

FACTORIES AND SHOPS
(AMENDMENT) ACT.

Act No. 11, 1935.

An Act to provide for the licensing of outdoor workers in the clothing trades; to limit the provisions of Part IV of the Factories and Shops Act, 1912-1931, relating to trade descriptions

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descriptions of goods to the trade description of bedding, including mattresses, pillows, bolsters, quilts, cushions, and upholstered furniture; to make certain further provisions as to false advertisements; to amend the Factories and Shops Act, 1912-1931; and for purposes connected therewith. [Assented to, 6th March, 1935.]

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:—

PART I.

PRELIMINARY.

Short title,
citation
and com-
mencement.

1. (1) This Act may be cited as the "Factories and Shops (Amendment) Act, 1935."

(2) The Factories and Shops Act, 1912-1931, 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, 1912-1935.

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

Amendment of
Act No. 39,
1912.
Part II.
New Divi-
sion 2A.

2. The Principal Act is amended—

(a) by inserting at the end of Division 2 of Part II the following new Division:—

DIVISION 2A.—*Outdoor Workers—Clothing Trades.*

Outdoor
workers in
clothing
trade to be
licensed.

19A. No work in the clothing trades of any description or class which if done or performed in a factory would be covered by any award for the time being in force under any Act or Commonwealth Act relating to industrial arbitration shall be done or performed outside a factory by any person for or on behalf of the occupier of a factory, or any trader who sells such clothing by wholesale or retail, unless such person holds a license as an outdoor worker.

19B.

19B. (1) The Industrial Registrar may grant such licenses to any persons who prove to his satisfaction that they are in necessitous circumstances, or that by reason of domestic ties, infirmity, old age, or any other sufficient reason (of which the Industrial Registrar shall be the sole judge) they are unable to work in factories.

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Licenses:
by whom
and to
whom
granted,
etc.

(2) Application for the issue or renewal of such license shall be made to the Industrial Registrar in the form and in the manner prescribed.

(3) Every such license shall be in the form prescribed and shall be granted upon such terms and conditions as may be determined by the Industrial Registrar, and shall, subject to the provisions of this Act, remain in force for one year from the date thereof, but may be renewed and on each renewal shall take effect for a further period of twelve months.

(4) The Industrial Registrar shall notify the industrial union concerned of the grant of such license together with the terms and conditions upon which such license was granted.

(5) Every license issued under this Act shall be held by the licensee subject to the provisions of this Act and shall be delivered up to the Industrial Registrar upon demand.

(6) Upon the loss or accidental destruction of any license, the Industrial Registrar may, if satisfied, issue a duplicate or substitute license.

(7) The issue or renewal of a license may be refused—

- (a) unless the applicant satisfies the Industrial Registrar that he is in all respects a fit and proper person to hold such license;
- (b) upon proof to the satisfaction of the Industrial Registrar of any matter which under other provisions of this Act would be a sufficient cause for suspension or cancellation of a license.

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(8) The Industrial Registrar shall keep a record of all persons licensed under this Act; and shall from time to time alter the entries in such record to the end that it shall be a correct record of the licenses for the time being in force and of the names and addresses and other particulars of the persons licensed.

(9) The license of any outdoor worker may be suspended or cancelled by the Industrial Registrar on being satisfied that the licensee is suffering from a communicable disease, or that he is not in all respects a fit and proper person to hold a license, or for any other sufficient reason, of which the Industrial Registrar shall be the sole judge.

19c. No licensed outdoor worker shall—

- (a) employ any other person or persons whatsoever in wholly or partly preparing or manufacturing articles of clothing or wearing apparel save and except members of the licensed outdoor worker's own family;
- (b) do any work inside a factory.

19d. The occupier of a factory shall not have at any one time more than one licensed outdoor worker to every ten indoor workers or fraction thereof except with the approval in writing of the Industrial Registrar.

19e. (1) Any inspector, in addition to the powers already conferred upon him by this Act, may at any reasonable times enter any premises where any licensed outdoor worker is employed for the purpose of inspecting the outdoor worker's license or obtaining information as to the name and address of the employer, and the price or rate paid or to be paid to the licensee for the work performed by him, and for the purpose abovementioned may ask any reasonable questions of the licensee; and every such licensee shall in reply to such questions give such information as he may possess to enable the inspector to carry out the purpose abovementioned.

(2)

Prohibition of employment of other persons by licensed outdoor workers, etc.

Restriction on employment of outdoor workers.

Powers of inspectors.

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(2) If any person obstructs an inspector in the exercise of his powers under this section, or fails when duly required to produce his license, he shall be liable to a penalty not exceeding five pounds.

19F. Any person who contravenes or fails to carry out any provision of this Division of this Part of this Act shall, where no other penalty is provided, be liable on summary conviction to a penalty not exceeding fifty pounds.

Penalty for contravention of provisions of Division.

19G. This Division of 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 Division or the application thereof to any person or circumstances is held invalid, the remainder of this Division or the application of such provision to other persons or circumstances shall not be affected.

Construction of Division.

(b) by inserting in section three after the definition of " Furniture " the following new definition:—

Sec. 3.
(Interpretation.)

" Industrial Registrar " means the Registrar appointed under the Industrial Arbitration Act, 1912, or any Act replacing that Act.

(c) by omitting from paragraph six of section nine the words " Part of this " wherever occurring;

Sec. 9.
(Powers of inspectors.)

(d) (i) by omitting from section seventeen the words " last preceding section " and by inserting in lieu thereof the words " section sixteen and for the purposes of Division 2A of this Part of this Act ";

Sec. 17.
(Occupier.)

(ii) by inserting in the same section after the words " the said section " the words " and the said Division ";

(e) by inserting at the end of section fifty-two the following new subsection:—

Sec. 52.
(No prosecution without consent of Minister.)

(3) The prosecutor may conduct his case himself or by his counsel, attorney or an agent duly authorised by him in writing.

(f)

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Sec. 62.

(Regulations.)

(f) by inserting in subsection one of section sixty-two next after paragraph (q) the following new paragraph:—

(r) to prescribe the form of outdoor workers' licenses which may be issued and the form of renewals of such licenses.

Sec. 1.

(Division into Parts.)

(g) by inserting in section one after the words and figures " Division 2.—Records—ss. 14–19 " the words and figures " Division 2A.—Outdoor workers—ss. 19A–19G ";

3. The Principal Act is further amended—

Further amendment of Act No. 39, 1912.

Sec. 76.

(Definitions.)

(a) (i) by omitting from section seventy-six the definition of " Boots " and by inserting in lieu thereof the following definition:—

" Bedding " includes mattresses, pillows, bolsters, quilts, cushions, but does not include sheets, pillowslips, blankets, rugs, or other bed-coverings which are not quilted.

(ii) by omitting from the same section the definition of " Covering ";

(iii) by omitting from the definition of " False trade description " in the same section the word " goods " and by inserting in lieu thereof the words " bedding or upholstered furniture ";

(iv) by omitting from the same section the definition of " Goods ";

(v) by omitting from the definition of " Sell " in the same section the words " trade, or manufacture " and by inserting in lieu thereof the words " or trade ";

(vi) by omitting from the same section the definition of " Trade description " and by inserting in lieu thereof the following definition:—

" Trade description " in relation to any bedding or upholstered furniture means any description, statement, indication, or suggestion, direct or indirect, as to the quality, purity or weight

weight of the bedding or upholstery and as to the material or ingredients of which the bedding or upholstery is composed.

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- (b) by omitting section seventy-seven and by inserting in lieu thereof the following new section:—
- Substituted
s. 77.
77. (1) No person shall sell any bedding or upholstered furniture unless there is conspicuously appended thereto, or if so prescribed, to any covering, label or thing used in connection therewith, in such manner as is prescribed, a trade description of such character and relating to such matters as is prescribed.
- Trade
description
to be
appended to
bedding.
- (2) The regulations shall not prescribe a trade description which discloses trade secrets of manufacture or preparation, except in any case where, on the ground that the disclosure is necessary for the protection of the health or well-being of the public, the Minister so recommends.
- (c) by omitting from section seventy-eight the word “goods” wherever occurring and by inserting in lieu thereof the words “bedding or upholstered furniture”;
- Sec. 78.
(Altered trade
description.)
- (d) by omitting from section seventy-nine the word “goods” wherever occurring and by inserting in lieu thereof the words “bedding or upholstered furniture”;
- Sec. 79.
(False trade
description.)
- (e) by omitting section eighty;
- Sec. 80.
(Implied
warranty.)
- (f) (i) by inserting at the commencement of subsection one of section eighty-one the words “For the purposes of section seventy-nine”;
- Sec. 81.
(Appending
trade
descriptions.)
- (ii) by omitting from paragraph (a) of subsection one of the same section the words “goods themselves” and by inserting in lieu thereof the words “bedding or upholstered furniture itself”;
- (iii) by omitting from subsection two of the same section the words “or to any placard required by the regulations to be used”;
- (iv)

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(iv) by omitting from the same section the word "goods" wherever occurring and by inserting in lieu thereof the words "bedding or upholstered furniture";

(v) by omitting from the same section the word "reel" wherever occurring;

Substituted section.

(g) by omitting section eighty-two and by inserting in lieu thereof the following new section:—

Offences with intent to defraud.

82. (1) Any person who sells, exhibits, exposes or has in his possession for sale or any purpose of advertisement or trade any bedding or upholstered furniture to which a trade description is not appended in compliance with the provisions of this Part of this Act, shall be guilty of an offence against this Part of this Act.

(2) Any person who—

(a) being a manufacturer, dealer, or trader, alters in contravention of this Part of this Act any trade description appended to any bedding or upholstered furniture under or in compliance with any law of New South Wales or of the Commonwealth; or

(b) sells, exhibits, exposes or has in his possession for sale or any purpose of advertisement or trade, any bedding or upholstered furniture 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

(c) appends any false trade description to any bedding or upholstered furniture,

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

Sec. 83.
(Sale with false trade description.)

(h) (i) by omitting from section eighty-three the word "or" where firstly occurring and by inserting in lieu thereof the word "exhibits"; (ii)

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- (ii) by omitting from the same section the words “ trade or manufacture ” and by inserting in lieu thereof the words “ advertisement or trade ”; No. 11, 1935.
- (iii) by omitting from the same section the word “ goods ” wherever occurring and by inserting in lieu thereof the words “ bedding or upholstered furniture ”;
- (iv) by omitting paragraph (c) of the same section;
- (i) (i) by omitting from section eighty-four the word “ goods ” wherever occurring and by inserting in lieu thereof the words “ bedding or upholstered furniture ”; Sec. 84.
(Offences in course of business.)
- (ii) by omitting subsection two of section eighty-four;
- (j) by omitting from section eighty-five the word “ goods ” and by inserting in lieu thereof the words “ bedding or upholstered furniture ”; Sec. 85.
(False representation as to Royal Warrant.)
- (k) by omitting subsection two of section eighty-six; Sec. 86.
(Aiding and abetting.)
- (l) (i) by inserting in section eighty-seven after the word “ person ” where firstly occurring the words “ whose rights are impaired ”; Sec. 87.
(Who may prosecute.)
- (ii) by inserting in the same section before the word “ person ” where secondly occurring the word “ such ”; Sec. 88.
(Period for prosecution.)
- (m) by omitting section eighty-eight; Sec. 89.
(Evidence.)
- (n) (i) by omitting paragraph (a) of section eighty-nine;
- (ii) by omitting from paragraph (b) of the same section the word “ an ” and by inserting in lieu thereof the words “ the Government ”;
- (iii) by omitting from the same paragraph the words “ the analyst ” and by inserting in lieu thereof the words “ the Government Analyst or one of his officers ”;
- (o)

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Sec. 90.
(Punish-
ment.)

Secs. 91, 92,
93.
(Forfeiture of
goods.)

Sec. 95.
(Powers of
inspec-
tors.)

- (o) by omitting from section ninety all words after the words " fifty pounds " where firstly occurring;
- (p) by omitting sections ninety-one, ninety-two and ninety-three;
- (q) (i) by omitting from subsection one of section ninety-five the words " in addition to the powers already conferred upon him by this Act ";
- (ii) by omitting from paragraph (a) of the same subsection the words " goods are " wherever occurring and by inserting in lieu thereof the words " bedding or upholstered furniture is ";
- (iii) by omitting from paragraphs (b) and (d) of the same subsection the word " goods " wherever occurring and by inserting in lieu thereof the words " bedding or upholstered furniture."

Further
amendment of
Act No. 39,
1912.

New Part V.

4. The Principal Act is further amended—

- (a) by inserting after Part IV the following new Part:—

PART V.**FALSE ADVERTISEMENTS.**

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

- (a) is intended or apparently intended by such person or any other person to promote the sale or disposal of any goods (which term includes anything that is the subject of trade, manufacture or merchandise); and
- (b) is to his knowledge false in any material particular,

shall be liable on summary conviction to a penalty not exceeding one hundred pounds.

(2)

Penalty for
publishing
or causing
to be pub-
lished any
false
advertis-
ment to
promote
the sale of
goods.

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

- (a) inserted in any newspaper or any other publication printed and published in New South Wales; or
- (b) publicly exhibited—
 - (i) in, on, over or under any building, vehicle or place (whether or not a public place and whether on land or water); or
 - (ii) in the air in view of persons being or passing in or on any street or 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.
- (d) broadcast by wireless transmission.

(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 who published the statement or caused 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 that having taken all reasonable precautions against committing an offence under this section he had reasonable grounds to believe and did believe that the statement was true and had no reason to suspect that the statement was false.

(4) Every body corporate shall be liable for an offence under this section as if such body corporate were a private person and shall be subject to the same penalties as if it were an individual.

(5)

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(5) 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 section shall be deemed to have committed that offence and shall be punishable accordingly.

(6) Where two or more persons commit or knowingly authorise or permit the commission of any offence under this section 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.

(7) No prosecution shall be instituted against the printer, publisher, or proprietor of any newspaper printed and published in New South Wales or against any person acting under the authority of the same for the publication in any such newspaper of any statement in contravention of this section unless—

- (a) such printer, publisher or proprietor has been warned by an 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; and
- (b) such printer, publisher or proprietor has on any one 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 New South Wales printed or owned by him (as the case may be); and
- (c) the consent of the Minister to the prosecution is first obtained.

(8) No prosecution shall be instituted against the seller or distributor of any newspaper for the publication in such newspaper of any statement in contravention of this section unless the consent of the Minister to the prosecution is first obtained.

(9)

(9) In this section "newspaper" includes any periodical publication.

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

(11) This section shall be read and construed as in aid of and not in derogation from any enactment or law relating to false or misleading advertisements or other statements.

(b) by inserting in subsection one of section fifty-two after the words and figures "Part IV" the words and figures "and Part V";

Sec. 52. (Prosecutions.)

(c) by inserting at the end of section one the words and figures "Part V—False Advertisements—s. 97."

Sec. 1. (Division into Parts.)
