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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1916.

A BILL

To provide for the marking of articles of gold and silver and for the warranty of such articles; to regulate the sale and exposing for sale of articles of gold and silver; and for other purposes.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

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Preliminary.

1. This Act may be cited as the "Gold and Silver Marking Act, 1916," and shall come into operation on a day to be proclaimed by the Governor and notified in the Gazette.

Short title and commencement.

2. In this Act, unless inconsistent with the context or subject-matter—

Interpretation.

"Article of gold" means article made in whole or in part of gold.

"Article of silver" means article made in whole or in part of silver.

"Jeweller" includes a person who in the course of his business (whatever that business may be) sells articles of gold or articles of silver.

"Manufacturer" includes not only a person whose sole or principal business is the manufacture of articles of gold or articles of silver, but also a person who (whatever his principal business may be) manufactures such articles for trade or sale.

"Prescribed" means prescribed by this Act or by the regulations.

"Registered" means registered under this Act.

"Regulations" means regulations under this Act.

"Schedule" means Schedule to this Act.

3. This Act shall not apply to articles of gold or articles of silver of any prescribed class, if such articles—

Non-application.

(1) (a) bear—

(i) British Hall Marks; or

(ii) the official or Government mark of any other country or any mark authorised by the law of such country or generally recognised by the custom of the trade in such country used for the purpose of indicating the fineness of the gold or silver in such articles, and were manufactured in such country; and

(b) contain the number of carats of fine gold in the pound, troy, corresponding to the words

words and figures of one of the expressions, as specified in the Schedule, or the proportion of silver, as provided in section seven of this Act, or the actual quantity or proportion of fine gold or silver corresponding to the words and figures appearing thereon ;
or

- (2) were actually wholly manufactured and exposed for sale before the commencement of this Act :
Provided that any such article if stamped with any word, mark, or figure, indicating the fineness of the gold or silver in such article shall be of the quality so indicated, or if not stamped with any such word, mark, or figure, shall contain at least nine carats of fine gold in the pound, troy, in the case of an article of gold and at least eight hundred parts out of every one thousand parts of the metal of which such article is composed shall be pure silver in the case of an article of silver.

Schedule.

Exemption of articles prescribed by regulation from Act.

4. The Governor may by regulations exempt from the provisions of this Act any prescribed kinds or classes or parts of articles of gold or articles of silver or articles of gold or silver and any other metal.

5. The Governor may, subject to the Public Service Act, 1902, appoint a registrar and inspectors, who shall have the powers and duties conferred and imposed by this Act and by the regulations.

Appointment of registrar and inspectors.

Distinctive and carat marks, &c.

6. (1) Every manufacturer of articles of gold or articles of silver shall apply in the prescribed manner for registration under this Act of a distinctive mark, which shall be placed on any article of gold or article of silver manufactured by him.

Definition of distinctive mark of manufacturer.

(2) The registrar shall, on being paid the prescribed fee, register such mark by entering into a register, to be kept by him for the purpose, a description of the same, with the name and address of the applicant, and such other particulars as are prescribed, unless upon inquiry he is of opinion—

- (a) that the applicant is not bonâ fide a manufacturer as aforesaid ; or,

(b)

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- (b) that the proposed mark is identical with another mark registered under this Act, or with the trade mark of some other person which is registered under any Act of the Parliament of the Commonwealth of Australia in respect of like articles, or so nearly resembles any such mark or trade mark as to be likely to deceive; or
- (c) that the proposed mark is otherwise unsuitable.

(3) Such mark shall be for purposes of identification only; and registration under this section shall not confer on the person using the mark any right to the same as a registered trade mark.

7. (1) The words and figures of one of the expressions specified in the Schedule, or any prescribed contraction of the same, shall be placed by every manufacturer on every article of gold manufactured by him.

(2) No manufacturer of articles of silver and no jeweller shall sell or expose for sale any article of silver which is marked "silver," "sterling," or "sterling silver," or any contraction of such words, unless nine hundred and twenty-five parts out of every thousand parts of the metal of which the article is composed are pure silver.

8. A manufacturer—

- (a) of any article of gold who has placed the words and figures specified in the Schedule, or any prescribed contraction of the same, on any article of gold; or
- (b) of any article of silver who has placed any of the words mentioned in subsection two of the next preceding section or any contraction of such words on any article of silver,

shall in addition place thereon his registered mark; but a manufacturer of an article of gold or an article of silver to the order of another manufacturer may if authorised in that behalf place the registered mark of such manufacturer on the article in lieu of his own registered mark.

9. On the sale or in the contract for the sale by a manufacturer or by a jeweller of—

- (a) any article of gold marked with any of the words and figures specified in the Schedule or with any prescribed contraction of the same;
- (b)

Comm. Act, 1905, No. 20.

Marking of articles.

Carat marks. Schedule.

Silver jewellery and other articles marked "sterling."

Registered mark to be placed on articles of gold or silver.

Implied warranty.

Schedule.

- (b) or on the sale or in the contract of sale as aforesaid of any article of silver marked with any of the words specified in subsection two of section seven of this Act or any contraction of such words ;

the manufacturer and the vendor shall be deemed to warrant that the article is made of gold of at least the indicated number of carats of fine gold in the pound troy or within a quarter of a carat of such indicated number or (as the case may be) of silver of the prescribed quality.

Inspection, seizure, and forfeiture.

10. (1) An inspector—

- (a) may at any reasonable hour enter any house, shop, or place, and may inspect any stall or package in which he has reasonable ground to believe that any articles of gold or any articles of silver or any articles purporting to be articles of gold or of silver are manufactured or are kept or exposed for sale and may examine such articles ;

Inspection.

- (b) may put questions to any person in charge or apparently in charge of such house, shop, place, or package as to who is the owner of such articles and as to the persons from whom such owner has purchased the same, and the person to whom any such questions are put shall truly answer such questions ;

Inquiries by inspector.

- (c) may place under seal any article which in his opinion has been manufactured or kept or exposed for sale in contravention of this Act ; and

Power to place articles under seal.

- (d) may submit for assay any such article or any article seized or obtained or purchased for test purposes.

(2) Where an inspector has placed an article under seal, such article shall, subject to the regulations, be at the disposal of the inspector for the purpose of this Act for a period not exceeding forty-eight hours from the placing of such article under seal.

Powers of inspector as to articles sealed.

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(3) No person other than an inspector shall, during the said period, remove or break any seal placed on any article in pursuance of this section. Seal not to be removed except by inspector.

11. Where, pursuant to the provisions of this Act, an inspector has seized any article or thing or has placed any article under seal or has obtained or purchased any article for test purposes, such inspector shall forthwith give notice in writing of such seizure or of such article being placed under seal, or of such obtaining or purchase for test purposes to the manufacturer (if any) whose mark is on such article or thing. Notice of seizure to manufacturer.

12. Whenever any article is under the provisions of this Act submitted for assay by an inspector a portion of such article shall be placed under seal and given so sealed to the person from whom the article has been taken or obtained or purchased, and such portion so given to such person shall remain under seal in his possession during the period of the assay of the other portion and shall thereafter be at the disposal of such person for assay by the Royal Mint or otherwise for production in court as he thinks fit. Provisions as to portion of samples.

13. If any assay is made of any article of gold or silver or any article purporting to be an article of gold or of silver, whether such article has been placed under seal or seized pursuant to this Act or has been obtained or purchased for test purposes, a copy of the result of such assay certified in writing under the hand of the assayer thereof shall be furnished to any person to be prosecuted in respect of the article assayed at least ninety-six hours before the hearing of such prosecution. Copy of assay made to be given to person to be prosecuted.

14. (1) When any article of gold or silver has been obtained or purchased from any person for test purposes any prosecution under this Act in respect thereof shall not be instituted after the expiration of thirty days from the time of the purchase. Limits of time for prosecution and summonses.

(2) In any prosecution concerning any article of gold or of silver or purporting to be an article of gold or of silver, the summons shall not be made returnable in less time than fourteen days from the day on which it is served.

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15. (1) Where upon information being laid of an offence against this Act a justice is satisfied by evidence on oath or affidavit that there is reasonable cause to suspect that any article or thing by means of or in relation to which such offence has been committed is in a house or premises of the person against whom the information has been laid, or otherwise in his possession, or under his control in any place, such justice may issue a warrant under his hand by virtue of which it shall be lawful for any inspector, or member of the police force named or referred to in the warrant, to enter such house, premises, or place at any reasonable time of the day and to search there for and seize and take away that article or thing, and if necessary cause the same to be assayed.

Search warrant.
See 50 and 51
Vic. c. 28,
s. 12 (1).

(2) Any article or thing seized under any such warrant shall be brought before a court of petty sessions for the purpose of its being determined whether the same is or is not liable to forfeiture under this Act.

16. (1) If the owner of any article or thing, which if the owner thereof had been convicted would be liable to forfeiture under this Act is unknown, or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture.

Information
for forfeiture.
Ibid. s. 12 (2).

(2) A court of petty sessions may cause notice to be advertised stating that unless cause is shown to the contrary, at the time and place named in the notice, such article or thing will be forfeited, and at such time and place the court, unless the owner or any person on his behalf or other person interested in the article or thing shows cause to the contrary, may order such article or thing to be forfeited.

17. (1) Where any person is convicted of an offence against this Act the court before which conviction is had may, in its discretion, forfeit to His Majesty every article or thing in respect or by means of which the offence has been committed.

Forfeiture on
conviction.

(2) If the court so orders the defendant shall pay the cost of any assay.

18. (1) Any article or thing forfeited under this Act may be destroyed or otherwise disposed of in such manner as the court by which the same is forfeited directs.

Disposal
of article
forfeited.
Ibid. s. 12 (3).

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(2) Such court may out of any proceeds which may be realised by the disposition of any such article (all prohibited and false marks being first obliterated) award to an innocent party any loss he has innocently sustained in dealing with such article.

Supplementary.

19. No person shall place on any article of gold or of silver a distinctive mark, other than his registered distinctive mark, unless duly authorised in that behalf. Unlawful marking with distinctive mark.

20. No person, unless in pursuance of the registration of a mark under this Act, shall place on any article of gold or of silver a mark which indicates or which might be taken to indicate the number of carats of fine gold in the pound troy in the said article if of gold, or which indicates or might be taken to indicate the prescribed quality of silver in the said article if of silver. Unauthorised marking.

21. No person shall manufacture and (except in the case of articles exempted) no manufacturer of articles of gold or of silver or jeweller shall sell or expose for sale an article of gold of any number of carats of fine gold in the pound troy other than one of the numbers specified in the Schedule or within a quarter of a carat thereof or an article of silver of a lower quality than the aforesaid prescribed quality. Number of carats in article manufactured or sold. Schedule.

22. No person shall place on any article of gold or of silver or on any part thereof and no jeweller shall sell or expose for sale any article of gold or of silver marked with a mark which may reasonably or by custom of of trade be taken to indicate— False marking.

(a) that such article or any part thereof contains the indicated number of carats of fine gold in the pound troy, if such article or any part thereof is of gold of a less number of carats of fine gold in the pound troy or is not made of gold at all; or

(b) that any article of silver is of the prescribed quality if such article or any part thereof is of silver of less quality or is not made of silver at all.

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23. (1) No manufacturer of articles of gold or of silver or jeweller shall sell or expose for sale any article on the representation that it contains gold or silver unless such article—

Article which is represented to contain gold or silver to bear the carat mark.

- (a) is marked with some of the words and figures specified in the Schedule or the words specified in subsection two of section seven of this Act or any prescribed contraction of the same; or
- (b) is exempted by the regulations from the provisions of this Act.

Schedule.

24. Any person who—

- (a) obstructs or impedes in any manner any inspector in carrying out his duties under this Act; or
- (b) refuses to allow to be taken any article demanded; or
- (c) gives to or procures for any inspector or offers or promises any bribe or recompense or reward to or influences or attempts to influence any inspector in the discharge of his duty; or
- (d) prevents or attempts to prevent the due execution by such inspector of his duty under this Act; or
- (e) resists any inspector or attempts to rescue any articles of gold or silver which have been detained or seized under this Act, or resists or prevents their detention or seizure, or assaults or by force molests or obstructs or endeavours to intimidate any inspector,

Obstructing, resisting, or bribing of inspector.

shall be guilty of an offence against this Act.

25. Any person—

- (a) fraudulently erases, obliterates, or defaces or counterfeits any registered mark of any manufacturer, or prescribed carat, or other mark;
- (b) makes any instrument for the purpose of counterfeiting the registered mark of any manufacturer or prescribed carat or other mark on articles of gold or of silver;
- (c) marks any article of gold or of silver with any such instrument, or is possessed without lawful excuse of any such instrument or any article marked with any such instrument or any counterfeit mark; or
- (d)

False markings on articles.

- (d) transposes or attempts to transpose from one article to another or cuts with intent to place on some other article any registered mark of any manufacturer or prescribed carat or other mark,

shall be liable to imprisonment for a period not exceeding *twelve* months.

26. (1) Any person who manufactures, or prepares, or sells any article of gold or of silver, or any article purporting to be an article of gold or of silver in contravention of this Act, or is guilty of any offence against this Act for which a penalty is not expressly provided, shall be liable on conviction for a first offence to a penalty of not more than *twenty* pounds, and for a second offence to a penalty of not less than *five* pounds or more than *fifty* pounds, and for any subsequent offence to a penalty of not less than *ten* pounds, or more than *one hundred* pounds.

Manufacturing, &c.,
goods in con-
travention
of Act.

(2) Where a person guilty of an offence is liable to a penalty exceeding *fifty* pounds, and the offence in the opinion of the court was committed by the personal act, default, or culpable negligence of the person accused, that person shall be liable (if the court is of opinion that a penalty will not meet the circumstances of the case) to imprisonment for a period not exceeding *three* months.

27. (1) A notification of the name of any person who has been convicted by any court of an offence against this Act relating to the sale of any article of gold or of silver or of any article purporting to be an article of gold or of silver, may if the court so directs be published by the registrar in the Gazette, together with the address of the place or places of business of such person and a description of the nature of the offence, the decision of the court, the penalty imposed, and any forfeiture incurred.

Notification
of conviction.

(2) In the case of a second or any subsequent conviction of any person for any such offence against this Act, a copy of such notification shall be published by the registrar for public and general information in the Gazette, and may if the court so directs be published in any newspaper generally circulating in any part of New South Wales.

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(3) During the pendency of any appeal against a conviction for any offence against this Act a notification as aforesaid shall not be published by the registrar.

28. (1) In any prosecution under this Act an assay by the Sydney branch of the Royal Mint shall be conclusive evidence of the number of carats of fine gold in the pound troy or percentage of pure silver contained in any article submitted to such assay.

Assay of Royal Mint conclusive evidence.

(2) A certificate purporting to have been signed by the assayer of the said branch of the Royal Mint shall be evidence of the result of the assay so made, without proof of the signature of such assayer.

29. No witness on behalf of any prosecution under this Act shall be compellable to disclose the fact that he received any information or the nature of such information or the name of any person who gave such information, and the registrar or an inspector appearing as a witness shall not be compellable to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

Privilege of witness in regard to information supplied to him.

Regulations.

30. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters and things required or permitted by this Act to be prescribed or which are necessary and convenient to be prescribed for carrying out or giving effect to the provisions of this Act, and may therein impose any penalty not exceeding *twenty* pounds for any breach of the regulations.

Regulations.

(2) All such regulations shall be published in the Gazette, and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting, and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament.

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SCHEDULE.

Sections 3, 7,
8, 9, 21, 23.

*Marks indicating the number of carats in the pound troy
in articles of gold.*

24 carats.

22 carats.

18 carats.

15 carats.

12 carats.

9 carats.
