



APPLICATION FOR USE OF LOGO

PART 1

1. INTRODUCTION

The Whitsunday Development Corporation Ltd (ACN 107 054 848), trading as Enterprise Whitsundays, is a not-for-profit company established to promote products and goods of the Whitsunday region in local, domestic and international markets.

Enterprise Whitsundays has created the brand identity depicted above (“**the Logo**”) and claims rights to it as a common law trade mark. Enterprise Whitsundays has applied for protection of the logo as a certification trade mark, but that application remains pending.

2. APPROVAL PROCESS

A user application form is attached and further copies are available from the Made in the Whitsundays website. All products and goods must meet the strict compliance tests contained in the Rules (**Part 2**).

3. AUTHORISED USERS

Authorised Users (“**Users**”) will comprise two distinct groups:

- Firstly, those who grow, produce, harvest or manufacture approved goods, products or produce, and
- Secondly, wholesalers or retailers in various industries who might sell approved goods, products or produce.

Once approved, all Users have the right to use the Logo in accordance with the Rules and the User Agreement.

4. FEES

The application fee is payable at the time of application. Thereafter, fees will be paid annually (or as otherwise agreed) by each authorised user. Should an application not be successful in gaining accreditation, the application fee will be refunded. If accepted, in no circumstances will any fees be refundable.

5. DISCLAIMER

It must be noted that a certification trade mark has been applied for in relation to the logo, but that application has not yet been accepted nor (as is required) approved by the Australian Competition and Consumer Commission (ACCC). Enterprise Whitsundays makes no representation that the trade mark will be accepted by the Trade Mark Registrar nor approved by the ACCC and reserves the right at any time to withdraw the trade mark application and instruct all parties to cease using the logo in association with their products. In the meantime, Enterprise Whitsundays reserves all rights in the Logo as a common law trade mark.

6. FURTHER INFORMATION

The ACCC has published an excellent guide titled *Country of Origin Claims and the Trade Practices Act* which, while dealing with country of origin rather than *region* of origin claims, provides very useful information on what products or goods may or may not be certified. The booklet may be downloaded from the ACCC's website at www.accc.gov.au.

If further information is required please contact Enterprise Whitsundays as follows:

PO BOX 479
CANNONVALE QLD 4802
T: 07 4946 0111
F: 07 4946 0112

Email: projectmanager@enterprisewhitsundays.com.au

Website: www.madeinwhitsundays.com.au

PART 2

RULES GOVERNING USE OF CERTIFICATION TRADE MARK

1. THE LOGO

The Logo can only be used in association with one or more of the following representations appropriate to the products or goods, viz.

- “Made in the Whitsundays”

or

- “Grown in the Whitsundays” by itself or qualified by the name of the ingredients to which the claim relates, eg. “Whitsundays Grown Peas and Carrots”.

2. CERTIFICATION REQUIREMENTS

The Logo can only be used in association with one of the following representations appropriate to the products or goods:

- “Made in the Whitsundays” or
- “Grown in the Whitsundays”.

2.1 For products or goods to be certifiable to be used in association with “Made in the Whitsundays”:

Either

- (a) the region of origin of each significant ingredient or significant component must be the Whitsundays; **and**
- (b) all, or virtually all, processes involved in the production or manufacture of the products or goods must have occurred in the Whitsundays,

Or

- (c) goods must be “substantially transformed” in the Whitsundays (as defined in section 65AE of the Trade Practices Act 1974); **and**
- (d) 50% or more of the cost of manufacturing and producing the goods must be attributal to production or manufacturing processes that occurred in the Whitsundays [in accordance with sections 65AG to 65AM (inclusive) of Trade Practices Act 1974].

“Substantial transformation” requires that there be a fundamental change that occurred in the Whitsundays in the form, appearance or nature of goods, such that the goods existing after the change are new and different from those that existed before the change.

To determine whether 50% or more of the production costs occurred in the Whitsundays, consideration will be given to:

- *expenditure on materials in the production or manufacturing process,*
- *expenditure on labour in that process, and*
- *expenditure on overheads directly attributable to the production of the goods in the Whitsundays.*

2.2 For products to be certifiable for use in association with “Grown in the Whitsundays”:

- (a) each significant ingredient or significant component of the product must be grown or water harvested in the Whitsundays; and
- (b) all, or virtually all, of the processes involved in the production of the products must have occurred in the Whitsundays.

Please note: If livestock is grown in the Whitsundays but slaughtered elsewhere, it will not meet the criteria. If meat products are grown outside the Whitsundays and bought into the Whitsundays for processing, they will also not meet the criteria.

3. CERTIFICATION PROCESS

- 3.1 All goods and products, and the manner in which the Logo is to be used in relation to them, must be approved by a certifier nominated by Enterprise Whitsundays (“**Approved Certifier**”).
- 3.2 For certification, all goods and products must be made available to an Approved Certifier together with such other evidence (including evidence as to the manner in which the Logo is proposed to be used) as may reasonably be required by Enterprise Whitsundays to meet the certification criteria.
- 3.3 If approved, no use of the Logo can take place until the User meets the requirements of Rule 5.
- 3.4 In the event that certification is refused, an applicant for certification may call for a review of the decision by the chief executive officer of Enterprise Whitsundays. If that person does not provide a written response within 21

days of the date of submission of the request, or if the response is in the negative, the applicant for certification shall have the right to call for an arbitrator to be appointed by the Institute of Arbitrators and Mediators Australia, whose fees and charges will be borne by the applicant and whose decision shall be final and binding.

4. APPROVED CERTIFIERS

Approved Certifiers shall be such parties as may be nominated from time to time by Enterprise Whitsundays who, in Enterprise Whitsundays' reasonable opinion, have the necessary experience and skills to determine whether goods and products, and the manner of their use of the Logo, meet the certification criteria.

5. CONDITIONS OF USE

A User may commence using the Logo once they have:

- 5.1 Received a written confirmation that their application has been approved by Enterprise Whitsundays; and
- 5.2 paid the initial administration fee, and
- 5.3 signed and returned to Enterprise Whitsundays the User Agreement (**Part 3**).

6. USER CERTIFICATE

If a User's goods and/or products are authorised to be used in conjunction with the Logo, Enterprise Whitsundays will issue an appropriate certificate which will be valid for the period specified on it.

7. REGISTER OF USERS

- 7.1 Enterprise Whitsundays will maintain a register of Users of the Logo, which will contain full details of their names, ACNs or ABNs, address, telephone and facsimile numbers and their contact person, together with a list of authorised goods or products in relation to each User.
- 7.2 The register of Users will be made available on reasonable notice to any party during normal business hours at the head office of Enterprise Whitsundays or on Enterprise Whitsundays' website.

- 7.3 Enterprise Whitsundays will update any changes to the register within seven days of the date of change.

8. MAINTENANCE AND RECORDS

Users shall maintain sufficient documentary records to substantiate their compliance with the certification requirements contained in clause 2, as amended from time to time by Enterprise Whitsundays. Such records must be made available to Enterprise Whitsundays and its audit representatives on request.

9. INDEPENDENT COMPLIANCE AUDIT

From time to time, users may be required to furnish relevant documentary records kept in accordance with Rule 8 to an independent compliance auditor, who will determine whether the licensee has complied with these Rules.

10. DISPUTE RESOLUTION

If a dispute arises in relation to these Rules or the User Agreement, the aggrieved party must provide the other party with a written notice outlining the dispute and the remedy sought by that party (“**Dispute Notice**”). If the dispute is not resolved within 21 days of the receipt by the other party of a Dispute Notice, either party may refer the matter to an arbitrator to be appointed by the Institute of Arbitrations and Mediators Australia, whose decision shall be final and binding and who shall determine whether either or both parties shall bear the costs and charges of such arbitration.

11. IP AUSTRALIA

A version of these Rules has been lodged with IP Australia and are available for inspection by any person by contacting IP Australia, as required under the *Trade Marks Act 1995* (Cth).

12. AUSTRALIA COMPETITION AND CONSUMER COMMISSION (“ACCC”)

- 12.1 These Rules have yet to been considered or approved by the ACCC and Enterprise Whitsundays reserves the right to change any part of them if so directed by the ACCC.

- 12.2 Once and if approved by the ACCC, any amendments to these rules must be approved by the ACCC and subsequently lodged with IP Australia and made available for public inspection.
- 12.3 Enterprise Whitsundays will advise all Users of any amendments to the Rules within 14 days of the amendments being approved by the ACCC.