Commerce (Trade Descriptions) Act 1905

No. 16, 1905

Compilation No. 8

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This compilation includes a commenced amendment made by Act No. 10, 2015

Prepared by the Office of Parliamentary Counsel, Canberra

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About this compilation

This compilation

This is a compilation of the *Commerce (Trade Descriptions) Act 1905* that shows the text of the law as amended and in force on 5 March 2016 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to Commerce with other Countries

Part I—Preliminary

1 Short title and commencement

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 Comptroller-General 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:

Comptroller-General of Customs means the person who is the Comptroller-General of Customs in accordance with subsection 11(3) or 14(2) of the *Australian Border Force Act 2015*.

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

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(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

(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 an import 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

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(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.

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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) The Comptroller-General of Customs may, by writing, give directions 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 Comptroller-General of Customs concerning the exercise of those powers.

(5) A direction given for the purposes of subsection (4) is a legislative instrument.

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 shipped, give notice, in accordance with the regulations, to an

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officer 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*.

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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 Comptroller-General of Customs is satisfied that the contravention was not intentional or reckless:

(a) the Comptroller-General of Customs 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.

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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 Comptroller-General of Customs is satisfied that the contravention was not intentional or reckless:

(a) the Comptroller-General of Customs 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.

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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 Comptroller-General of Customs 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 Comptroller-General of Customs 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 Comptroller-General of Customs 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 Comptroller-General of Customs 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

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(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.

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Part V—Miscellaneous

15 Review of decisions

(1) Applications can be made to the Administrative Appeals Tribunal for review of decisions of the Comptroller-General of Customs 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.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

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

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Administration (Transitional Provisions and Consequential Amendments) Act 1986	10, 1986	13 May 1986	13 May 1986 (s 2(1))	s 2(2) and 4
Industry, Technology and Commerce Legislation Amendment Act 1992	168, 1992	11 Dec 1992	Part 5 (s 14, 15): 30 July 1975 (s 2(2)) Remainder: 11 Dec 1992 (s 2(1))	—
Customs, Excise and Bounty Legislation Amendment Act 1995	85, 1995	1 July 1995	Sch 3 (items 1–7): 1 July 1995 (s 2(5)) s 18, 20 and Sch 9 (items 48–50): 1 July 1995 (s 2(1) item 2(1))	s 18 and 20
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1), (2) and Sch 7: 24 May 2001 (s 2(1)(a))	s 4(1) and (2)
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch (items 160–164): 4 July 2008 (s 2(1) item 64)	—
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 3 (items 67, 348, 349): 5 Mar 2016 (s 2(1) item 2)	Sch 3 (items 348, 349)
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 2 (items 2, 3, 8), Sch 5 (items 24-26), Sch 6 (items 18-22) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 2 (item 8), Sch 5 (item 26), Sch 6 (item 22) and Sch 9

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Endnote 4—Amendment history

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; No 41, 2015
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; No 41, 2015
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; No 10, 2015; No 41, 2015
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; No 41, 2015
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; No 41, 2015
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
	am No 41, 2015

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Endnote 4—Amendment history

Provision affected	How affected
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; No 41, 2015
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
	am No 41, 2015
Part V	
Heading to Part V	ad. No. 216, 1973
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
	am No 41, 2015
Heading preceding s. 17	rep. No. 216, 1973
s. 18	rep. No. 80, 1950

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