

[Approved for Reprint, 14th September, 1954.]

WESTERN AUSTRALIA.

TRADE DESCRIPTIONS AND FALSE ADVERTISEMENTS.

1° Edwd. VIII., No. XLII.

No. 42 of 1936.

As amended by Acts No. 46 of 1944 (a), No. 56 of 1953 (b) and No. 60 of 1953 (c) and reprinted pursuant to the Amendments Incorporation Act, 1938.

AN ACT to make provision for the application of trade descriptions to certain Goods and for the prevention of false advertisements in relation to Property for sale.

[Assented to 11th December, 1936.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Trade Descriptions and False Advertisements Act, 1936-1953*, and shall come into operation on a day to be fixed by proclamation.¹

Short title
Amended by
No. 56 of
1953, s. 1 (3);
No. 60 of
1953, s. 1 (3).

1A. This Act is divided into Parts as follows:—

PART I., ss. 2 to 4—PRELIMINARY.

PART II., ss. 4A to 7A—TRADE DESCRIPTIONS.

Division 1, ss. 4A to 4F—*Textile Products.*

Division 2, s. 5—*Goods other than Textile Products.*

Division 3, ss. 6 to 7A—*General.*

Act divided
into Parts.
S. 1 A added
by No. 46 of
1944, s. 2.
No. 60 of
1953, s. 9.

(a) Assented to 24th January, 1945.

(b) Assented to 9th January, 1954.

(c) Assented to 9th January, 1954: Proclaimed to come into operation on 1st August, 1954—*Vide Gazette* dated 16th July, 1954, p. 1256.

¹ Proclaimed to come into operation on 1st January, 1938—*Vide Gazette* dated 10th December, 1937, p. 2109.

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PART III., s. 8—FALSE ADVERTISEMENTS.
 PART IV., ss. 9 to 12—INSPECTORS.
 PART V., ss. 13 to 23—MISCELLANEOUS.
 SCHEDULE—GOODS TO WHICH ACT APPLIES.

PART I.—PRELIMINARY.

[Heading
 inserted by
 No. 46 of
 1944, s. 3.]

Definitions.
 Amended by
 No. 46 of
 1944, s. 4;
 No. 60 of 1950,
 s. 3.

2. In this Act, subject to the context—

“Chief Inspector” means the Chief Inspector of Factories appointed under the Factories and Shops Act, 1920.¹

“Court” means a court of petty sessions.

“Covering” includes stopper, glass, cask, bottle, vessel, box, cover, container, capsule, case, frame, or wrapper.

No. 46 of
 1944, s. 4.

“Distributor” means in relation to textile products any person who having in his possession, ownership or control imported textile products offers such products for sale either direct or through an agent or wholesaler or retailer, and includes contractors, jobbers, and makers-up engaged in any preliminary or intermediate process to the ultimate stage of manufacture of such textile products for sale direct or through an agent, wholesaler, or retailer.

No. 60 of 1953,
 s. 3.

Cf. 6th
 S.R. 1949,
 No. 46, 3 (a)
 as amended
 by 6th S.R.
 1953, 2 (a).

“Fibre” means wool, hair, silk, cotton, linen, and any other fibrous material, whether natural or artificial.

Amended by
 No. 46 of
 1944, s. 4; No.
 60 of 1953,
 s. 3.

“Goods” means any article or thing of the nature, kind, or species set forth in the schedule to this Act, and any other article or thing which is the subject of trade, manufacture, or merchandise, and which is declared by regulation to be “goods” within the meaning and for the purposes of this Act. This Act does not apply to goods acquired and not disposed of prior to the proclamation of this Act.

¹ Now Factories and Shops Act, 1920-1952: See No. 59 of 1952, s. 1 (3).

“Inspector” means an inspector appointed under the Factories and Shops Act, 1920,¹ or the Health Act, 1911-1935.²

“Label” includes band or ticket.

“Manufacturer” means, in relation to textile products, any person engaged in the process of spinning, weaving, knitting and felting of textile products for sale and includes contractors, jobbers and makers-up engaged in any preliminary or intermediate process to the ultimate stage of manufacture of such textile products for sale direct or through an agent, wholesaler, or retailer.

No. 46 of
1944, s. 4.

“Per centage” means in relation to the fibre contents of a textile product, per centage by weight.

No. 46 of
1944, s. 4.

“Retailer” means a person who sells goods retail.

No. 46 of
1944, s. 4.

“To sell” means to sell by wholesale or retail and includes barter, supply for profit, offer for sale, receive for sale, have in possession for sale, expose for sale, send forward or deliver for sale, cause or suffer or allow to be sold, and the disposal or offer for disposal under hire purchase agreement; and inflections and derivatives of the verb “to sell” have correlative meanings.

No. 60 of
1953, s. 3.

“Textile products”—

(a) means

(i) woven, knitted or felted materials manufactured from fibre,

(ii) threads and lace;

whether in the piece or roll or in apparel, and

(iii) tops and yarns;

but

(b) does not include anything which by the regulations is excluded from this interpretation.

No. 60 of
1953, s. 3.
Cf. Cth
S.R. 1953,
No. 54, 2 (c).

¹ Now Factories and Shops Act, 1920-1952: See No. 59 of 1952, s. 1 (3).
² Now Health Act, 1911-1952 See No. 25 of 1952, s. 1 (3).

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Cf. Imp. Act
50 and 51
Vic. C. 28.
s. 3.

“Trade description” in relation to any goods means any description, statement, indication, or suggestion direct or indirect as to—

CwIth.
Commerce
(Trade
Descriptions)
Act, 1905, s.
3.

- (a) the nature, number, quantity, quality, purity, class, grade, measure, gauge, size, or weight of the goods; or
- (b) the State, country, or place in or at which the goods or any portions, or the constituents thereof, were made or produced; or
- (c) the manufacturer or producer of the goods, or the person by whom they were selected, packed, graded, or in any way prepared for market; or
- (d) the mode of manufacturing, producing, selecting, packing, grading, or otherwise preparing the goods; or
- (e) the material or ingredients of which the goods are composed or from which they are derived; or
- (f) goods, being the subject of an existing patent, privilege, or copyright,

and includes the use of any figure, word, trade name, trade style or mark which according to the custom of any trade is commonly taken as an indication of any of the above matters.

No. 46 of
1944, s. 4.

“Wholesaler” means, in relation to textile products, a person who receives textile products from a manufacturer or a distributor for sale either direct or through a retailer.

No. 46 of
1944, s. 4.
No. 60 of
1953, s. 3.
Cf. C'th S.R.
1949, No. 46,
3 (c) as
amended by
C'th S.R. 1953
No. 54, 2 (d).

“Wool” means the natural fibre from any variety of domestic sheep or lamb.

Construction.

3. (1) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act so as not to exceed the legislative powers of

the Parliament of the State to the intent that any portion thereof which may be held to be in excess of that power shall (to the extent which it is so in excess) be deemed to be severable from the other portion of the Act, and not to affect the validity or operation thereof.

(2) This Act shall be in addition to and not in derogation of the provisions of any other legislative enactments.

Act does not affect other Acts, e.g., C. Code, Health Act, State Manufactures Description Act, Factories and Shops Act, etc.

4. The Governor may at any time, and from time to time by regulation, declare that, as from a date to be specified therein, being not less than one calendar month after the date of publication of such regulation, any article or thing not included in the Schedule to this Act, and which is the subject of trade, manufacture, or merchandise shall be "goods" within the meaning and for the purposes of this Act.

Goods not included in the schedule may be declared to be goods by regulation.

PART II.—TRADE DESCRIPTIONS.

Division 1—Textile Products.

[New heading and subheading added by No. 46 of 1944, s. 5.]

4A. (1) Subject to this Act no person shall sell any textile products unless there is applied thereto, or where so required by the regulations, to the several appropriate portions of such textile products, a trade description in the English language printed or stamped on or woven into or securely attached to such textile product or portions thereof in legible characters conspicuously placed so as to be clearly visible containing particulars as prescribed.

Trade description compulsory in relation to textile products. S. 4A added by No. 46 of 1944, s. 5 amended by No. 60 of 1953, s. 4.

(2) The trade description applied to textile products which contain ninety-five per centum or more by weight of wool shall include the words, "Pure Wool".

(2a) The trade description applied to textile products which contain less than ninety-five per centum by weight of wool shall not include the words, "Pure Wool".

Subs. (2a) added by No. 60 of 1953, s. 4 (c).

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Subs. (2b)
added by No.
60 of 1953, s.
4 (c).

(2b) The trade description applied to textile products which contain less than ninety-five per centum but not less than five per centum by weight of wool shall include a statement specifying—

- (a) the percentage by weight of wool which is contained in the products; and
- (b) the other fibres contained in the products in order of dominance by weight.

Subs. (2c)
added by No.
60 of 1953, s.
4 (c).

(2c) The trade description applied to textile products which contain less than five per centum by weight of wool shall state the fibres other than wool, in order of dominance by weight followed by the words, "less than five per centum wool".

Subs. (2d)
added by
No. 60 of 1953,
s. 4 (c).

(2d) The trade description applied to textile products which contain no wool shall include a statement specifying the fibre contained in the products, or, if the products contain more than one fibre, the fibres in order of dominance by weight.

(3) Any person who in any respect contravenes this section shall be guilty of an offence.

Penalty—For a first offence, fifty pounds; or any subsequent offence two hundred pounds.

False trade
description.
s. 4B added
by No. 46 of
1944, s. 5,
amended by
No. 60 of
1953, s. 5.

4B. (1) Any person who applies to a textile product a trade description the particulars of which do not comply with the requirements of section four A of this Act or of the regulations or are in any respect false or incorrect shall be guilty of an offence.

Penalty—For a first offence, fifty pounds; or any subsequent offence two hundred pounds.

(2) [*Subsection (2) repealed by No. 60 of 1953, s. 5.*]

Invoices to
be furnished.
s. 4C added
by No. 46 of
1944, s. 5;
amended by
No. 60 of
1953, s. 6.

4C. (1) Every manufacturer and every distributor shall when delivering textile products to a wholesaler or a retailer furnish to such wholesaler or retailer a numbered invoice which shall contain details of the constituent fibres comprising such textile products respectively as prescribed.

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(2) Any person who contravenes this section shall be guilty of an offence.

Penalty—Fifty pounds for a first offence and two hundred pounds for a subsequent offence.

4D. (1) Every manufacturer and every distributor of textile products shall keep and maintain in writing in the English language for at least three years all records and specifications of textile products delivered or sold by him and invoiced as provided for in section four C of this Act.

Records to be kept.
S. 4D added by No. 46 of 1944, s. 5; amended by No. 60 of 1953, s. 7.

(2) Any person who contravenes this section shall be guilty of an offence.

Penalty—Fifty pounds for a first offence and two hundred pounds for a subsequent offence.

4E. (1) Every manufacturer and every distributor shall at all reasonable times give access to an inspector to inspect and check records required by this Act or the regulations to be kept by such manufacturer or distributor.

Access for inspector to inspect records.
S. 4E added by No. 46 of 1944, s. 5; amended by No. 60 of 1953, s. 8.

(2) Any person who contravenes this section shall be guilty of an offence.

Penalty—Fifty pounds for a first offence and two hundred pounds for a subsequent offence.

4F. Where at the hearing of a charge on complaint of an offence against the provisions of subsection (1) of section four of this Act or the regulations relating to the application of trade descriptions to textile products the defendant proves—

S. 4F added by No. 60 of 1953, s. 9.

- (a) that the textile products were manufactured in, or imported into, the State before the coming into operation of the Trade Descriptions and False Advertisements Act Amendment Act, 1953; and

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- (b) that at the time of the complaint he held the textile products *bona fide* and without fraudulent intention;

the court shall not convict the defendant of the charge but unless the defendant has given to the complainant what is, in the opinion of the court, reasonable notice of the matters mentioned in paragraphs (a) and (b) of this section, the court shall order the defendant to pay the costs and expenses of the complainant of and incidental to the complaint and the hearing of the charge.

[New heading substituted by No. 46 of 1944 s. 6.]

Trade descriptions compulsory in certain cases.

Amended by No. 60 of 1953, s. 10.

Division 2—Goods, Other Than Textile Products.

5. (1) No person shall sell—
- (a) any goods of the nature or description set out in the Schedule to this Act; or
- (b) any goods which are declared by regulation to be goods for the purpose of this Act,

unless there is conspicuously applied thereto in such manner as may be prescribed the full name and the complete address of the manufacturer and a trade description of the goods containing such details as may be prescribed.

Provided that—

- (i) in respect of any of the kinds or descriptions of goods specified in the preceding paragraphs (a) and (b) the Governor may from time to time by regulation suspend the operation of the Schedule or of any regulation declaring any goods to be goods for the purpose of this Act either generally or in relation to any particular kind or description of goods named therein;

- (ii) in respect of any goods or classes of goods to which this Act applies it shall not be necessary to state the name and address of the manufacturer where it is impracticable or inconvenient to do so and the regulations made under this Act make provision to that effect;
- (iii) before making any regulation for the purpose of paragraph (b) of this subsection the Governor shall give at least one calendar month's notice in the prescribed manner for the purpose of enabling manufacturers, traders, and members of the public an opportunity to be heard either in opposition to or in support of the proposed regulation and may delegate to some person authority to inquire into the matter and make a report to him for that purpose;
- (iv) this section shall not impose on any person a duty to disclose a trade secret of manufacture or preparation except in cases where in the opinion of the Commissioner of Public Health such disclosure is necessary for the protection of the health or well-being of the public and the said Commissioner issues a certificate in writing to that effect;
- (v) the Governor may revoke, vary, or amend from time to time any regulation made for the purpose of this section.

(2) It shall not be necessary to affix the prescribed particulars relating to the manufacturer and to the goods on the goods themselves, but it shall be sufficient compliance with this section if such particulars are attached to any covering, label, reel, placard, or thing used in connection with the goods: provided that the same are at all times in sufficient proximity to the goods and conspicuously displayed so as to be clearly and easily referable thereto by any person proposing to purchase the goods.

(3) In this section "goods" does not include textile products.

Division 3—General.

[New heading inserted by No. 46 of 1944, s. 7.]

Condition of sale.

Amended by No. 60 of 1953, s. 11.

6. (1) It shall be an implied condition of every sale or contract for sale of goods within the meaning of this Act—

- (a) that the trade description applied to the goods is true and correct; and
- (b) that the prescribed trade description has been applied to the goods.

Subs. (2) added by No. 60 of 1953, s. 11 (b).

(2) In this section “goods” includes textile products.

Amended by No. 60 of 1953, s. 12.

Cf. Imp. 50 and 51, cap. 28.

Ibid. s. 5.

7. (1) A trade description shall be deemed to be applied to goods—

- (a) if it is attached to the goods themselves; or
- (b) if it is attached to any covering, label, reel, or thing used in connection with the goods; or
- (c) if it is used in any manner likely to lead to the belief that it describes or designates the goods; or
- (d) if it is used, whether in an advertisement or catalogue or otherwise, in any manner in connection with or for the purposes of the sale or disposal of the goods; or
- (e) if it is woven, impressed, or otherwise worked into or annexed or affixed to the goods, or to any covering, label, reel, or thing used, or to any placard required to be used in connection therewith.

Vic. Goods Act, 1928, s. 90 (2) 96.
N.S.W., 39 of 1912, s. 81, amended by 55 of 1931.

Subs. (2) added by No. 60 of 1953, s. 12(b).

(2) In this section “goods” includes textile products.

Certain expressions in trade descriptions prohibited.
S. 7A added by No. 46 of 1944, s. 8; amended by No. 60 of 1953, s. 13.

7A. A trade description shall not contain:—

- (a) The expressions “artificial wool,” or “imitation wool,” or “synthetic wool,” or “substitute wool” in any circumstances or for any purposes or in relation to any goods;

- (b) Any other expression which includes the word "wool" and is intended to be descriptive of the goods to which the trade description is applied or of a substance used in the manufacture of the said goods, when the goods are not a textile product, or the substance is not wool.

PART III.—FALSE ADVERTISEMENTS.

[New heading substituted by No. 46 of 1944, s. 9 (1).]

8. (1) Any person who publishes or causes to be published any statement which—

False advertisements. Vic. No. 4074 (1932).

- (a) is intended or apparently intended by such person or any other person to promote the sale or disposal of any real property or any personal property (including without limiting the generality of this section chattels real, or stocks, shares, bonds or other securities and goods and textile products), or any services, or to increase the consumption or use of any such personal property, or to induce any person or persons to enter into any obligations relating to any such real property or personal property or services or any interest in any such real or personal property; and

Amended by No. 56 of 1953, s. 2; No. 60 of 1953, s. 14.

- (b) is to his knowledge false in any material particular,

shall be guilty of an offence.

Penalty: For a first offence, not exceeding fifty pounds; for a second offence, not less than fifty pounds or more than two hundred pounds, or imprisonment with hard labour for not less than six months or more than twelve months; for a third or subsequent offence, not less than two hundred pounds or more than three hundred pounds, or imprisonment with hard labour for not less than twelve months or more than two years.

As to
publication.
Subs. (2)
amended by
No. 56 of
1953, s. 2.

(2) A statement shall be deemed to be published within the meaning of this section if it is—

(a) inserted in any newspaper or other publication printed and published in Western Australia; or

(b) publicly exhibited—

(i) in, on, over or under any building, vehicle, or place (whether a public place or private place, and whether on land or water); or

(ii) in the air—

in view of persons being or passing in or on any public place; or

(c) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person; or

(d) made verbally to any person; or

(e) broadcasted by radio; or

(f) in the case of an article of furniture, attached to or stamped upon such article in the form of a label or impressed stamp denoting that such article complies with the requirements of the Standards Association of Australia as to Australian standard specification, or any other reference to quality or make indicated by a label or stamp.

Para. (f)
added by No.
56 of 1953,
s. 2.

Presumption
of knowledge
of falsity of
statement
published or
caused to be
published in
certain
cases.

(3) In any proceedings under this section against any person for publishing any statement aforesaid, or causing the same to be published, if it is proved that such statement was false in any material particular, the person publishing the statement, or causing the same to be published, shall be deemed to have published the same, or to have caused the same to be published with knowledge of its falsity, unless he proves—

(a) that he had reasonable ground to believe and did believe that the statement was true; or

- (b) that he had no reason to suspect that the statement was false; or
- (c) that otherwise he had acted innocently.

(4) No prosecution shall be instituted against the printer or publisher or proprietor of any newspaper printed and published in Western Australia or against any broadcasting company operating in Western Australia and dealing in advertising business; or against the printer of any advertisement, dodger, or catalogue, or against any person acting under the authority of any such printer, publisher, or proprietor unless—

As to
prosecutions
of printers,
ect., of
newspapers.

(a) in the case of a newspaper—

- (i) the printer, publisher, or proprietor has been warned by the Minister or the Chief Inspector of the falsity of such statement, or of any other statement substantially the same as such statement, and that the publication thereof is an offence under this section, such warning to be in writing signed by the Minister or the Chief Inspector and delivered to the registered address of the newspaper: in the case of a daily, twelve hours before the date of publication, and in the case of a newspaper other than a daily, twenty-four hours before the date of publication; and
- (ii) the printer, publisher, or proprietor has on any day after the receipt of the warning, published or authorised or permitted the publication of such statement, or any such other statement in any issue of any newspaper in Western Australia printed, published, or owned by him (as the case may be);

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- (b) in the case of any advertisement, dodger, or catalogue contained in any written publication other than a newspaper—
- (i) the printer has been warned by the Minister or the Chief Inspector of the falsity of such statement or of any other statement substantially the same as such statement, and that the publication thereof is an offence under this section, such warning to be in writing, signed by the Minister or the Chief Inspector and delivered at the place of business of the printer;
 - (ii) such printer has not immediately withdrawn from publication all other advertisements, dodgers or catalogues in his possession, or in the case of any catalogue, book, or publication in which such advertisements are purely incidental, such printer has not amended the false advertisement to the satisfaction of an inspector so that the advertisement no longer offends against this Act;
- (c) in the case of a broadcasting station licensed to deal in advertising by wireless transmission—
- (i) the management has been warned in writing by the Minister or the Chief Inspector of the falsity of such a statement or of any other statement substantially the same as the statement published by wireless transmission and that the publication thereof is an offence under this section; and
 - (ii) the said management has not immediately withdrawn from its list of scheduled advertisements any such advertisement or advertisements declared to be false within the meaning of this Act.
- (5) In this section "newspaper" includes any periodical publication.

PART IV.—INSPECTORS.

[New heading substituted by No. 48 of 1944, s. 9 (2).]

9. (1) All inspectors appointed under the provisions of the Factories and Shops Act, 1920,¹ or the Health Act, 1911,² shall by virtue of their offices be inspectors under this Act.

Inspectors.
Amended by No. 60 of 1953, s. 15.

(2) It shall be the duty of every inspector to see that the provisions of this Act relating to trade descriptions and false advertisements are being carried out or observed and, subject to the approval of the Chief Inspector of Factories and to the provisions of this Act, to commence and conduct prosecutions for offences under this Act; provided that nothing herein contained shall affect the right of any person to prosecute for any offence against this Act.

Duties of inspectors.

10. (1) An inspector may—

Powers of inspectors.
Amended by No. 60 of 1953, s. 16.
W.A., 5 of 1931, s. 11.
Cf. Vic. Goods Act, 1928, s. 109.
N.S.W., 39 of 1912, s. 94, as amended by 55 of 1931.

- (a) enter during usual working hours by day or night any premises or place in which he has reasonable cause to believe that goods are or have been manufactured, sold, offered or exposed for sale, or any premises or place where he has reason to believe any offence against this Act or regulations thereunder has been committed;
- (b) take with him a member of the police force to assist him in the execution of his duty;
- (c) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are being infringed;
- (d) require the production by any person manufacturing goods or selling, offering, or exposing goods for sale of all books, vouchers, letters, and documents relating to the manufacture, acquisition, purchase, or possession of such goods by such person, and make copies of or extracts from the same;

¹ Now Factories and Shops Act, 1920-1952: See No. 59 of 1952, s. 1 (3).

² Now Health Act, 1911-1952: See No. 25 of 1952, s. 1 (3).

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- (e) take with him into any building, premises, or place any person whom he may think qualified to act as an interpreter, and whose assistance he shall deem necessary for the performance of his duties. Any question asked by such person shall be deemed to have been actually asked by the inspector, and any person who obstructs the interpreter shall have been deemed to have obstructed the inspector within the meaning of this Act.

(2) An inspector, acting under the provisions of this Act shall, and if and when called upon, produce satisfactory evidence of his appointment.

(3) No inspector or interpreter shall disclose to any person, other than in the course of his duties under this Act, any information which he obtains in the exercise of his duties.

Subs. (4)
added by
No. 80 of
1953, s. 16.

(4) In this section "goods" includes textile products.

Occupier to
allow inspection.
Cf. W.A., 5
of 1931, s. 11.

11. The occupier of any building, premises, or place shall at all reasonable times furnish the means required by an inspector for entry, inspection, or examination or inquiry in the exercise of his powers under this Act.

Obstructing
inspectors.
Cf. W.A., 5
of 1931, s. 13.

12. (1) No person shall—

(a) obstruct any inspector in the execution of his duties under this Act;

(b) being lawfully required by an inspector, fail to produce or exhibit any books, vouchers, letters, or documents, or to permit extracts from or copies to be taken or made; or

(c) wilfully mislead any inspector in any particular likely to affect the discharge of his duties; or

- (d) being lawfully required to answer any questions by an inspector pursuant to this Act, fail to answer the same truthfully to the best of his knowledge, information and belief.

(2) A person shall be deemed to obstruct an inspector in the execution of his duty under this Act who— *Ibid.* s. 14.

- (a) without reasonable cause delays an inspector in the exercise of any of his powers and duties under this Act; or
- (b) fails to comply with the requisition of any inspector made under any such powers, or to produce any documents which he is required by this Act to produce; or
- (c) prevents, or attempts to prevent, any person from appearing alone before or being examined by an inspector.

PART V.—MISCELLANEOUS.

13. Any person who by act or omission commits a breach of any of the provisions of this Act, shall be guilty of an offence against this Act.

[New heading substituted by No. 46 of 1944, s. 9 (3).]

Offences not otherwise stated.

Amended by No. 60 of 1953, s. 17.

Cf. No. 30 of 1918, s. 4.

“This Act” includes regulations.

Penalties for offences.

Cf. Vic. Goods Act, 1928, s. 103.

N.S.W., 39 of 1912, s. 90, as amended by 55 of 1931.

14. Any person guilty of an offence against this Act for which no penalty is specifically provided, shall be liable to a penalty of fifty pounds, and for a second offence to a penalty of not less than twenty-five pounds, nor more than one hundred pounds, and for a third or any subsequent offence, to a penalty not less than fifty pounds nor more than two hundred pounds.

Goods without trade descriptions to be seized. Amended by No. 60 of 1953, s. 18.

15. (1) If an inspector finds any goods which are exposed or offered, or are in the possession of any person for sale, and to which the prescribed trade description has not been applied as required by this Act, he may take possession of and detain such goods, for such time as may be necessary to decide what action (if any) shall be taken against the owner or person in possession of the goods, but such inspector shall take all reasonable precautions to protect such goods from injury, damage, theft, or loss to the owner until any proceedings that may be taken in respect of such goods for an offence against this Act are disposed of, and such inspector shall, before removing such goods, give to the owner a receipt for same, specifying the quantity and class of goods so taken possession of: Provided that if no action be taken against such owner or person in possession of such goods within one calendar month of the taking possession of the goods, such goods shall be returned to such owner or person at the end of such calendar month.

(2) Such goods shall at all times during such detention be at the risk and expense of the owner thereof.

(3) If an inspector takes possession of and detains any goods in the absence of the owner, he shall do so in the presence of a reputable witness, and shall affix to such goods a statement giving his name and the date of his inspection, and shall, as soon as practicable, notify the owner that he has taken possession of and detained such goods.

Subs. (4) added by No. 60 of 1953, s. 18.

(4) In this section "goods" includes textile products.

Manner in which goods seized may be dealt with. Amended by No. 60 of 1953, s. 19

16. (1) When an inspector has taken possession of and detained any goods under the power conferred by section fifteen of this Act, the goods may be dealt with, as follows:—

- (a) The inspector may apply to the court for the forfeiture of the goods to the Crown, and the court may make such order in regard to the goods as they are empowered to make under the succeeding paragraphs of this section.

- (b) If proceedings are taken in respect of the goods for an offence against this Act and the defendant is convicted of such offence, the court, in addition to imposing a penalty, may order that the goods shall be forfeited to the Crown, or that the goods shall be returned to the owner, subject to any conditions which the court may think fit to impose:

Provided that, where the court orders the return of the goods subject to conditions, the inspector shall detain the goods until such conditions have been observed and performed, and, if such conditions are not observed and performed within three months after the date of the order, the inspector, by complaint against the defendant under the Justices Act, 1902¹ may apply to the court for an order forfeiting the goods to the Crown.

Cf. No. 30
of 1918, s. 14.

- (c) Where any goods are by order of any court forfeited to the Crown, they shall be disposed of by the inspector obtaining the same on behalf of the Crown in the manner prescribed.
- (d) Subject as hereinafter provided where in any case the court hearing the complaint does not make any order forfeiting the goods to the Crown, the inspector detaining the goods shall return the same to the owner so far as may be known forthwith at such owner's expense:

Provided that, where the court is of the opinion that the owner has acted innocently in the matter and that he has exercised reasonable care to avoid committing an offence under this Act, the court may order that the owner's expenses in connection with the return of the goods shall be paid to the owner.

¹ Now Justices Act, 1902-1948: See No. 29 of 1948, s. 2.

- (e) If proceedings are taken in respect of the goods for an offence against this Act, and the defendant is not convicted, but it is proved in the proceedings that the goods are of a kind to which the prescribed trade description is required to be applied in accordance with this Act, the Court may make an order that the goods shall be detained by the inspector until the owner thereof gives a written undertaking to the inspector, and security to the satisfaction of a Chief Inspector that the prescribed trade description will be applied to the goods before they are sold:

Provided that, if such written undertaking and security are not given within three months after the date of the order, the goods shall be deemed to be forfeited to the Crown, and shall be disposed of by the inspector on behalf of the Crown in the manner prescribed.

- (f) Where in any case mentioned in paragraph (e) hereof, the owner of the goods gives the undertaking and security mentioned in the said paragraph, the inspector detaining the goods shall return the same forthwith to the owner at the owner's expense.

Subs. (2)
added by No.
60 of 1953, s.
19 (d).

- (2) In this section "goods" includes textile products.

Goods of
unknown
owner.
Amended by
No. 60 of
1953, s. 20.
Cr. Vic.
Goods Act,
1928, s. 102
(2).
N.S.W., 39 of
1912, as
amended by
55 of 1931.

17. (1) Where the owner of goods which, if the owner thereof had been convicted, would be liable to forfeiture under this Act is unknown or cannot be found, a complaint may be laid for the purpose only of enforcing such forfeiture, and a resident or police magistrate 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 goods 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 goods shows cause to the contrary, may order such goods or any of them to be forfeited.

(2) In this section "goods" includes textile products.

Subs. (2) added by No. 60 of 1953, s. 20 (b).

18. Notwithstanding the provisions of section two hundred and twenty-seven of the Justices Act, 1902,¹ the period of limitation for the prosecution of offences under this Act shall be twelve months from commission of any such offence.

Limitation period for prosecution. Amended by No. 60 of 1953, s. 21. Cf. No. 30 of 1918, s. 14.

19. (1) In any prosecution for an offence against this Act—

Evidence. Amended by No. 60 of 1953, s. 22.

- (a) in the case of imported goods, evidence of the port of shipment shall be *prima facie* evidence of the country or place in or at which the goods were made or produced;
- (b) the production of a certificate by an analyst shall be sufficient evidence of the facts therein stated, unless the defendant requires the analyst to be called as a witness.

(2) In this section "goods" includes textile products.

Subs (2) added by No. 60 of 1953, s. 22 (b).

20. Nothing in this Act—

- (a) shall exempt any person from any action, suit, or other proceeding which might but for the provisions of this Act be brought against him; or
- (b) shall entitle any person to refuse to make discovery or answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such persons in any prosecution for an offence against this Act; or
- (c) shall render liable to prosecution or punishment any servant of a master resident in Australia who *bona fide* acts in obedience to the instructions of such master, and, on demand by or on behalf of the prosecutor, has given full information in regard to his master and the circumstances of the case.

Savings. Cf. Vic. Goods Act, 1928, s. 109. N.S.W., 39 of 1912, s. 94, as amended by 55 of 1931.

¹ Now Justices Act, 1902-1948: See No. 29 of 1948, s. 2.

Aiding or
abetting
offences.

21. Subject to the provisions of the preceding section—

- (a) every person who aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in the commission of any offence under this Act, shall be deemed to have committed that offence, and shall be punishable accordingly;
- (b) where two or more persons commit, or knowingly authorise or permit the commission of any offence under this Act, each of such persons shall be liable therefor, and the liability of each of them shall be independent of the liability of the other or others.

Liability of
two or more
persons.

Saving as to
civil
proceedings.

22. Notwithstanding any proceedings against any person for an offence against this Act (whether resulting in conviction or otherwise) such person shall remain liable to all civil proceedings, in like manner as if proceedings for an offence had not been taken.

Regulations.
Amended by
No. 46 of
1944, s. 10;
No. 60 of
1953, s. 23.

23. The Governor may make regulations, not inconsistent with this Act, prescribing all such matters as by this Act are required or permitted to be prescribed, or as may be necessary or convenient to be prescribed for giving effect to this Act and particularly for the analysis of samples of goods taken under this Act and the extent to which certificates of analysis shall be *prima facie* evidence in proceedings under this Act of the facts therein stated and without limiting the generality of the foregoing may make regulations—

- (a) prescribing the form of, and manner in which, trade descriptions shall be applied to textile products, and to the covering label, reel, or thing, used in connection with textile products;

- (b) requiring trade descriptions to be applied to textile products to contain particulars relating to the quality, purity, or weight, of textile products of the materials of which textile products are composed;
- (c) exempting textile products or a specified class or specified classes of textile products from the operation of this Act;
- (d) prescribing that the whole or any part of the provisions of a regulation made under this Act applies to textile products generally, to specified classes of textile products or to all classes of textile products other than those specified in the regulations.

THE SCHEDULE.

New
Schedule
substituted
by No. 46 of
1944, s. 11.

Sec. 2. (1) The following goods, where any such goods do not come within the definition of "textile products" as set out in this Act, that is to say:—

Bedding,
Blankets,
Rugs.

(2) Flour.

(3) Furniture.

(4) Motor bodies, including cabs, trays, platforms and coaches of every description as used on motor vehicles for private, passenger, or any commercial purpose.