premises of the seller; or
- (ii) where there are less than 12 such articles—the total number of all the articles (being not fewer than six) on the premises,

greater than the permissible deficiency prescribed in relation to that article for the purposes of Section 16(4).

24. PERMITS.

(1) Where there has been a contravention of or failure to comply with any of the provisions of this Act with respect to the packing of any article or of the marking of a pack containing any article, and the Minister is satisfied that the sale of the article should be permitted, he may, on application by a person, grant to the person a permit authorizing the sale of the article.

(2) A permit is subject to—

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

- (i) the number of individual articles the sale of which is authorized by the permit; and
- (ii) the form and manner in which the weight or measure of the article contained in each pack shall be indicated; and
- (iii) the weight or measure of the article contained in each pack; and

(b) such other conditions as the Minister thinks proper.

(3) A person to whom a permit is granted shall, at such times as are fixed by the Minister, forward to the Departmental Head particulars, in a form approved by the Minister, of the sale of articles under the permit.

(4) A permit may after due enquiry and for good cause be revoked by the Minister by written notice.

25. OFFENCES IN RELATION TO SALES UNDER PERMITS.

(1) A person who—

- (a) sells under a permit an article to another person knowing or having reason to believe that the other person will sell the article; and
- (b) fails to inform the other person in writing of the conditions of the permit,

is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K200.00.

For a second or subsequent offence—a fine not exceeding K400.00.

(2) A person who—

- (a) sells an article the sale of which is authorized by a permit, otherwise than in accordance with the conditions of the permit; or
- (b) falsely represents that a permit has been granted or is in force in relation to the sale of any article,

is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K200.00.

For a second or subsequent offence—a fine not exceeding K400.00.

(3) In proceedings for an offence against Subsection (2)(a), it is a defence if the person charged proves—

- (a) that the commission of the offence was due to a cause that he could not reasonably have foreseen or for which he could not reasonably have made allowance; and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of an offence in respect of the article to which the proceedings relate; and
- (c) that he purchased the article from another person and sold or delivered it in the same state as it was in when delivered to him.

26. INVOICE TO ACCOMPANY ARTICLE SOLD ELSEWHERE THAN AT PREMISES OF SELLER.

(1) Where an article sold by weight or measure is delivered to the purchaser at a place other than the premises of the seller, the seller must deliver with the article an invoice or delivery note showing the weight or measure of the article.

(2) Subsection (1) does not apply where—

- (a) the article sold is weighed or measured at the premises of the purchaser; or
- (b) the article sold is a pre-packed article that is marked in accordance with this Act.

(3) A person who delivers or sends to a purchaser an invoice or delivery note that states as the weight or measure of the article a weight or measure that is greater than the weight or measure of the article is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K200.00.

For a second or subsequent offence—a fine not exceeding K400.00.

PART VI. – MISCELLANEOUS.**27. LIABILITY FOR ACTS OF PACKER.**

(1) Where any person (in this section referred to as “**the agent**”) acting, otherwise than as an employee, for or on behalf of another person (in this section referred to as “**the principal**”)–

- (a) packs an article for sale; or
- (b) marks a pack containing an article; or
- (c) sells an article,

and commits an offence against this Act in relation to that packing, marking or sale, the principal is also guilty of the offence unless he proves–

- (d) that he had no knowledge of the commission of the offence; and
- (e) that he took all reasonable precautions and used all due diligence to avoid the commission of the offence.

(2) The principal may be convicted of an offence in accordance with Subsection (1) notwithstanding that the agent has not been proceeded against or has not been convicted of the offence.

(3) Subsection (1) does not prejudice or affect any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.

28. LIABILITY OF EMPLOYER FOR ACTS OF EMPLOYEE.

(1) Where any person as the employee of another person–

- (a) packs an article for sale; or
- (b) marks a pack containing an article; or
- (c) sells an article;

and commits an offence against this Act in relation to that packing, marking or sale, the employer is also guilty of the offence (whether or not the offence was committed without his authority or contrary to his orders or instructions), unless he proves–

- (d) that he had no knowledge of the commission of the offence; and
- (e) that he could not, by the exercise of due diligence, have prevented the commission of the offence.

(2) The employer may be convicted of an offence in accordance with Subsection (1) notwithstanding that the employee has not been proceeded against or has not been convicted of the offence.

(3) Subsection (1) does not affect any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.

29. OFFENCES BY CORPORATIONS.

Where a corporation does any act or makes any omission that is an offence against this Act, every person who—

- (a) at the time of the act or omission was a director or member of the governing body of the corporation; or
- (b) was concerned in the management of the corporation, and who authorized or knowingly permitted the act or omission,

shall, for the purposes of this Act, be deemed to have committed the offence.

30. EVIDENCE.

In proceedings in respect of an offence against this Act—

- (a) a marking on the pack containing an article indicating the name and address of a person as the person who packed the article is evidence that the article was packed by that person; and
- (b) a marking on the pack containing an article indicating the name and address of a person as the person for or on whose behalf the article was packed is evidence that the article was packed on behalf of that person; and
- (c) a marking on a pack containing an article indicating that the article was packed in a place is evidence that the article was packed in that place; and
- (d) the marking on the pack containing an article indicating a date as the date on which the article was packed is evidence that the article was packed on that date; and
- (e) a document purporting to be certified by the Departmental Head to be a copy of an approval of a brand under Section 7 is evidence of the approval and of the conditions (if any) subject to which it was granted, and the fact that the brand is marked on a pack containing an article is evidence that—
 - (i) the article was packed by or on behalf of the owner of the brand; and
 - (ii) the article was packed at the place (if any) the address of which is specified in the approval as the address indicated by the brand; and
 - (iii) the article was packed on the date (if any) indicated by the brand; and
- (f) a document purporting to be certified by the Departmental Head to be a copy of a permit is evidence of the grant of the permit and of the conditions (if any) subject to which it was granted; and

- (g) a document purporting to be signed by the Departmental Head stating that an approval under Section 7 or a permit has been cancelled is evidence of the matters stated in it.

31. REGULATIONS.

(1) The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular prescribing matters providing for and in relation to—

- (a) the form and manner in which packs required or permitted by a provision of this Act to be marked with any particulars, statement or approved brand shall or may be so marked; and
- (b) the denominations of weights or measures in which articles of any prescribed description shall or may be packed or sold; and
- (c) standard specifications of capacity for or in relation to packs used in the packing or sale of prescribed articles and distinctive marks for packs made to those specifications, and providing that any such articles, when packed, shall be sold only in prescribed packs made to those specifications and bearing the prescribed distinctive marks; and
- (d) requiring packs containing articles of a prescribed description to be marked with a statement of the sale price per unit of weight or measure of the articles; and
- (e) generally regulating and controlling the packing of articles or of articles of prescribed descriptions, and the marking of packs in which articles are contained; and
- (f) penalties of fines not exceeding K100.00 for offences against the regulations.

(2) The regulations—

- (a) may make different provision in respect of different classes of articles, packs and sales; and
- (b) may be of general or limited application; and
- (c) may differ in their effect with differences in time, place and circumstances.

(3) The regulations may provide for delegations or for the conferring of discretionary powers.