



Brands and Marks Act 1949

No. 3 of 1949

Compilation No. 2

Compilation date: 13 August 2019

Includes amendments up to: Norfolk Island Continued Laws Ordinance 2015 (No. 2, 2015) as amended up to Norfolk Island Legislation Amendment (Fees and Other Matters) Ordinance 2019 (F2019L01048)

NORFOLK



ISLAND

BRANDS AND MARKS ACT 1949

TABLE OF PROVISIONS

1. Short title
2. Repeal
3. Definitions
4. The Registrar
5. Registrar to keep records
6. Application and allotment of brands and marks
7. Transfer of brand or mark
8. Cancellation of brand or mark
9. Appeal
10. Appointment of Inspectors
11. Powers of entry
12. Powers of seizure
13. Duty of owner to assist in inspection
14. Compulsory branding of cattle and horses
15. Sheep to be branded and earmarked
16. Offences
17. Penalties
18. Saving
19. Regulations



Brands and Marks Act 1949

An Act relating to brands and marks for stock

Short title

1. This Act may be cited as the *Brands and Marks Act 1949*.

Repeal

2. The “Brands and Marks Law, 1913”, the *Brands Act 1925* and the *Brands Act 1927* are repealed.

Definitions

3. In the Act, unless the contrary intention appears —
“brand” means the impression of any letter, sign, figure, or character on any stock by fire, tattoo, or colouring matter;
“cattle” means bulls, cows, oxen, heifers, steers, and calves;
“horses” means horses, mares, geldings, colts, fillies, and foals;
“Inspector” means an Inspector of Brands and Marks appointed or holding office under this Act;
“mark” means the cutting of any letter, sign, figure or character in the ear of any stock;
“sheep” means rams, ewes, wethers, and lambs;
“stock” includes cattle, horses and sheep;
“the Registrar” means the Registrar of Brands and Marks appointed under this Act.

The Registrar

4. There shall be a Registrar of Brands and Marks who shall be appointed by the Minister.

Registrar to keep records

5. (1) The Registrar shall keep a book called the “Register of Brands and Marks” in which he shall enter all “owners’ brands” and marks allotted by him.
(2) The Register of Brands and Marks shall be open to inspection by anyone on payment of the approved fee.
(3) The Registrar shall, twice in every year, prepare and exhibit for public inspection a list of the brands and marks registered, transferred, or cancelled since the exhibition of the last preceding list. Such list shall be prepared and exhibited as the Minister may direct.

Application and allotment of brands and marks

6. (1) An owner of stock shall transmit to the Registrar an application in the prescribed form for the registration of his “owner’s brand” or mark, together with the approved fee for the recording of the brand or mark.

(2) If the brand or mark is not the same as, or similar to, any other brand or mark already registered the Registrar shall register the brand or mark as the “owner’s brand” or mark of the applicant and shall furnish him with a certificate of registration in the prescribed form.

(3) If the Registrar has any objection to the registration of the brand or mark applied for, the Registrar shall forthwith intimate to the applicant such objection and may suggest to him a modification thereof.

(4) If within 21 days after the date of that intimation the Registrar does not receive from the applicant an acceptance of the modification, or some other modification of the brand or mark so applied for which, in the opinion of the Registrar, is not objectionable, the Registrar shall register the brand or mark as modified by himself and the same shall be the “owner’s brand” or mark of the applicant accordingly.

Transfer of brand or mark

7. (1) The Registrar may transfer the registration of any brand or mark on application in the prescribed form, accompanied by the approved fee, by the registered proprietor of the brand or mark.

(2) In the event of the death of the registered proprietor of the brand or mark application for transfer may be made by the legal personal representative of the deceased.

(3) Where stock is sold application for transfer of the brand or mark shall be made jointly by the vendor and purchaser.

Cancellation of brand or mark

8. (1) The Registrar may cancel the registration of any brand or mark —

- (a) which he thinks objectionable;
- (b) which has not been used for more than 2 years; or
- (c) on the application, accompanied by the approved fee, of the registered proprietor.

(2) Before cancellation under paragraph 8(1)(a) or 8(1)(b) the Registrar shall give 21 days written notice to the registered proprietor of his intention to cancel the brand or mark.

(3) The registered proprietor of the brand or mark may within 21 days after the date of that notice appeal in writing to the Court of Petty Sessions against any proposed cancellation of the brand or mark under paragraph 8(1)(a) or 8(1)(b) and shall serve, or cause to be served, a copy thereof upon the Registrar.

(4) Where the Registrar has received a copy of an appeal under this section, he shall not cancel the brand or mark before the appeal has been determined by the Court.

(5) The decision of the Court upon any such appeal shall be final.

Appeal

9. (1) There shall be an appeal to the Court of Petty Sessions from any decision of the Registrar under section 6 or 7, and the decision of the court shall be final.

(2) An appeal under this section may be made in writing by the applicant for the registration of the brand or mark, or by any person who —

- (a) appears before the Registrar in opposition to the application; or

(b) notifies the Registrar in writing, before the decision of the Registrar, of his objection to any proposed registration or transfer.

(3) An appeal under this section shall be made within 21 days after the date of the Registrar's decision.

Appointment of Inspectors

10. (1) The Chief Executive Officer may, by written instrument, appoint persons to be Inspectors of Brands and Marks.

(2) Each member of the Police Force of Norfolk Island shall be an Inspector of Brands and Marks.

Powers of entry

11. (1) An Inspector may, at all reasonable times, enter upon any land or premises and inspect any stock, hides and branding or marking instruments thereon.

(2) For the purpose of carrying out his powers under this section, an Inspector may muster the stock on the land or premises.

(3) The Inspector may employ and take with him on to the land or premises all such assistance as he thinks necessary to enable him to carry out his powers under this section.

Powers of seizure

12. (1) An Inspector may seize any stock or hides belonging to any person if he has reasonable grounds to believe that that person has committed or is committing an offence against this Act, and may seize any instrument designed for the impressing of a brand or the cutting of a mark which he has reasonable ground to believe is an unregistered brand or mark.

(2) Where any stock, hides or branding or marking instruments seized in pursuance of this section are required for the purpose of evidence only, they may be detained in any place of security so long as is reasonably necessary for that purpose.

(3) Stock, hides or branding or marking instruments seized in pursuance of this section shall be taken before the Court of Petty Sessions and the Court may order their forfeiture to the Administration.

Duty of owner to assist in inspection

13. The owner of any stock shall —

- (a) when required by an Inspector so to do, muster the stock for inspection by the Inspector;
- (b) facilitate, by all reasonable means, the inspection of stock by an Inspector; and
- (c) produce to an Inspector, on demand, all branding or marking instruments in his possession, control or custody.

Compulsory branding of cattle and horses

14. An owner of stock shall brand with his registered brand —

- (a) any cattle and horses owned by him which are not already branded with a registered brand;
- (b) within one month after their acquisition any cattle or horses which are not already branded with a registered brand; and
- (c) any calf or foal the natural increase of his cattle or horses before it attains the age of 6 months.

Sheep to be branded and earmarked

15. An owner of sheep which are above the age of 6 months shall earmark and brand all such sheep and keep them legibly branded with an “owner’s brand” which has been duly registered under this Act.

Offences

16. A person shall not —

- (a) wilfully or negligently brand or mark or permit to be branded or marked, with his own registered brand or mark, any stock of which he is not the owner;
- (b) wilfully or negligently fail to brand —
 - (i) any cattle or horses owned by him and not branded with a registered brand; or
 - (ii) any natural increase of his cattle or horses;
- (c) wilfully or negligently cut off, destroy, deface or alter any brand or mark on any stock, or on the hide, skin or wool of any stock or permit such destruction, defacement or alteration;
- (d) wilfully cut from any hide or skin any of the branded or marked portions other than those removed in slaughtering;
- (e) crop or cut off more than one-fourth of the ear in marking any stock except on account of disease;
- (f) wilfully or negligently add another letter, sign or character or part thereof to any brand already branded on any stock;
- (g) use the brand or mark of an owner of stock without his permission; or
- (h) use any brand or mark not registered as the brand or mark of the person by or for whom it is used.

Penalties

17. Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding 5 penalty units or imprisonment for a period not exceeding 6 months.

Saving

18. (1) A brand or mark the registration of which is in force in Norfolk Island at the commencement of this Act shall be deemed to have been registered under this Act.

(2) The Register of Brands and Marks kept by the Registrar of Brands and Marks under any Law or Act repealed by this Act shall be deemed to have been made and kept under this Act.

Regulations

19. The Administrator may make regulations, not inconsistent with this Act, prescribing all matters which are, by this Act, required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to the provisions of this Act, and in particular for prescribing —

- (a) the registration, cancellation of registration and transfer of brands and marks;
- (c) the use of brands and marks and the order, size and position of brands and marks on stock; and

- (d) penalties not exceeding 5 penalty units for offences against the regulations.
-

NOTES

The *Brands and Marks Act 1949* as shown in this reprint comprises Act No. 3 of 1949 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Brands and Marks Act 1949</i>	3, 1949	29.11.49	18
<i>Amendments Incorporation Act 1963</i>	2, 1963	28.3.63	
<i>Ordinances Revision Act 1964</i>	6, 1964	30.6.64	6
<i>Fees Act 1976</i>	3, 1976	31.5.76	
<i>Ordinances Citation Act 1976</i>	11, 1976	25.11.76	
<i>Ordinances Revision Act 1979</i>	13, 1979	7.8.79	5
<i>Ordinances Revision (Executive Members) Act 1980</i>	8, 1980	6.11.81	5
<i>Ordinances Revision (Decimal Currency) Act 1980</i>	31, 1980	15.1.81	
<i>Statute Law Revision (Penalties and Fees) Act 1984</i>	9, 1985	13.5.85	4

[Previously consolidated as at 20 May 1985]

<i>Interpretation (Amendment) Act 2012</i>	14, 2012	28.12.12	
<i>[to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]</i>			

Ordinance	Registration	Commencement	Application, saving and transitional provisions
Norfolk Island Continued Laws Amendment Ordinance 2015 (No. 2, 2015) (now cited as Norfolk Island Continued Laws Ordinance 2015 (see F2015L01491))	17 June 2015 (F2015L00835)	18 June 2015 (s 2(1) item 1)	Sch 1 (items 344, 345, 382–396)
as amended by			
Norfolk Island Continued Laws Amendment (Statutory Appointments and Other Matters) Ordinance 2018	28 Sept 2018 (F2018L01378)	Sch 1 (item 9): 29 Sept 2018 (s 2(1) item 1)	—
Norfolk Island Legislation Amendment (Fees and Other Matters) Ordinance 2019	12 Aug 2019 (F2019L01048)	Sch 1 (items 14, 15): 13 Aug 2019 (s 2(1) item 1)	—

Table of Amendments

ad = added or inserted am = amended rep = repealed rs = repealed and substituted

Provisions affected	How affected
1	am 2, 1963; 3, 1976; 11, 1976
4	am 6, 1964; 8, 1980
5	am 3, 1976; 8, 1980; 9, 1985; Ord No 2, 2015 (as am by F2019L01048)
6	am Ord No 2, 2015 (as am by F2019L01048)
7	am Ord No 2, 2015 (as am by F2019L01048)
8	am 6, 1964; Ord No 2, 2015 (as am by F2019L01048)
9	am 6, 1964
10	am 8, 1980; Ord No 2, 2015 (as am by F2018L01378)
12	am 6, 1964; 13, 1979
17	am 31, 1980; 9, 1985
19	am 13, 1979; 31, 1980; 9, 1985; Ord No 2, 2015 (as am by F2019L01048)