

FACTORIES AND SHOPS (AMENDMENT) ACT.

Act No. 55, 1931.

George V,
No. 55, 1931.

An Act to include in the trade description of goods an indication of the country or place of origin; to provide for the trade description of certain goods; to make certain provisions as to altered and false trade description of goods, and as to false representations with respect to Royal Warrants and Government Departments; to amend the Factories and Shops Act, 1912; the Evidence Act, 1898, and certain other Acts; and for purposes connected therewith. [Assented to, 7th October, 1931.]

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 New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. **1.** (1) This Act may be cited as the "Factories and Shops (Amendment) Act, 1931."

(2) The Factories and Shops Act, 1912, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Factories and Shops Act, 1912-1931.

(4) This Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2.

2. The Principal Act is amended by inserting after section seventy-four the following new part:—

No. 55, 1931.
Amendment
of Act No.
39, 1912.
New Part IV.

PART IV.

TRADE DESCRIPTIONS.

75. (1) This Part of this Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State to the intent that where any provision of this Act or the application thereof to any person or circumstances is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected. Construction.

(2) Notwithstanding any provisions of this Act which may be construed to the contrary, but without affecting the generality of subsection one of this section, such provisions shall not impair freedom of trade, commerce, and intercourse among the States of the Commonwealth of Australia, and this Act shall be read and construed accordingly.

76. In this Part, unless the context or subject-matter otherwise indicates or requires,— Definitions.

“Alter,” “append,” and “sell” include cause to be altered, appended, or sold, as the case may be.

“Australia” includes any territory under the authority of the Commonwealth.

“Boots” includes shoes and other footwear.

“Commonwealth” means the Commonwealth of Australia.

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

“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 appended, and includes every alteration of a trade description whether by way of addition of, Goods Act,
1928 (Vic),
s. 86.

No. 55, 1931.

cf. 50 & 51
Vic., c. 28,
s. 3 (1).cf. Commerce
(Trade Des-
criptions)
Act, 1905.
(Cwth), s. 3.

addition, effacement, or otherwise, which makes the description false, or likely to mislead in a material aspect.

“Goods” means anything which is the subject of trade, manufacture, or merchandise.

“Inspector” means an inspector of factories and shops appointed under Part II of this Act.

“Label” includes band or ticket.

“Prescribed” means prescribed by this Part of this Act, or by any regulation made under this Part of this Act.

“Regulation” means a regulation made under this Part of this Act.

“Sell” includes exhibit, expose, or have in possession for sale, or for any purpose of advertisement, trade, or manufacture.

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

- (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 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 the 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) the goods being the subject of an existing patent, privilege, or copyright;

(b)

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

No. 55, 1931.

Trade descriptions.

77. (1) No person shall sell any goods to which this section applies unless there is conspicuously appended to the goods themselves, or if so prescribed, to any covering, label, reel, or thing used, or any placard required by the regulations to be used, in connection therewith, in such manner as is prescribed, the full name and complete address of the manufacturer and a trade description of such character and relating to such matters as is prescribed, and, if the goods were manufactured within the Commonwealth, the State or Territory of origin of the goods, and, if the goods were not manufactured within the Commonwealth, the country or place of origin of the goods.

Trade description to be appended to goods.
cf. Goods Act, 1928 (Vic.), s. 89.

(2) This section shall, as from the commencement of this Part of this Act, apply to furniture, bedding, boots, and clothing :

Provided that in respect of furniture, bedding, boots, or clothing in the possession of any person at the date of such commencement the Governor may from time to time by proclamation published in the Gazette, suspend the operation of this Part of this Act either generally, or in relation to particular furniture, bedding, boots, or clothing.

(3) The Governor may, from time to time by proclamation, published in the Gazette, specify any other goods and declare that this section shall apply to such goods as and from a date specified in the proclamation.

The Governor may in like manner revoke, amend, alter, or vary any such proclamation.

(4) The regulations shall not prescribe a trade description which discloses trade secrets of manufacture or preparation, except in any case where,

cf. Commerce (Trade Descriptions) Act, 1905 (C'with), s. 16.

No. 55, 1931.

Altered trade
description.
cf. Goods
Act, 1928
(Vic.), s. 20.

False trade
description.

Implied
warranty.
cf. *Ibid.*
s. 107.

Appending
trade
description.
cf. *Ibid.*
ss. 90 (2), 96.

where, on the ground that the disclosure is necessary for the protection of the health or well-being of the public, the Board of Health so recommends.

78. (1) No person being a manufacturer, dealer, or trader shall, except to the extent and in the manner prescribed, alter by effacement or otherwise any trade description which has been appended under or in compliance with any law of New South Wales or of the Commonwealth to any goods.

(2) No person shall sell any goods of which any trade description so appended has been altered in contravention of this Part of this Act.

79. No person shall append a false trade description to any goods, or sell any goods to which a false trade description is appended.

80. On the sale or in the contract for the sale of any goods to which a trade description is appended, the seller shall be deemed to warrant that the trade description has not been altered in contravention of this Part of this Act and is not a false trade description within the meaning of this Part of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to and accepted by the purchaser.

81. (1) A trade description shall be deemed to be appended to goods if—

- (a) it is appended to the goods themselves; or
- (b) it is appended 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; or
- (d) it is used, whether in an advertisement or catalogue or otherwise, in any manner in connection with or for the purposes of the sale of the goods.

(2) A trade description shall be deemed to be appended whether 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 by the regulations to be used in connection therewith.

(3)

(3) Nothing in this section shall effect any requirement of this Part of this Act or of any regulation respecting the appending of a trade description to certain goods. No. 55, 1931.

Offences.

82. Any person who—

- (a) sells or exposes or has in his possession for sale or any purpose of trade or manufacture any goods to which a trade description is not appended in compliance with the provisions of this Part of this Act; or
- (b) being a manufacturer, dealer, or trader, alters in contravention of this Part of this Act any trade description appended to any goods under or in compliance with any law of New South Wales or of the Commonwealth; or
- (c) sells or exposes or has in his possession for sale or any purpose of trade or manufacture any goods of which the trade description appended under or in compliance with any law of New South Wales or of the Commonwealth has been altered in contravention of this Part of this Act; or
- (d) appends any false trade description to any goods,

Offences with intent to defraud.
Goods Act, 1928 (Vic.), s. 91.

shall be guilty of an offence against this Part of this Act, unless he proves that he acted without intent to deceive or defraud.

83. Any person who sells or exposes or has in his possession for sale or any purpose of trade or manufacture any goods to which any false trade description is appended shall be guilty of an offence against this Part of this Act, unless he proves—

Sale with false trade description.
cf. Goods Act, 1928 (Vic.), No. 3694, s. 87

- (a) that having taken all reasonable precautions against committing an offence against this Part of this Act, he had at the time of the commission of the alleged offence no reason to suspect that the trade description was false; and

(b)

No. 55, 1931.

Offence in
course of
business.
cf. Goods
Act, 1923
(Vic.), No.
3694, s. 97.

- (b) that on demand made by or on behalf of the prosecutor, informant, or complainant, he gave all the information in his power with respect to the person from whom he obtained the goods; or
- (c) that otherwise he acted innocently and that the goods were held by him bona fide and without any fraudulent intention.

84. (1) Any person, who being in the ordinary course of his business employed on behalf of another person to alter a trade description appended to goods, or to append a trade description to goods—

- (a) alters in contravention of this Part of this Act any trade description which has been appended under or in compliance with any law of New South Wales or of the Commonwealth to any goods; or

(b) appends any false trade description to goods, shall be guilty of an offence against this Part of this Act, unless he proves—

- (i) that in the case which is the subject of the charge he was so employed by some person resident in Australia and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and
- (ii) that he took reasonable precautions against committing the offence charged; and
- (iii) that he had at the time of the commission of the alleged offence no reason to suspect that the alteration was in contravention of this Part of this Act or that the trade description was false, as the case may be; and
- (iv) that on demand made by or on behalf of the prosecutor, informant, or complainant, he gave all the information in his power with respect to the person on whose behalf the trade description was altered or appended.

(2) If by reason only of the defence mentioned in subsection one of this section any person is discharged from a prosecution under that subsection, he shall be liable to pay the costs thereof unless

unless he has given due notice to the prosecutor, informant, or complainant of his intention to rely on such defence. No. 55, 1931.

85. Any person who falsely represents that any goods are made by a person holding a Royal Warrant or for the service of His Majesty or of any Government department or have been tested or inspected by or on behalf of His Majesty or any Government department, shall be guilty of an offence against this Part of this Act and shall be liable on summary conviction to a penalty not exceeding twenty pounds. False representations as to Royal Warrant.
cf. Goods Act, 1929 (Vic.), s. 110.

86. (1) Any 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 against this Part of this Act, shall be deemed to have committed that offence and shall be punishable accordingly. Aiding and abetting.
cf. *Ibid.* s. 91 (2).

(2) Any person who, being within New South Wales, aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in the commission outside New South Wales of any act which, if committed in New South Wales, would be an offence against this Part of this Act, shall be deemed to be guilty of that offence and shall be punishable accordingly. cf. *Ibid.* s. 101.

87. Proceedings may be taken before any stipendiary or police magistrate, or any two or more justices of the peace, for an offence against this Part of this Act, by any person or by the duly appointed attorney of any person, or by an inspector acting with the authority of the Minister, and may be disposed of summarily. Who may prosecute.

88. No prosecution for an offence against this Part of this Act shall be commenced after the expiration of three years next after the commission of the offence or of one year next after the first discovery thereof by the informant, whichever expiration first happens. Period for prosecution.
cf. *Ibid.* No. 3694, s. 103.

No. 55, 1931.

Evidence.

cf. Goods
Act, 1928
(Vic.), s. 100.

89. In any prosecution for an offence against this Part of this Act—

- (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 the certificate of an analyst shall be sufficient evidence of the facts therein stated unless the defendant requires the analyst to be called as a witness.

Punishment.

cf. *Ibid.*
s. 103.

90. Any person who commits an offence against this Part of this Act where no other penalty or punishment is provided shall be liable—

- (a) upon summary conviction to imprisonment for a term not exceeding six months or to a penalty not exceeding fifty pounds, and, for a second offence, to imprisonment for a term not exceeding twelve months or 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 imprisonment for a term of two years or to a penalty not less than fifty pounds nor more than two hundred pounds.
- (b) in any case to forfeit to His Majesty the goods in relation to which the offence is committed.

Forfeiture of
goods.
cf. *Ibid.*
s. 92.

91. (1) Where in any prosecution for an offence against this Part of this Act the defendant is discharged therefrom, but it is proved that he exposed or had in his possession any goods for sale or any purpose of trade or manufacture in contravention of this Part of this Act the goods shall be liable to be forfeited to His Majesty as if the owner had been convicted of an offence against this Part of this Act in relation thereto.

(2) Any forfeiture under this section may be subject to a condition that it is not to be enforced if the owner gives security to the satisfaction of the Minister that the goods will not be sold in contravention of this Part of this Act or the regulations.

92. If the owner of any goods which if the owner thereof had been convicted would be liable to forfeiture under this Part of this Act is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a stipendiary 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 show cause to the contrary, may order such goods or any of them to be forfeited.

No. 55, 1931.

Goods of unknown owner.

cf. Goods Act, 1929 (Vic.), s. 102 (2).

93. (1) Any goods forfeited under this Part of this Act may be destroyed or otherwise disposed of in such manner as is prescribed in the regulations.

Disposal of forfeited goods. cf. *Ibid.* s. 34 (2).

(2) The court by which the same are forfeited may out of any proceeds which may be realised by the disposition of such goods (all marks and trade descriptions being first obliterated) award to any innocent party any loss he has sustained in dealing with such goods.

cf. *Ibid.* s. 102 (3).*Savings.*

94. Nothing in this Part of this Act—

- (a) shall exempt any person from any action, suit, or other proceeding which might but for the provisions of this Part 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 person in any prosecution for an offence against this Part of 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 or complainant has given full information as to his master.
- (d) shall affect the operation of section 49A.

Savings.

cf. *Ibid.* No. 3694, s. 109.

95. (1) Any inspector, in addition to the powers already conferred upon him by this Act—

- (a) may at any reasonable time enter any place where goods are manufactured or sold, or any place where he has reason to believe that goods are manufactured or sold ;
- (b) may inspect any goods in such place ;
- (c) shall, at the request of any person apparently in charge of such place or of any work carried on therein produce a certificate of his appointment as inspector ; and
- (d) may in any such place take any goods, whether manufactured or partly manufactured, paying a just price for the same ;
- (e) may on obtaining the authority of the Minister, institute a prosecution for any offence against this Part of this Act, or any breach of the regulations :

Provided that in a prosecution for any such breach or contravention, an authority to prosecute purporting to have been signed by the Minister shall be evidence of such authority without proof of the Minister's signature.

An inspector shall report to the Minister all offences against this Part of this Act, or breaches of the regulations which have come to his knowledge.

(2) A person who hinders or obstructs, or attempts to hinder or obstruct, any inspector in the exercise by him of the powers conferred by this Part of this Act shall be liable to a penalty of not less than five pounds nor more than twenty pounds.

Regulations.

Regulations.

96. (1) The Governor may make regulations not inconsistent with this Part of this Act prescribing all matters and things required or authorised by this Part of this Act to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part of this Act.

(2)

Factories and Shops (Amendment) Act.

475

(2) The regulations may prescribe a penalty not exceeding twenty pounds for any contravention thereof. No. 55, 1931.

- (3) The regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of publication, or from a later date to be specified in the regulations; and
 - (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given, at any time within fifteen sitting days after the regulations have been laid before each House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

3. The Principal Act is further amended—

- (a) by inserting at the end of section one the words and figures— Further amendment of Act No. 39, 1912.
Sec. 1.
(Short title.)

PART IV.

TRADE DESCRIPTIONS—ss. 75-96.

- (b) by inserting in paragraph (a) of the definition of "Factory" in section three after the word "sale" the words "and any office, building, or place in which less than four persons are so engaged and which the Governor declares to be a factory"; Sec. 3.
(Interpretation.)
- (c) (i) by inserting next after subsection two of section four the following new subsection:— Sec. 4.
(Application of Act.)

(2A) The Governor may by proclamation as aforesaid declare any office, building, or place in which less than four persons are engaged directly or indirectly in working at any handicraft or in preparing or manufacturing articles for trade or sale to be a factory for the purposes of this Act.

If

No. 55, 1931.

The declaration may be made with regard to a particular case or generally with regard to any industry specified in the proclamation.

- (ii) by inserting at the end of the same section the following new subsection :—

(4) Any proclamation made under this section shall—

- (a) be published in the Gazette;
- (b) take effect from the date of such publication, or from a later date specified in the proclamation;
- (c) be laid before both Houses of Parliament within fourteen sitting days if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing any proclamation or part thereof, the proclamation or part shall thereupon cease to have effect.

Sec. 6.
(Registration
of factories.)

- (d) (i) by omitting from subsection four of section six the words “or become void may be renewed by the occupier upon application in the form prescribed, and” and by inserting in lieu thereof the words “may be renewed by the occupier”;
- (ii) by omitting from subsection fifteen of the same section the words “first day of December” and by inserting in lieu thereof the words “thirty-first day of December in the preceding year”;
- (iii) by inserting next after subsection sixteen of the same section the following new subsections :—

(17) Any fee payable by an occupier in respect of the registration or the renewal of the registration of a factory may be sued

sued for and recovered as a debt by and in the name of the Minister by any person authorised by him.

No. 55, 1931.

In any proceedings the production of an authority purporting to be signed by the Minister shall, without proof of the signature, be evidence of the appointment of the person named therein to sue and that his authority to sue remains in force.

(18) If a fee is unpaid at the expiration of one month from the due date, the factory in respect of which the fee is payable shall be deemed to be an unregistered factory.

- (e) by omitting from subsection three of section thirty-nine the words "Chief Officer of Fire Brigades or some other officer of fire brigades, or other competent person appointed by him in that behalf" and inserting in lieu thereof the words "Board of Fire Commissioners of New South Wales";
- (f) by inserting in subsection one of section fifty-two after the word "and" the words "subject to Part IV of this Act."

Sec. 39.

(Fire escapes.)

Sec. 52.

(No prosecution without authority of Minister.)