

No. 4501.

An Act to amend the Law relating to Dealings in Goods.

[29th November, 1937.]

BE it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

Short title
construction
and citation.
Nos. 3694, 4408.

1. (1) This Act may be cited as the *Goods Act 1937* and shall be read and construed as one with the *Goods Act 1928* (hereinafter called the Principal Act) and the Act amending the same which Acts and this Act may be cited together as the Goods Acts.

Commencement.

(2) This Act shall come into operation on a day to be fixed by proclamation by the Governor in Council published in the *Government Gazette*.

New Part
substituted for
No. 3694
Part V.

2. For Part V. of the Principal Act there shall be substituted the following Part :—

Comp. (N.S.W.)
1931 No. 55
s. 2, 1935
No. 11 s. 3.
Interpretation.
Comp. No. 3694
ss. 86, 88.

“PART V.—MERCHANDISE MARKS.

86. In this Part unless inconsistent with the context or subject-matter—

“Covering.”

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

“False trade description.”

“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 or in connexion with which it is used, 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.

“Goods”

- “Goods” means anything which is the subject of trade manufacture or merchandise. “Goods.”
- “Inspector” means— “Inspector.”
- (a) any inspector of factories and shops under the Factories and Shops Acts; Nos. 3677 &c.
- (b) any inspector under the Health Acts; Nos. 3697 &c.
- (c) any inspector under the Licensing Acts; or Nos. 3717 &c.
- (d) any person authorized in writing by the Minister (whether generally or in any particular case or in respect of any particular class of goods) to act as an inspector for the purposes of this Part.
- “Label” includes band or ticket. “Label.”
- “Prescribed” means prescribed by the regulations. “Prescribed.”
- “Regulations” means regulations made under this Part or any corresponding previous enactment. “Regulations.”
- “Sell” includes expose or have in possession for sale or for any purpose of trade or manufacture. “Sell.”
- “Trade description” means any description statement indication or suggestion direct or indirect as to— “Trade description.”
- (a) the nature quality purity number quantity class grade measure size gauge or weight of any goods;
- (b) the price from which any goods have been reduced;
- (c) the country or place in or at which any goods or any portions or constituents thereof were made or produced;
- (d) the manufacturer or producer of any goods or the person by whom they were selected packed graded or in any way prepared for the market;
- (e) the mode of manufacturing producing selecting packing grading or otherwise preparing any goods; or
- (f) the

(f) the material or ingredients of which any goods are composed or from which they are derived—

and includes a newspaper advertisement relating to goods and the use of any figure word initials or mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters.

Certain goods not to be sold unless prescribed particulars as to quality, composition &c. attached thereto.

87. (1) No person shall sell any goods to which this section applies unless there is applied to such goods (or, if so prescribed, to any covering label reel or thing used in connexion therewith) in the manner prescribed a trade description containing such particulars as are prescribed relating to the quality purity or weight of the goods or the material or ingredients of which the goods are composed.

Application of section.

(2) The goods to which this section applies are bedding (including mattresses, pillows, bolsters, quilts, cushions, blankets and rugs) upholstered furniture artificial or imitation leather and such articles of wearing apparel (including boots and shoes) as are specified for the purposes of this section in a proclamation of the Governor in Council published in the *Government Gazette*.

Defence.
Comp. No.
3694
ss. 87 (2) (c), 97.

(3) In any prosecution for contravening or failing to comply with any of the provisions of this section, if the defendant proves that the goods with respect to which the offence was committed were manufactured in or imported into Victoria before the commencement of the *Goods Act 1937* and that such goods were held by him *bonâ fide* and without any fraudulent intention, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred on behalf of the prosecution unless he has given due notice to the informant that he will rely on such defence.

Certain goods not to be sold unless country of origin indicated thereon.
Ib. s. 89.

88. (1) No person shall sell any goods to which this section applies unless there is applied to such goods (or, if so prescribed, to any covering label reel or thing used in connexion therewith) in the manner prescribed a trade description of such character as is

prescribed

prescribed indicating the country or place in or at which the said goods or such portions or constituents thereof as are prescribed were made or produced.

(2) This section applies to any goods specified for the purposes of this section or any corresponding previous enactment in a proclamation of the Governor in Council published in the *Government Gazette*.

Application of section.

(3) This section does not apply to any goods or portions or constituents thereof aforesaid which were made or produced within the Commonwealth of Australia.

89. (1) No person shall apply a false trade description to any goods or sell any goods to which a false trade description is applied.

False trade descriptions.
Comp. No. 3694
s. 87 (1)
(d), (2).

(2) For the purposes of this section a false trade description shall be deemed to be applied to any goods if—

When false trade description deemed to be applied.
Ib. ss. 90 (2), 96.

- (a) it is applied to woven into impressed on or otherwise worked into or annexed or affixed to the goods or any covering label reel or thing used in connexion therewith ;
- (b) it is used in any manner likely to lead to the belief that it describes or designates the goods ; or
- (c) it is used, whether in an advertisement or catalogue or otherwise, in any manner in connexion with or for the purposes of the sale of the goods.

90. Every 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 liable to a penalty of not more than Fifty pounds.

False representation as to Royal Warrant, &c.
Ib. s. 110.

91. (1) In the execution of this Part any inspector may at any reasonable time—

Power to inspectors to enter, inspect goods and take samples.

- (a) enter on any premises ;
- (b) examine any room or part of such premises and any goods therein ;
- (c) take an account of any goods therein ;
- (d) on payment or tender of a reasonable price demand select and obtain any sample of any goods which are in or on such premises.

(2) Every

Penalty for
obstructing
inspector &c.

(2) Every person who—

- (a) refuses or fails to admit any inspector demanding to enter in pursuance of this section ;
- (b) refuses to permit any inspector to select or obtain samples in pursuance of this section ; or
- (c) obstructs or delays any inspector in the discharge of his duty or causes or permits him to be so obstructed or delayed—

shall be guilty of an offence against this Part.

Search
warrants.
Comp. No. 3694
s. 102 (1).

(3) Where upon information for an offence against this Part either a summons requiring the defendant charged by such information to appear to answer the same or a warrant for the arrest of such defendant has been issued, and either at the time of the issue of the summons or warrant or at any time thereafter any justice is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any premises ship or vehicle of the defendant or otherwise in his possession or under his control in any place, such justice may issue a search warrant under his hand by virtue of which it shall be lawful for any member of the police force named or referred to in the warrant to break and enter such premises ship vehicle or place at any reasonable time by day and to search there for and seize and take away those goods or things ; and any goods or things seized under any such warrant may be brought before a court of petty sessions.

Offences.
Ib. ss. 87 (2), 97.

92. (1) Every person who contravenes or fails to comply with any of the provisions of this Part shall, unless he proves—

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

(b) that

(b) that on demand made by or on behalf of the informant or an inspector he gave all the information in his power with respect to the persons from whom he obtained the goods with respect to which the offence was committed—

be guilty of an offence against this Part.

(2) Every person who is guilty of an offence against this Part shall unless any other penalty is expressly provided therefor be liable in the case of a first offence to a penalty of not more than Fifty pounds and in the case of a second or any subsequent offence to a penalty of not more than Two hundred pounds or imprisonment for a term of not more than six months. Penalty.

93. Proceedings for any offence against this Part may be taken by any inspector or by any other person thereunto authorized in writing by the Minister whether generally or in any particular case or by any person whose rights are impaired or who is specially aggrieved by the commission of such offence or by the duly appointed attorney of any such last-mentioned person. Prosecutions.

94. In any prosecution for an offence against this Part, in the case of imported goods evidence of the port of shipment shall be *primâ facie* evidence of the country or place in or at which the goods were made or produced. Evidence as to imported goods.
Comp. No. 3694
s. 100 (2).

95. Nothing in this Part shall—

(a) exempt any person from any action suit or other proceeding which might but for the provisions of this Part be brought against him ;

(b) 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 ; or

(c) render liable to any prosecution or punishment any employé of an employer resident in Victoria who *bonâ fide* acts in obedience to the instructions of such employer and

on

Savings.
Ib. s. 100.

on demand made by or on behalf of the informant or an inspector gives full information as to his employer.

Regulations.

96. (1) The Governor in Council may make regulations for or with respect to—

(a) forms for the purposes of this Part (and all such forms or forms to the like effect shall be sufficient in law);

(b) any matters which by this Part are required or permitted to be prescribed or which are necessary or expedient to be prescribed for giving effect to the provisions of this Part; and

(c) penalties not exceeding Twenty pounds for any offence against the regulations.

As to disclosure of trade secrets.

(2) No such regulation shall require the disclosure in any trade description of any trade secret of manufacture or preparation, except in any case where the Minister so recommends on the ground that the disclosure is necessary for the protection of the health or well-being of the public.

Publication of regulations.

(3) All such regulations shall be published in the *Government Gazette* and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament, and a copy of all such regulations shall be posted to each member of Parliament."

Consequential amendment of No. 3694 s. 1.

3. In section one of the Principal Act for the expression "ss. 86-111" there shall be substituted the expression "ss. 86-96".