

TRADE DESCRIPTIONS AND FALSE ADVERTISEMENTS.

No. 74 of 1983.

AN ACT to amend the Trade Descriptions and False Advertisements Act 1936-1979.

[Assented to 22 December 1983.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Trade Descriptions and False Advertisements Amendment Act 1983*. Short title and citation.

(2) In this Act the Trade Descriptions and False Advertisements Act 1936-1979 is referred to as the principal Act. Reprinted as approved 7 September 1981.

(3) The principal Act as amended by this Act may be cited as the Trade Descriptions and False Advertisements Act 1936-1983.

Section 1A
amended.

2. Section 1A of the principal Act is amended—

(a) by deleting "s. 8" and substituting the following—

" ss. 8 to 8J "; and

(b) by inserting, after the reference to Part III, the following—

“ Part IIIA., s. 8K—INFORMATION. ”.

Section 2
amended.

3. Section 2 of the principal Act is amended—

(a) by inserting after the section designation "2." the subsection designation "(1)";

(b) as to the definition of "Inspector", by deleting paragraph (a) and substituting the paragraph following—

“ (a) a person who is approved by the Minister and is appointed by the Commissioner to carry out investigations and inquiries for the purposes of this Act; ”;

(c) by inserting in their respective appropriate alphabetical sequence the several definitions following—

“ “business” includes a business not carried on for profit, and any business activity;

“Commissioner” means the person for the time being holding or acting in the office of Commissioner for Consumer Affairs under the Consumer Affairs Act 1971;

“interest”, in relation to land, means—

- (a) a legal or equitable estate or interest in the land;
- (b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to acquire shares, in a body corporate that owns the land or building; or
- (c) a right, power or privilege over, or in connection with, the land;

“manufacture” includes assemble, process or recondition;

“price” includes a fee or charge of any description, and any other valuable consideration;

“shares”, in relation to a body corporate, includes stock, or any legal or equitable interest in shares or stock, whether held alone or jointly with another person;

“special price”, in relation to an advertisement for the supply of goods, services or the disposal of an interest in land, means—

- (a) a price that is represented in the advertisement to be a special or bargain price, by reference to an ordinary price or otherwise; or
- (b) a price that a person who reads, hears or sees the advertisement would reasonably understand to be a

(d) by adding the subsection following—

“ (2) For the purposes of this Act a person shall be taken to be engaged in a business activity if, whether in the conduct of a profession or in the course of trade or commerce or otherwise, he carries on a business of supplying goods or services or holds himself out as carrying on such a business. ”.

4. Section 8 of the principal Act is amended— Section 8
amended.

(a) in subsection (1)—

(i) by deleting the paragraph designation “(a)”;

(ii) by deleting “which—

(i) is false or misleading in a material particular; or

(ii) is likely to deceive or mislead any person in a material way,”
and substituting the

following—

“ which is a false representation ”;

and

(iii) by deleting paragraph (b);

(b) by inserting after subsection (1b) the new subsections following—

“ (1c) A person shall not, in the conduct of his trade or business, publish or cause to be published any statement which is a false representation with respect to the profitability or risk, or as to any other material aspect, of any business activity that that

relating to the supply on behalf of another person of goods or services or an interest in land may be taken to constitute employment.

(1g) For the purposes of this section—

(a) a statement shall be taken to be a false representation if it is false, or deceives, or if it or any information thereby provided is materially inaccurate and that statement is intended or is apparently intended—

(i) to promote the supply of any goods or services or the disposal of any interest in land;

(ii) to induce any other person to make use, on payment of a price, of any goods or services or interest in land; or

(iii) to relate to any business activity or employment referred to in an advertisement containing that statement; and

(b) “materially inaccurate”, in relation to any information, means—

(i) inaccurate; or

(ii) misleading or likely to mislead,

in a material respect and to a material degree by reason of anything contained therein or omitted therefrom.

(b) if no such period or quantity is specified in the advertisement, during such period and in such quantity as is reasonable having regard to the nature of the market in which the supplier carries on business and the nature of the advertisement.

(2) Where a person, in the conduct of his trade or business, advertises, or publishes or causes to be published an advertisement for goods or services for supply, or any interest in land for disposal, at a special price for a specified period that person shall not fail to make available those goods or services or that interest for supply or disposal to any other person who, during that period, offers to acquire those goods or services or that interest at that price.

(3) Where a person, in the conduct of his trade or business, advertises, or publishes or causes to be published an advertisement for, goods or services for supply, or any interest in land for disposal, at a special price without specifying in the advertisement the period during which the goods or services are available for supply or that interest is available for disposal, or the quantity available, at that price, that person shall not fail to make those goods or services or such interest available for supply to any other person who, during such period as is reasonable having regard to the nature of the market in which the person advertising carries on business and the nature of the advertisement, offers to acquire the goods, services or interest at that price.

(4) In any proceedings for an offence against subsection (2) or (3) of this section, it is a defence for a person who advertised, or published the advertisement or caused the

advertisement to be published to establish that the person who advertised the supply or disposal—

- (a) offered to make available for supply or disposal, or offered to procure another person to make available for supply or disposal, goods or services or interests of the kind advertised to the person offering to acquire them within a reasonable period, in a reasonable quantity and at the advertised special price; or
- (b) immediately offered to make available for supply or disposal, or offered to procure another person to make available for supply or disposal within a reasonable period, equivalent goods or services or interests to the person offering to acquire them in a reasonable quantity and at the price at which the firstmentioned goods or services or interests were advertised,

and, in either case, where the offer by the person who advertised was accepted by the person offering to acquire the goods or services or interests, the person advertising has made available for supply or disposal, or procured another person to make available for supply or disposal, goods or services or interests of that kind or equivalent to those referred to in paragraph (a) of this subsection.

(5) Where a person, in the conduct of his trade or business, advertises or publishes or causes to be published any advertisement for supply at a special price a quantity of goods or services specified in the advertisement the person shall not fail to make available for supply to any other person who offers to acquire at that price goods or services of the description specified in the advertisement.

(6) In any proceedings for an offence against subsection (5) of this section, it is a defence for a person who advertised, or published the advertisement or caused the advertisement to be published, to establish that—

- (a) the person who advertised the supply was, at the time of the publication of the advertisement, able to supply the quantity of goods or services specified in the advertisement; and
- (b) since that publication, that person has exhausted that quantity of goods or services by supplying them at the advertised special price.

8B. (1) In any proceedings under this Act where a name, business name, address, telephone number or post office box number is specified in a statement or advertisement published or representation made and is that of a person, or of the agent of a person,

Evidence as to statements, advertisements and representations.

(a) who—

- (i) is the owner, whether alone or jointly with one or more other persons, of any goods or interests in land;
- (ii) is the supplier of any goods or services; or
- (iii) has, otherwise than as an owner, an interest in any goods or interests in land, or the supply of any services,

being goods, services or interests in land the supply, use or disposal of which the statement, advertisement or representation is intended or apparently intended to promote; or

- (b) who seeks thereby another person for employment,

that person or agent, as the case may be, shall be deemed, in the absence of proof to the contrary, to have caused the statement or advertisement to be published and the representation to be made.

(2) For the purposes of this Act, a person who causes a statement or advertisement to be published shall be deemed to have done so on any day on which that statement or advertisement was published.

Publications
in the
ordinary
course of
business.

8C. In any proceedings in relation to an offence against this Part of this Act, being an offence constituted by the publication of an advertisement, it is a defence if the defendant establishes that he is a person whose business it is to publish or arrange for the publication of advertisements and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would be an offence.

Media
publication.

8D. (1) No prosecution shall be instituted against the printer, publisher, or proprietor of any newspaper or the licensee of any commercial broadcasting station or commercial television station, or against any person acting under the authority of any such person, for the publication in any such newspaper or for the broadcasting by wireless transmission or by television from such station, as the case may be, of any statement which contravenes this Part of this Act unless—

- (a) the printer, publisher, proprietor or licensee had been warned by the Commissioner, or a person authorized in writing by the Commissioner, of the nature of the false representation

which would be conveyed by the statement, or any other statement substantially the same as that statement, and that its publication would contravene this Part; and

- (b) the printer, publisher, proprietor or licensee has on any one day after the receipt of the warning published or broadcast by wireless transmission or by television or authorized or permitted the publication or broadcasting of the statement or any such other statement in any issue of any newspaper printed or published by him or from any commercial broadcasting station or commercial television station of which he is the licensee, as the case may be.

(2) In subsection (1) of this section—

“licensee”, “commercial broadcasting station” and “commercial television station” have the meanings ascribed thereto in the Broadcasting and Television Act 1942 of the Commonwealth, or any Act of the Commonwealth amending or replacing that Act; and

“newspaper” includes any periodical publication.

8E. A person who contravenes or fails to comply with any provision of this Part of this Act commits an offence and is liable on conviction to a penalty of \$5 000.

Offences
against this
Part.

8F. In any proceedings for a contravention of subsection (1) of section 8 of this Act where it is proved that a statement as published contravened that subsection, the person who published the statement or caused it to be

Evidence
as to
knowledge of
contraven-
tion.

published shall be deemed to have had knowledge that the statement contravened that subsection at the time of publication unless he proves—

- (a) that at that time he had reasonable grounds to believe and did believe that the statement did not contravene that subsection; or
- (b) that—
- (i) he did not know; and
 - (ii) there were no grounds on which a reasonable person might have suspected; and
 - (iii) the exercise by him of reasonable diligence would not have ascertained.

that the statement contravened that subsection.

Defences
under this
Part.

8G. (1) In any proceedings for a contravention of a provision of this Part of this Act, it is a defence if the defendant establishes—

- (a) that the contravention in respect of which the proceeding was instituted was due to reasonable mistake;
- (b) that the contravention in respect of which the proceeding was instituted was due to reasonable reliance on information supplied by another person; or
- (c) that—
 - (i) the contravention in respect of which the proceeding was instituted was due to the act

or default of another person,
to an accident or to some
other cause beyond the
defendant's control; and

- (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

(2) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the court, entitled to rely on that defence unless he has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in his possession.

8H. Where a person has committed an offence against this Part of this Act, or would have committed an offence but for the fact that he could establish a defence under section 8G of this Act, and the contravention, or what would have constituted the contravention, was due to the act or default of another person—

Third parties
may be
prosecuted.

(a) that other person—

- (i) shall be guilty of an offence and liable to the same penalty as is provided for the first-mentioned offence;

and

- (ii) may be charged with and convicted of the offence by virtue of this section whether

or not proceedings are taken
against the first-mentioned
person;

and

- (b) the first-mentioned person shall be
a competent and compellable wit-
ness in any proceedings taken
against that other person in respect
of the offence.

Proceedings
under this
Part.

8J. Proceedings for an offence under this
Part of this Act shall not be commenced
except—

- (a) upon the complaint of the Commis-
sioner; or
- (b) with the consent in writing of the
Commissioner or of a person auth-
orized by the Commissioner, by
writing under his hand, to give such
consents. ”.

Part IIIA
inserted.

6. The principal Act is amended by inserting
before section 9 the heading and the section
following—

“ PART IIIA—INFORMATION.

Provision of
information.

8K. For the purposes of this Act—

- (a) goods that are attached to, or, wholly
or partly wrapped or wound with,
anything shall be deemed to be
packaged and the thing to which
they are attached, or with which they
are wrapped or wound, shall be
taken to be the packaging, covering
or container in which they are
packaged;

- (b) a person provides information in relation to goods—
 - (i) if he labels the goods;
 - (ii) if he labels any covering or container in which the goods are packaged;
 - (iii) if he places the information in any covering or container in which the goods are packaged;
 - (iv) if he packages the goods in any covering or container that is labelled;
 - (v) if he provides the information in any other manner whether that manner is or is not similar to any manner of providing information referred to in subparagraph (i), (ii), (iii) or (iv) of this paragraph;
- (c) a person shall be deemed to provide information in relation to goods if he supplies goods in respect of which information is provided (whether by himself or any other person) in the manner referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (b) of this section;
- (d) information shall be deemed to be provided in relation to goods or an interest in land if it would be taken by any reasonable person as referring directly or indirectly to the goods or interest, or a class of goods or interests that includes those goods or interests, whether or not those goods or interests are in existence at the time the information is provided;

requirements of this Act are carried out and its provisions observed and, subject to section 8J of this Act, to commence and conduct prosecutions for offences against this Act.

(3) Subsection (2) of this section shall not be construed as affecting the right of any person to prosecute, subject to section 8J of this Act, for any offence against this Act. ”.

8. The principal Act is amended by inserting after section 14 the section following—

Section 14A
inserted.

“ 14A. (1) In a proceeding under this Act in respect of any conduct engaged in by a body corporate—

Proceedings
against
a body
corporate.

(a) where it is necessary to establish the intention of the body corporate, it is sufficient to show that an employee or agent of the body corporate by whom the conduct was engaged in had that intention; and

(b) any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate or by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

(2) Where a body corporate commits an offence against this Act, every director and other officer and the manager of the body corporate shall be guilty of committing a like offence and liable to the same penalty as is provided for that offence unless he proves that

