

CHAPTER 411

THE STANDARDS ACT

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STANDARDS

An Act to provide for the preparation and promotion of Standards in relation to goods, services, processes and practices by the establishment and operation of a Bureau of Standards, to define the powers and functions of the Bureau of Standards, and for other connected matters.

(1st May, 1987.)

3/1987.

1. This Act may be cited as the Standards Act. **Short title.**
2. In this Act— **Interpretation.**

"Bureau" means the Antigua and Barbuda Bureau of Standards established by section 3 of this Act;

"code of practice" means a description of the method of production of any goods, or the execution of any service, process or practice by which, in the opinion of the Bureau, a person adhering to it is able to produce goods or offer services, which are likely to comply with a specification or standard;

"compulsory standard" means a standard declared to be compulsory by Order of the Minister under Section 18;

"Council" means the National Standards Council established by section 4 of this Act;

"goods" means commodities which are the subject of trade or commerce;

"practice" includes advertising, labelling or packaging;

"specification" means a description of any goods, services, powers or practice by reference to its nature, quality, strength, purity, safety, composition, quantity, dimension, weight, grade, durability, origin, age,

or other characteristics, and includes guidelines for a process or practice, tables of data, and a code of practice;

⁴ "standard" means a specification declared by the Bureau to be a standard.

PART I

Establishment and Functions of the Bureau

**Establishment of
Antigua and
Barbuda Bureau
of Standards.**

3. There is established a body corporate to be known as the Antigua and Barbuda Bureau of Standards (in this Act called the Bureau) with perpetual succession and a common seal, and with power to acquire, hold and dispose of land and other property to enter into contracts and to do all things necessary for the purpose of its functions.

**Functions of the
Bureau of
Standards.**

4. (1) The Bureau shall promote and encourage the maintenance of standards in relation to goods, processes and practices, and shall exercise such other functions as may be prescribed.

(2) For the purpose of subsection (1) the Bureau may—

(a) prepare and promote the general adoption and implementation of standards relating to structure, goods, materials, practices, operations and other matters, on a national and international level;

(b) promote research in relation to specifications, establish or designate laboratories and testing facilities, and provide for the examination and testing of goods, services, processes and practices;

(c) inspect or cause to be inspected—

(i) any operations carried out;

(ii) any books or records in connection with the production, manufacture, processing or treatment of any goods; and

(iii) the execution of any services, powers or practice for which a compulsory standard has been declared or for which application has been made to use the Standard Mark.

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- (d) declare standards and keep them under review;
 - (e) collect and publish for public information and guidance, data relating to specifications and standards;
 - (f) encourage and undertake educational programmes relating to standards;
 - (g) provide for the examination, testing and calibration of instruments, appliances and apparatus;
 - (h) cooperate with and advise manufacturers in setting up quality control systems and preparing standards;
 - (i) do such other things as may be expedient or necessary to secure the proper execution of the purposes of this Act.

5. (1) The Minister shall appoint a Director of the Bureau, and the Bureau may appoint such other staff as it requires for the proper discharge of its functions. **Appointment of Director and staff of the Bureau.**

(2) No sum in excess of twenty thousand dollars may be assigned as the annual salary to a post in the Bureau without the approval of the Minister.

(3) An officer may, with the approval of the Minister, be transferred on secondment—

- (a) from the Bureau to the public service; or
- (b) from the public service to the Bureau.

(4) When an officer is transferred pursuant to subsection (3), the Bureau shall make such arrangements as are necessary to preserve the right of the officer to any pension, gratuity or other benefit to which he would have been entitled had the transfer not been effected.

PART II

Administration of the Bureau

6. The general administration of the affairs of the Bureau shall be carried out by the Standards Council (in this Act called the Council) of fifteen members. **Standards Council.**

**Appointment of
Council Members.****7.** The Council shall comprise of the following

(a) two persons nominated by the Minister in his discretion, one of whom shall be appointed Chairman, and the other Vice-Chairman of the Council:

(b) three persons nominated from the private sector, one each to be nominated by the Chambers of Commerce, the Manufacturer's Association, and the Consumer's Association;

(c) four persons nominated by the Minister from the public sector, each of whom is employed in a senior capacity in the Government Service, one being an officer employed in the Ministry of Finance, and one, an officer employed in the Government Chemistry Laboratory;

(d) four persons with knowledge of Industrial or Commercial Standard or other matters pertaining to the work of the Standards Unit; nominated by the Minister on the recommendation of the Director of the Standard Unit;

(e) two *ex-officio* members, one being the Director of the Bureau/Standard Unit, who shall also be Secretary to the Council and the other being the Manager of the Industrial Development Board.

**Chairing of
Council Meetings.**

8. Where the Chairman is absent or unable to act the Vice Chairman shall preside at Council Meetings in case both the Chairman or Vice Chairman are absent or unable to act, the members of the Council present at a meeting shall elect one of their members to preside.

**Tenure of Office
of Council
Members.**

9. (1) The Minister shall appoint members nominated to the Council by instrument in writing for a period not exceeding three years, and a member so appointed is eligible for re-appointment on the expiration of his period of office.

(2) The Minister may at any time revoke the appointment of the Chairman or any other nominated member of the Council.

10. A nominated member of the Council may resign his office at any time by letter addressed to the Minister, and conveyed through the Chairman and such resignation takes effect from the date the letter is received by the Minister.

Resignation of Council Members.

11. The names of the members of the Council shall be published in the *Gazette* and any subsequent change in the members of the Council shall be similarly *Gazetted*.

Publication of membership of the Council.

12. (1) The Council shall meet once every quarter and at such other times as are necessary or expedient for transacting the business of the Bureau.

Meetings and quorum of the Council.

(2) The quorum at meetings is seven, and the decision of the Council shall be taken by a majority of votes.

13. (1) A member of the Council whose interest may directly or indirectly be affected by a decision of the Council on any matter shall disclose the nature of his interest at the first meeting of the Council at which he is present after the relevant facts have come to his knowledge.

Conflict of interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Council, and after the disclosure the member concerned may not vote on the matter, and unless otherwise directed by the Council, shall not be present at any meeting when the matter is being decided.

14. (1) The Bureau's seal shall be kept in the custody of the Secretary of the Council and shall be authenticated by the Chairman or in his absence, by the Vice Chairman and the Secretary of the Council.

Bureau's seal and authentication of documents.

(2) All documents other than those required to be under seal and all decisions of the Council may be authenticated by the Chairman or the Secretary.

15. (1) No action, suit, prosecution or other proceedings may be brought or instituted against a member of the Council in his personal capacity, in respect of any act done or omitted to be done by him in good faith in execution or purported execution of this Act.

Immunity of Council members.

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(2) Where a member of the Council is exempt from liability by reason only of this section the Bureau is liable for the acts of the member on the principles of agency.

Appointment of committees and co-opting of members.

16. (1) The Council may appoint committees for the better regulation and management of any matter with which the Council is concerned and may determine—

(a) the number of members of a committee so appointed;

(b) the terms of appointment of the members;

(c) the quorum of the committee;

(d) the functions of the committee as a whole and of individual members; and

(e) the area and scope of the Committee's authority;

(2) The Council may co-opt members to a committee appointed under subsection (1) and in such case section 13 applies to the co-opted member as it applies to a Council member.

PART III

Business of the Bureau

Declaration and publication of standards.

17. (1) The Bureau may declare a specification to be a standard, and a standard to be an Antigua and Barbuda Standard.

(2) No specification may be declared a standard and no standard may be varied or revoked unless the Bureau is satisfied that persons who may be affected thereby have had an opportunity to consider and comment on the standard.

(3) The Bureau shall keep a copy of every standard and every variation of a standard available for public inspection and shall cause every declaration, variation or revocation of a standard to be published in the *Gazette*, and in such other publications as the Minister may direct.

(4) The Bureau may adopt an international specification formulated outside of Antigua and Barbuda where it is impractical to formulate its own specification.

18. (1) A standard may be voluntary or compulsory and a standard which is intended primarily— **Voluntary and compulsory standards.**

(a) to protect the consumer or user against danger to health and safety;

(b) to prevent fraud or deception arising from misleading advertising or labelling;

(c) to ensure quality in goods produced for export;

(d) to require adequate information to be given to the consumer or user; or

(e) to ensure quality in a case where the choice of sources of supply is restricted;

may on the recommendation of the Bureau, be declared by Order of the Minister to be a compulsory standard.

(2) An Order made under subsection (1) shall state the purpose for which the standard is intended.

(3) The Minister shall by Notice published in the *Gazette*, give thirty days notice of his intention to declare a standard to be a compulsory standard and shall in the Notice indicate the date on which the compulsory standard comes into effect.

19. The Minister may on the recommendation of the Bureau prescribe a mark which shall be called the Antigua and Barbuda Standard Mark (in this Act called the Standard Mark), the property in which vests in the Bureau, and which shall be used in relation to goods, services, process or practices to signify conformity to a standard. **Standard Mark.**

20. (1) Any person may apply to the Bureau in such form and in such manner as may be prescribed for a licence to use the Standard Mark. **Licences to use standard Mark.**

(2) The Bureau may grant a licence to use the Standard Mark upon such terms and conditions, including the payment of a fee as may be prescribed, where it is satisfied that the subject matter of an application conforms to a standard.

Restriction on the use of the word "standard".

21. (1) No person shall carry on a business or perform any function under a name which contains the word "Standard" without the consent of the Bureau.

(2) Where a written law provides for the registration of an association of persons, the registering authority may refuse registration if in its opinion the use of the name to be registered is prohibited by subsection (1).

(3) This section does not apply to a name that was in use in Antigua and Barbuda at the commencement of this Act.

Testing of goods for compliance with compulsory standard.

22. (1) The Minister may—

(a) direct the bureau; or

(b) by letter conveyed through the Bureau authorise a public officer having such qualifications as may be prescribed;

to test or examine the quality of any goods for which a compulsory standard has been declared.

(2) The bureau or a public officer as mentioned in subsection (1) (b) may require any person in Antigua and Barbuda to submit goods manufactured by him for testing or examination where—

(a) that person has a licence to use the Standard Mark in respect of the goods; or

(b) a compulsory standard has been declared for the goods.

(3) The Bureau may—

(a) certify that the goods comply with; or

(b) report that the goods do not comply with

a standard or specification where the standard is voluntary or where a foreign specification exists with respect to certain goods.

Prohibition of sale or export of rejected goods.

23. Where a standard is compulsory and goods tested or examined under section 22 fail to conform to the standard the goods shall not be exported or released for home use

unless clearly stamped or marked with the words "export rejects" or "seconds" or "imperfect" or other similar words as may be prescribed, except that where the compulsory standard is declared to protect the consumer or user against danger to health or safety the goods may neither be exported nor released for home use but shall be disposed of as the Bureau thinks fit.

24. (1) The Bureau may authorise a member of its staff to examine goods manufactured outside Antigua and Barbuda and any custom entries relating to such goods, where a standard is declared for the goods. **Examination of Imported goods.**

(2) The Minister may in writing—

(a) authorise a public officer; or

(b) retain at a fee to be prescribed a suitably qualified consultant,

to assist the staff of the Bureau in an examination carried out under subsection (1).

(3) A person who examines goods under this section may take and submit samples of the goods for testing and analysis.

(4) Where goods imported into Antigua and Barbuda bear a mark so closely resembling the Standard Mark as to be misleading or which falsely represents a mark of compliance with a specification formulated or adapted outside Antigua and Barbuda, the goods shall not be entered for home use unless the mark is substantially changed.

(5) Where a standard is compulsory, goods produced or manufactured outside Antigua and Barbuda may be entered for home use if—

(a) upon an examination of samples the goods comply with the standard; or

(b) they are accompanied by a certificate of examination and compliance with the Standard, issued by a laboratory or other similar institution in the country of origin, recognised by the Bureau.

(6) In this section and in section 23, "home use" means consumption in Antigua and Barbuda.

**Appointment and
powers of
inspectors.**

25. (1) For the purpose of monitoring compulsory standards, or eliminating any process or practice, the effect of which adversely affects the environment, the Minister may on the advice of the Bureau designate employees of the Bureau or public officers to be inspectors and shall provide every inspector with documentary evidence of his designation.

(2) An inspector may at any time with warrant issued by a magistrate enter a place—

(a) where he has reasonable grounds to believe an article to which this section applies is manufactured, prepared stored or offered for sale, to examine and take samples of the article;

(b) where he has reasonable grounds to believe that an activity to which this section applies is carried out to inspect or investigate the activity and take samples of any article, material or substance relating to the activity;

and while there may—

(c) open and examine any receptacle or package that he has reasonable grounds to believe contains an article to which this section applies;

(d) examine and make copies of or transcribe extracts from any book, documents or other record which he has reasonable grounds to believe contains information relevant to the enforcement of this Act;

(e) seize and detain for such time as may be necessary, any article by means of which or in relation to which he has reasonable grounds to believe any provision of this Act has been infringed.

(3) A magistrate shall not issue a warrant under this section unless he is satisfied by sworn information in writing that admission to any premises has been refused, or that refusal is apprehended or that a request for admission could defeat the purpose of the entry.

(4) In this section

(a) "article to which this section applies" means any goods for which a compulsory standard is declared and includes

- (i) anything used in the manufacture, testing, preparation, processing, packaging, storage or sale of the goods; and
- (ii) any labelling or advertising material referring to the goods, whether or not bearing the standard Mark;

(b) "activity to which this section applies" includes any process or practice for which a compulsory standard has been declared and anything used in the performance of the process or practice.

(5) Where an inspector enters a place pursuant to this section, the owner or person in charge of the place and any servant or agent present at the time, shall give to the inspector all reasonable assistance and shall furnish him with such information as he may reasonably require.

(6) An inspector may in his discretion, leave any article seized under subsection (2) (e) in the place where it was seized or remove it to be stored in another place, and upon being satisfied that this section has been complied with shall release **all** seized articles not destroyed by testing.

(7) Where an article is seized under subsection (2) (e) and the owner or person from whom the article is seized consents to its destruction, the article forfeits to Antigua and Barbuda and may be destroyed or otherwise disposed of as the Minister may direct.

(8) An inspector may prosecute in courts of summary jurisdiction in cases arising from violation of this Act.

PART IV

Miscellaneous

26. The Bureau shall be financed by moneys appropriated by Parliament for the purpose, by fees charged for **Finance.**

examination, testing, certification, use of the Standard Mark, and for any service rendered to industry, and by Government grants and subsidies.

Offences.**27.** A person who—

(a) sells, offers for sale or supplies to another person any goods, service, process or practice for which a compulsory standard is declared and which does not conform to that standard;

(b) labels, packages or advertises goods or services or a process or practice otherwise than in compliance with a compulsory standard;

(c) makes a statement or representation or uses a mark with reference to goods, services, a process or practice which conveys or is likely to convey the impression that a person who is not entitled to use the standard mark is so entitled, or falsely represents that any goods, process or practice complies with a specification formulated outside Antigua and Barbuda;

(d) obliterates or otherwise removes a stamp or mark which denotes deficiencies before offering or exposing for sale goods which do not conform to a required standard;

(e) makes a statement or representation or uses a mark which conveys or is likely to convey that any goods, services, process or practice complies with a standard when it does not;

(f) without the authority of the Bureau and for the purpose of gain or profit makes a statement or representation comparing any goods, service, process or practice with a standard declared by the Bureau or the Minister, unless he proves that he acted without intention to defraud;

(g) hinders, or obstructs or knowingly makes a false or misleading statement to a person in the execution of his duty under this Act;

(h) with intent to defraud represents that he is an inspector or a person authorised by the Bureau or the Minister to perform a function under this Act;

(i) being entitled to use the Standard Mark uses it in contravention of the terms and conditions of the licence or after he is no longer entitled to use it;

(j) uses the word "Standard" in a name contrary to section 21;

(k) impersonates an inspector;

(l) obstructs an inspector by not giving him reasonable assistance or access to records, documents or information relevant to the performance of his functions under this Act;

(m) tampers with an article seized by an inspector in such a way as to change any of the characteristics of the article described in the standard applicable to such article;

is liable on summary conviction to a fine of ten thousand dollars and to an additional penalty of one thousand dollars for every day on which the offence continues or to imprisonment for two years.

28. Where a person is convicted of an offence under this Act, the Court—

Forfeiture of articles on conviction of offenders.

(a) may order the forfeiture of any article by means of or in relation to which the offence was committed or any similar item in the possession of that person or found with such article whether or not the item is proved to be in contravention of Section 25, and may order that such article or item be disposed of as the Minister may direct; and

(b) may order the person to cease and desist from performing any activity by means of or in relation to which the offence was committed until such time as the Court may direct.

29. A copy of a standard authenticated by the Bureau together with a copy of the *Gazette* notice declaring or amending the standard is *prima facie* evidence of that standard in legal proceedings.

Evidence of standard.

Secrecy of Information.

30. (1) All information obtained by the Minister, the Council, the Bureau or any member of its staff or any other person in the course of the administration of this Act, as to any formula, process or practice is confidential except for any purpose connected with the administration of this Act.

(2) The disclosure of any information relating to any formula, process or practice to the Minister, the Council the Bureau or any member of its staff or any other person for purposes connected with the administration of this Act, shall not prejudice a subsequent application for patent of the formula, process or practice.

Protection against claims.

31. No person has a claim against the Crown or against the Bureau by reason only of the fact that the Standard Mark is used in connection with any goods, or that any goods, service, process or practice conforms or is alleged to conform to a standard.

Regulations.

32. The Minister may make regulations for the purpose of this Act, and for prescribing all things required to be prescribed and in particular he may make regulations.

(a) regarding the declaring of standards (including compulsory standards);

(b) concerning the use of the Standard Mark and for prescribing the fees to be paid in respect of such use;

(c) regarding packaging, labelling and advertising;

(d) regarding the examination and testing of goods, processes and practices and entry upon premises for that purpose;

(e) requiring any person to keep and produce in relation to any goods, services, process or practice, such records as the Bureau may consider necessary for the purpose of this Act;

(f) prescribing matters in respect of which fees are to be paid, the amount of the fees and the persons by whom the fees are to be paid and authorising the refund or remission of fees in such circumstances as may be prescribed;

(g) prescribing penalties for the breach of any regulation not exceeding a fine of five thousand dollars or imprisonment for twelve months;

(h) prescribing the qualifications, powers and duties of persons authorized under section 22 to examine goods upon landing and of persons designated inspectors under this Act;

(i) prescribing anything required under this Act to be prescribed.
