

TRADE DESCRIPTIONS AND FALSE ADVERTISEMENTS.

No. 43 of 1973.

AN ACT to amend the Trade Descriptions and False Advertisements Act, 1936-1969.

[Assented to 18th October, 1973.]

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 Act Amendment Act, 1973*.

Short title
and citation.

(2) In this Act the Trade Descriptions and False Advertisements Act, 1936-1969 is referred to as the principal Act.

Reprinted in
Vol. 9 of the
Reprinted
Acts and
further
amended by
Acts Nos. 52
of 1956 and
20 of 1969.

(3) The principal Act as amended by this Act may be cited as the Trade Descriptions and False Advertisements Act, 1936-1973.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Long title
amended.

3. The long title to the principal Act is amended by deleting the words "in relation to Property for sale".

Section 1A
amended.

4. Section 1A of the principal Act is amended by deleting the passage "SCHEDULE—GOODS TO WHICH ACT APPLIES".

Section 2
amended.

5. Section 2 of the principal Act is amended—

(a) by deleting the definition “Chief Inspector” and substituting the following definition—

"Chief Inspector" has the same meaning as is given to that term in the Factories and Shops Act, 1963. ;

(b) by deleting the definition “Goods” and substituting the following definition—

"Goods" includes anything that is the subject of trade, manufacture or merchandise. ;

(c) by deleting the definition "Inspector" and substituting the following definition—

“Inspector” means—

(a) an inspector within the meaning of the Factories and Shops Act, 1963; and

(b) a Health Surveyor within the meaning of the Health Act, 1911. :

- (d) by adding after the definition "Retailer" the following definition—

"Services" includes, without limiting the generality of the expression, the rights or benefits that are to be provided under an agreement for—

- (a) the performance of work (otherwise than under contract) whether with or without the supply of goods;
 - (b) the provision of, or the use or engagement of, facilities for amusement, entertainment, recreation or instruction; or
 - (c) the conferring of rights or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction. ; and
- (e) by deleting the definition "To sell" and substituting the following definition—

"To sell" includes to exhibit, expose or have in possession for sale or for any purpose of advertisement, manufacture or trade, and inflections and derivatives of the verb "to sell" have correlative meanings. .

- 6. Section 4 of the principal Act is repealed. Section 4 repealed.
- 7. Section 4F of the principal Act is repealed. Section 4F repealed.
- 8. Section 5 of the principal Act is amended— Section 5 amended.
 - (a) by deleting the passage commencing with the word "sell" in line one of subsection (1), and ending with the passage "Act," in line two of paragraph (b), and substituting the passage "sell any goods that are declared, by the regulations, to be goods to which this section applies";

- (b) by deleting paragraph (i) of the proviso to subsection (1);
- (c) by substituting for the word “Act” in line two of paragraph (ii) of the proviso to subsection (1), the word “section”;
- (d) by substituting for the passage “for the purpose of paragraph (b) of this subsection” in lines one and two of paragraph (iii) of the proviso to subsection (1), the passage “declaring any goods to be goods to which this section applies,”;
- (e) by deleting paragraph (v) of the proviso to subsection (1); and
- (f) by repealing subsection (3).

**Section 8
amended.**

9. Section 8 of the principal Act is amended—

- (a) by repealing subsection (1) and substituting the following subsections—
- (1) (a) A person shall not publish or cause to be published any statement which is intended or is apparently intended to promote the sale, disposal or letting of any land or goods or to induce any other person to make use on payment of a fee or other consideration of any services and which—
- (i) is to his knowledge false or misleading in a material particular; or
- (ii) is to his knowledge likely to deceive or mislead any person in a material way.
- (b) For the purposes of this subsection but without limiting the generality of paragraph (a) thereof, a statement is misleading if—
- (i) the statement specifies an amount payable as portion of the consideration for goods, services or land offered for sale in the statement; and

- (ii) the statement does not contain the total consideration for which the goods, services or land may be obtained for cash.

(1a) A person shall not publish or cause to be published any statement, or do or cause to be done any act in relation to goods or services produced, manufactured, prepared or supplied by him which may reasonably be construed to indicate that the goods or services are produced, manufactured, prepared or supplied by any other person.

(1b) A person shall not, in the conduct of his trade or business, do or cause to be done any act in relation to goods produced, manufactured, prepared or sold by him that is likely to mislead any other person as to the purpose for which the goods are suitable. ;

- (b) by repealing paragraph (e) of subsection (2) and substituting the following paragraph—

(e) publicly announced by means of transmission of light or sound; ;

- (c) by repealing subsection (3) and substituting the following subsection—

(3) If in a proceeding against any person for publishing or causing to be published a statement in contravention of this section it is proved that the statement was in contravention of this section when published that person shall be deemed to have had knowledge that the statement contravened this section unless he proves—

- (a) that he took all reasonable precautions against committing the contravention; and

such printer has not amended the statement to the satisfaction of an inspector so that the statement no longer contravenes this section; ;

(vii) by deleting paragraph (c) of subsection (4) and substituting the following paragraph—

(c) in the case of a commercial broadcasting station or a commercial television station—

(i) the licensee of the station has been warned in writing by the Minister or the Chief Inspector of the contravention in the statement or any other statement substantially the same as the statement published by the station and that the publication thereof is an offence under this section; and

(ii) that licensee has not immediately withdrawn any such statements in contravention of this section from publication thereafter by that station. ;
and

(e) by adding after subsection (5) a subsection as follows—

(6) A person convicted of an offence against this section is liable to the following penalties—

- (a) for a first offence to a fine of not more than two hundred dollars or to imprisonment for six months or to both;
- (b) for a second offence to a fine of not less than two hundred dollars or more than five hundred dollars or imprisonment for twelve months or to both;
- (c) for a third or subsequent offence to a fine of not less than five hundred dollars or more than one thousand dollars or imprisonment for twelve months or to both.

Section 9
amended.

10. Section 9 of the principal Act is amended—

- (a) by repealing subsection (1); and
- (b) by deleting the words “relating to trade descriptions and false advertisements” in lines two and three of subsection (2).

Schedule
repealed.

11. The Schedule to the principal Act is repealed.