



Commerce (Trade Descriptions) Act 1905

Act No. 16 of 1905 as amended

This compilation was prepared on 9 July 2008
taking into account amendments up to Act No. 73 of 2008

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act relating to Commerce with other Countries

Part I—Preliminary

1 Short title and commencement [see Note 1]

This Act may be cited as the *Commerce (Trade Descriptions) Act 1905* and shall commence on a day to be fixed by proclamation not being earlier than six months after the passing of this Act.

1A General administration of Act in relation to imports

The Chief Executive Officer of Customs has the general administration of this Act in so far as it relates to imports.

2 Incorporation

This Act shall be incorporated and read as one with the *Customs Act 1901*.

Note: Chapter 2 of the *Criminal Code* applies to this Act in the way described in section 5AA of the *Customs Act 1901*.

3 Interpretation

In this Act, unless the contrary intention appears:

CEO means the Chief Executive Officer of Customs.

Officer means an officer of Customs.

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; or
- (b) as to the country or place in or at which the goods were made or produced; or
- (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; or

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- (d) as to the mode of manufacturing, producing, selecting, packing, or otherwise preparing the goods; or
- (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.

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.

4 Application of trade description

- (1) A false trade description shall be deemed to be applied to goods if:
 - (a) it is applied to the goods themselves; or
 - (b) it is applied to any covering, label, reel, or thing used in connexion 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) **Covering** includes any stopper, glass, bottle, vessel, box, capsule, case, frame, or wrapper; and **label** includes any band or ticket.

Part II—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 wharf 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, wharf 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.
- (4) Without limiting the generality of the power conferred on the CEO under subsection 4(4) of the *Customs Administration Act 1985*, the CEO may give directions in writing under that subsection concerning:
 - (a) the circumstances in which the powers under this section may be exercised; and
 - (b) the officers of Customs who are entitled to exercise those powers; and
 - (c) the manner and frequency of reporting to the CEO concerning the exercise of those powers.
- (5) A direction given for the purposes of subsection (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

6 Notice of intention to export

- (1) 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

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shipped, give notice, in accordance with the regulations, to the Customs of his or her intention to export the goods and of the place where the goods may be inspected.

Penalty: \$1,000.

- (2) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance of the offence, that the notice required to be given is notice in accordance with the regulations.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Part III—Imports

7 Prohibition of imports not bearing prescribed trade description

- (1) The regulations may prohibit the importation or introduction into Australia 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) Subject to subsection (3), goods imported in contravention of any regulation made for the purposes of subsection (1) are forfeited to the Crown.
- (3) If the CEO is satisfied that the contravention was not intentional or reckless:
 - (a) the CEO may, by notice in writing given to the owner or importer of the goods concerned, require the owner or importer:
 - (i) to apply the prescribed trade description; or
 - (ii) to export the goods;within a period specified in the notice; and
 - (b) if the owner or importer complies with the notice, subsection (2) does not apply in respect of the goods.
- (4) No regulations made for the purposes of this section shall take effect until after the expiration of not less than three months from notification in the *Gazette*.

8 Imported goods found in Australia 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 Australia 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) A person shall not import any goods to which a false trade description is applied.

Penalty: \$10,000.

- (2) In a prosecution for an offence against subsection (1) it is a defence if the defendant proves that he or she did not intentionally import the goods in contravention of that subsection.

9A Imported goods found in Australia with false trade description

All imported goods found in Australia which bear a false trade description shall, until the contrary is proved, be deemed to have been imported in contravention of this Act.

10 Forfeiture of falsely marked goods

- (1) Goods to which a false trade description is applied are prohibited to be imported.
- (2) Subject to subsection (3), goods imported in contravention of subsection (1) are forfeited to the Crown.
- (3) If the CEO is satisfied that the contravention was not intentional or reckless:
- (a) the CEO may, by notice in writing given to the owner or importer of the goods concerned, require the owner or importer to correct the false trade description within a period specified in the notice; and
 - (b) if the owner or importer complies with the notice, subsection (2) does not apply in respect of the goods.

Part IV—Exports

10A Application of Part

This Part does not apply in relation to goods that are prescribed goods within the meaning of the *Export Control Act 1982*.

11 Prohibition of exports not bearing the prescribed trade description

- (1) The regulations may prohibit the exportation 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) Subject to subsection (3), goods to which the prescribed trade description has not been applied that are entered for export, put on board any ship for export or brought to any wharf or place for export, are forfeited to the Crown.
- (3) If the CEO is satisfied that the entry for export, putting on board a ship for export, or bringing to a wharf or place for export, of goods to which the prescribed trade description had not been applied was not intentional or reckless:
 - (a) the CEO may, by notice in writing given to the owner or exporter of the goods concerned, require the owner or exporter:
 - (i) to apply the prescribed trade description to the goods before the exportation of the goods and within a period specified in the notice; or
 - (ii) to withdraw that entry, to remove the goods from that ship, or to remove the goods from that wharf or place, as the case requires, within the period so specified; and
 - (b) if the owner or exporter complies with the notice, subsection (2) does not apply in respect of the goods.

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12 Penalty for applying false trade description to exports

- (1) No person shall:
 - (a) intentionally 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 wharf or place for the purpose of export; or
 - (b) intentionally export or enter for export or put on any ship or boat for export any goods to which a false trade description is applied.
- (2) A person who contravenes subsection (1) is guilty of an offence and is punishable on conviction by a fine not exceeding \$10,000.

13 Exportation of falsely marked goods

- (1) Goods to which any false trade description is applied are prohibited to be exported.
- (2) Subject to subsection (3), goods to which a false trade description has been applied that are entered for export, put on board any ship for export or brought to any wharf or place for export, are forfeited to the Crown.
- (3) If the CEO is satisfied that entry for export, putting on board a ship for export or bringing to a wharf or place for export, of goods to which a false trade description has been applied was not intentional or reckless:
 - (a) the CEO may, by notice in writing given to the owner or exporter of the goods concerned, require the owner or exporter:
 - (i) to correct the false trade description before the exportation of those goods and within a period specified in the notice; or
 - (ii) to withdraw that entry, to remove the goods from that ship, or to remove the goods from that wharf or place, as the case requires, within the period so specified; and
 - (b) if the owner or exporter complies with the notice, subsection (2) does not apply in respect of the goods.

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.

Part V—Miscellaneous

15 Review of decisions

- (1) Applications can be made to the Administrative Appeals Tribunal for review of decisions of the CEO under subsection 7(3), 10(3), 11(3) or 13(3).
- (2) In this section:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Note: Subsection 3(3) of the *Administrative Appeals Tribunal Act 1975* extends the ordinary meaning of decision.

16 Trade description disclosing trade secrets

The regulations under sections seven and eleven of this Act shall not prescribe a trade description which discloses trade secrets of manufacture or preparation, unless in the opinion of the Governor-General the disclosure is necessary for the protection of the health or welfare of the public.

17 Regulations

The Governor-General 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 therein stated.

Table of Acts**Notes to the *Commerce (Trade Descriptions) Act 1905*****Note 1**

The *Commerce (Trade Descriptions) Act 1905* as shown in this compilation comprises Act No. 16, 1905 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 6 April 2001 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Commerce (Trade Descriptions) Act 1905</i>	16, 1905	8 Dec 1905	8 June 1906 (see <i>Gazette</i> 1906, p. 131)	
<i>Commerce (Trade Descriptions) Act 1926</i>	37, 1926	11 Aug 1926	11 Aug 1926	—
<i>Commerce (Trade Descriptions) Act 1930</i>	15, 1930	18 July 1930	18 July 1930	—
<i>Commerce (Trade Descriptions) Act 1933</i>	13, 1933	24 July 1933	24 July 1933	—
<i>Statute Law Revision Act 1950</i>	80, 1950	16 Dec 1950	31 Dec 1950	Ss. 16 and 17
<i>Statute Law Revision (Decimal Currency) Act 1966</i>	93, 1966	29 Oct 1966	1 Dec 1966	—
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
<i>Statute Law Revision Act 1981</i>	61, 1981	12 June 1981	Part VIII (ss. 22, 23): 12 June 1981 (a)	S. 23(2)
<i>Commerce (Trade Descriptions) Amendment Act 1981</i>	151, 1981	26 Oct 1981	26 Oct 1981	—
<i>Export Control (Miscellaneous Amendments) Act 1982</i>	48, 1982	9 June 1982	1 Jan 1983 (see s. 2 and <i>Gazette</i> 1982, No. G48)	—
<i>Customs Administration (Transitional Provisions and Consequential Amendments) Act 1985</i>	39, 1985	29 May 1985	10 June 1985 (see s. 2 and <i>Gazette</i> 1985, No. S194)	S. 4

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Customs Administration (Transitional Provisions and Consequential Amendments) Act 1986</i>	10, 1986	13 May 1986	13 May 1986	Ss. 2(2) and 4
<i>Industry, Technology and Commerce Legislation Amendment Act 1992</i>	168, 1992	11 Dec 1992	Part 5 (ss. 14, 15): 30 July 1975 Remainder: Royal Assent	—
<i>Customs, Excise and Bounty Legislation Amendment Act 1995</i>	85, 1995	1 July 1995	Schedule 3 (items 1–7): 1 July 1995 (b) Ss. 18, 20 and Schedule 9 (items 48–50): Royal Assent (b)	Ss. 18 and 20
<i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 7: (c)	S. 4(1) and (2) [see Table A]
<i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 4 (items 160–164): 4 July 2008	—

Act Notes

- (a) The *Commerce (Trade Descriptions) Act 1905* was amended by Part VIII (sections 22 and 23) only of the *Statute Law Revision Act 1981*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (b) The *Commerce (Trade Descriptions) Act 1905* was amended by Schedule 3 (items 1–7) and Schedule 9 (items 48–50) only of the *Customs, Excise and Bounty Legislation Amendment Act 1995*, subsections 2(1) and (5) of which provide as follows:
- (1) Subject to subsections (2), (3), (4), (5) and (6), this Act commences on the day on which it receives the Royal Assent.
 - (5) Schedules 2 and 3, items 1, 26 to 45, 49 to 53 and 56 and 67 of Schedule 4, Schedule 6, items 6 to 11 of Schedule 7 and Schedules 8 and 10 commence on 1 July 1995.
- (c) The *Commerce (Trade Descriptions) Act 1905* was amended by Schedule 7 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
 - (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part I	
Heading to Part I	ad. No. 216, 1973
Heading preceding s. 1	rep. No. 216, 1973
S. 1A	ad. No. 39, 1985 am. No. 85, 1995
Note to s. 2	ad. No. 24, 2001
S. 3	am. No. 15, 1930; No. 13, 1933; No. 80, 1950; No. 216, 1973; No. 48, 1982; No. 85, 1995
S. 4	am. No. 15, 1930
Part II	
Heading to Part II	ad. No. 216, 1973
Heading preceding s. 5	rep. No. 216, 1973
S. 5	am. No. 15, 1930; No. 85, 1995; No. 73, 2008
S. 6	am. No. 15, 1930; No. 13, 1933; No. 80, 1950; No. 93, 1966; No. 216, 1973; No. 48, 1982; No. 168, 1992; No. 24, 2001; No. 73, 2008
Part III	
Heading to Part III	ad. No. 216, 1973
Heading preceding s. 7	rep. No. 216, 1973
S. 7	am. No. 15, 1930; No. 216, 1973; No. 10, 1986; No. 85, 1995
S. 8	am. No. 15, 1930
S. 9	am. No. 93, 1966 rs. No. 216, 1973 am. No. 168, 1992; No. 24, 2001; No. 73, 2008
S. 9A	ad. No. 15, 1930
S. 10	am. No. 216, 1973; No. 10, 1986; No. 85, 1995 rs. No. 85, 1995
Part IV	
Heading to Part IV	ad. No. 216, 1973
S. 10A	ad. No. 48, 1982
Heading preceding s. 11	rep. No. 216, 1973
S. 11	am. No. 15, 1930; No. 13, 1933; No. 80, 1950; No. 216, 1973; No. 48, 1982; No. 85, 1995
S. 12	am. No. 93, 1966; No. 151, 1981; No. 48, 1982; No. 168, 1992; No. 24, 2001
S. 13	am. No. 15, 1930; No. 13, 1933; No. 80, 1950; No. 216, 1973; No. 48, 1982; No. 85, 1995 rs. No. 85, 1995
Part V	
Heading to Part V	ad. No. 216, 1973

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

<u>Provision affected</u>	<u>How affected</u>
S. 15.....	am. No. 37, 1926 rep. No. 15, 1930 ad. No. 61, 1981 am. No. 48, 1982; No. 10, 1986; No. 85, 1995 rs. No. 85, 1995
Heading preceding s. 17	rep. No. 216, 1973
S. 18.....	rep. No. 80, 1950

Table A

Application, saving or transitional provisions

Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001 (No. 24, 2001)

4 Application of amendments

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.