

AUSTRALIAN CAPITAL TERRITORY  
MISREPRESENTATION ORDINANCE 1975

EXPLANATORY MEMORANDUM

This proposed Ordinance gives effect to certain recommendations of the English Law Reform Commission regarding the existing law relating to misrepresentation. The proposed Ordinance extends a party's right to rescind a contract induced by innocent misrepresentation, confers on that party a right to recover damages for negligent misrepresentation, empowers a court to award damages instead of ordering the rescission of a contract, and limits a party's right to exclude by contract his liability for misrepresentation. In this regard the Ordinance accords with similar legislation introduced in the United Kingdom in 1967 and South Australia in 1971.

The proposed Ordinance also implements a recommendation of the Law Reform Committee of South Australia that civil remedies are not of themselves sufficient to protect the public against exploitation in commercial dealings. It will be an offence to make a misrepresentation, in trade or commerce for the purpose of causing or inducing another person to enter into a contract to pay any pecuniary amount or to transfer any real or personal property. The onus is placed on the defendant of proving that such a misrepresentation was not made for the purpose of inducing the entering into of the contract. It is a defence to such a charge to prove that the representor believed the statement to be true, or took all reasonable precautions to prevent the commission of the offence.

The proposed Ordinance has been agreed to by the A.C.T. Legislative Assembly, with one amendment which was not able to be accepted. The Assembly objected to the reversal of the onus of proof regarding the element of intent. Both the Attorney-General and I gave this careful consideration and concluded that without such a provision a prosecution would seldom, if ever, succeed. We felt it was eminently reasonable for the only person who indisputably knows the purpose for which the misrepresentation was made to be called upon to explain his purpose to the Court.

.....  
Minister's Initials