

# COMMERCE (TRADE DESCRIPTIONS)

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# Commerce (Trade Descriptions) Act 1905

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# Commerce (Trade Descriptions) Act 1905

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## TABLE OF AMENDMENTS

The Commerce (Trade Descriptions) Act 1905 No 16 was assented to on 8 December 1905 and commenced on 8 June 1906 (Commonwealth of Australia Gazette 1906 p 131). This Act is deemed to have applied in the Republic from 8 June 1906 (Laws Repeal and Adopting Act 1922, s 10 and Sch 1). The version reproduced here incorporates amendments up to and including Commonwealth of Australia Act 93 of 1966.

| Amending Legislation               | Certified   | Date of Commencement |
|------------------------------------|-------------|----------------------|
| Revised Written Laws Act 2021 No 7 | 1 June 2021 | 1 June 2021          |



An Act relating to Commerce with other Countries.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia and adapted by the Republic as follows:

## PART 1 — ADMINISTRATION

### 1 Short title and commencement

This Act may be cited as the *Commerce (Trade Descriptions) Act 1905* and came into effect 8 June 1906.

### 2 Incorporation

This Act shall be incorporated and read as one with the *Customs Act 2014*.

### 3 Definitions

In this Act:

**'False trade description'** means a trade description which, by reason of anything contained therein or omitted therefrom, is false or likely to mislead in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, which makes the description false or likely to mislead in a material respect;

**'Minister'** means the Minister for Finance;

**'Officer'** means an officer of Customs, and, in relation to exports, also includes an officer of the Department of Commerce and Agriculture, or any employee of the Department of Commerce and Agriculture, or any officer of a State engaged in the performance or execution for the Government of the Commonwealth of any work connected with the inspection or examination of goods in pursuance of this Act;

**'Secretary'** means the Secretary for Finance; and

**'Trade description'**, in relation to any goods, means any description, statement, indication, or suggestion, direct or indirect:

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

and includes a Customs entry relating to goods; and any mark which according to the custom of the trade or common repute is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act.

#### 4 **Application of trade description**

- (1) A trade description shall be deemed to be applied to goods if:
  - (a) it is applied to the goods themselves;
  - (b) it is applied to any covering, label, reel, or thing used in connection with the goods; or
  - (c) it is used in any manner likely to lead to the belief that it describes or designates the goods.
- (1A) A trade description which is required by the regulations to be applied to any goods shall be deemed to be applied to the goods if:
  - (a) it is applied to the goods themselves; or
  - (b) it is used in relation to the goods in the manner prescribed.
- (2) For the purpose of this Section, **‘covering’** includes, any stopper, glass, bottle, vessel, box, capsule, case, frame, or wrapper; and **‘label’** includes any band or ticket.



## **PART 2 — INSPECTION OF IMPORTS AND EXPORTS**

### **5 Inspection of imports and exports**

- (1) An officer may inspect and examine all prescribed goods which are imported, or which are entered for export or brought for export to any port or place or are in course of manufacture or preparation for export.
- (2) The officer may where practicable take samples of any goods inspected by him or her pursuant to this Section, and the samples so taken shall be dealt with as prescribed.
- (3) For the purposes of this Section, an officer may enter any ship, port or place, and may open any packages, and may do all things necessary to enable him or her to carry out his or her powers and duties under this Section.

### **6 Notice of intention to export**

Every person who intends to export any goods of a kind or class required under this Act to be inspected or examined by an officer, shall, if required to do so by regulation, before the goods are shipped, give notice, in accordance with the regulations, to the Customs, or to the Department of Commerce, Industry or Agriculture, of his or her intention to export the goods and of the place where the goods may be inspected.

Penalty: \$40.



## PART 3 — IMPORTS

### **7 Prohibition of imports not bearing prescribed trade description**

- (1) The regulations may prohibit the importation or introduction into the Republic of any goods unless there is applied to them a trade description of such character, relating to such matters, and applied in such manner, as is prescribed.
- (2) All goods imported in contravention of any regulation under this Section may be detained by the Chief Collector and may by direction of the Minister be seized as forfeited to the Republic.
- (3) The Chief Collector, or on appeal from him or her, the Minister, may in any case, and if in his or her opinion the contravention has not occurred either knowingly or negligently shall permit any goods which are liable to be or have been seized as forfeited under this Section to be delivered to the owner or importer upon security being given to the satisfaction of the Chief Collector that the prescribed trade description will be applied to the goods or that they will be forthwith exported.

(4) [subs (4) omitted by the Law Revision Commission under powers authorised by Act 10 of 2019]

### **8 Imported goods found in the Republic without prescribed trade description**

All imported goods to which a trade description is by the regulations required to be applied, and which are found in the Republic without the prescribed trade description, shall until the contrary is proved be deemed, subject to the regulations, to have been imported in contravention of the regulations.

### **9 Importation of falsely marked goods**

- (1) No person shall import any goods to which a false trade description is applied.

Penalty: \$200.

- (2) It shall be a defence to a prosecution for an offence against this Section if the defendant proves that he or she did not knowingly import the goods in contravention of this Section.

### **10 Forfeiture of falsely marked goods**

All goods to which any false trade description is applied are hereby prohibited to be imported, and shall if imported be forfeited to the Republic:

Provided that the Chief Controller, or on appeal from him or her the Minister, may, if he or she is satisfied that any goods which have been seized as forfeited under this Section were not knowingly imported in contravention of this Act, permit the importer to correct the false trade description, and may, when the correction has been made to his or her satisfaction, order the release of the goods, subject to the payment by the importer to the Customs of the expenses of the seizure, and the forfeiture shall be remitted.



## **PART 4 — EXPORTS**

### **11 Prohibition or exports not bearing the prescribed trade description**

- (1) The regulations may prohibit the exportation of any specified goods, unless there is applied to them a trade description of such character, relating to such matters, and applied in such manner, as is prescribed.
- (2) All such goods to which the prescribed trade description is not applied, which are exported or entered for export or put on board any ship or boat for export or brought to any port or place for export, may be detained by the Chief Collector of Customs or the Secretary, and may by direction of the Minister be seized as forfeited to the Republic.
- (3) Subject to the regulations the Secretary, or on appeal from him or her the Minister, may in any case, and if in his or her opinion the contravention has not occurred either knowingly or negligently shall permit any goods which are liable to be or have been seized as forfeited under this Section to be delivered to the owner or exporter, upon security being given to the satisfaction of the Secretary that the goods shall not be exported in contravention of the regulations.

### **12 Penalty for applying false trade description to exports**

No person shall:

- (a) knowingly apply any false trade description to any goods intended or entered for export or put on any ship or boat for export, or brought to any port or place for the purpose of export; or
- (b) knowingly export or enter for export or put on any ship or boat for export any goods to which a false trade description is applied.

Penalty: \$200.

### **13 Exportation of falsely marked goods**

All goods to which any false trade description is applied are hereby prohibited to be exported, and shall, if exported or entered for export or put on any ship or boat for export, or brought to any port or place for the purpose of export, be forfeited to the Republic:

Provided that the Secretary, or on appeal from him or her the Minister, may, if he or she is satisfied that the owner of any goods, which have been seized as forfeited under this Section did not knowingly act in contravention of this Act, permit the correction of the false trade description, and may, when the correction has been made to his or her satisfaction, order the release of the goods, subject to the payment by the exporter of the expenses of the seizure, and the forfeiture shall be remitted.

### **14 Marking of goods for export**

Any goods intended for export which have been inspected in pursuance of this Act may in manner prescribed be marked with the prescribed trade description.

**15 Application of Sections 7 and 11**

[s 15 omitted by the Law Revision Commission under powers authorised by Act 10 of 2019]

**16 Trade description disclosing trade secrets**

[s 16 omitted by the Law Revision Commission under powers authorised by Act 10 of 2019]

## PART 5 — MISCELLANEOUS

### 17 **Regulations**

The Cabinet 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 this Act, and particularly for the analysis of samples 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 stated in the certificate.

### 18 **Aiding or abetting offences**

[Repealed]

