

No. 40 of 1975

AN ORDINANCE

To amend the Law relating to Misrepresentation.

I, THE GOVERNOR-GENERAL of Australia, acting with the advice of the Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1973*.

Dated this thirtieth day of October, 1975.

JOHN R. KERR
Governor-General.

By His Excellency's Command,

GORDON M. BRYANT
Minister of State for the Capital Territory.

MISREPRESENTATION ORDINANCE 1975

1. This Ordinance may be cited as the *Misrepresentation Ordinance 1975*.^{*} Short title.
2. In this Ordinance, unless the contrary intention appears, "court" includes an arbitrator. Definition.
3. Where a person has entered into a contract after a misrepresentation has been made to him, the person shall, if otherwise he would be entitled to rescind the contract without alleging fraud, be entitled, subject to this Ordinance, to rescind the contract notwithstanding that— Removal of certain bars to rescission.
 - (a) the misrepresentation has become a term of the contract;
 - (b) the contract has been performed; or
 - (c) a conveyance, transfer or other document has been registered under a law of the Territory as a result of the contract.
4. (1) Where a person enters into a contract after a misrepresentation has been made to him by— Damages for misrepresentation.
 - (a) another party to the contract;
 - (b) a person acting for, or on behalf of, another party to the contract; or

^{*} Notified in the *Australian Government Gazette* on 31 October 1975.

- (c) a person who receives any direct or indirect consideration or material advantage as a result of the formation of the contract,

and as a result of so entering into the contract he suffers loss, any person (whether or not he is the person by whom the misrepresentation is made) who would be liable for damages in tort in respect of the loss had the misrepresentation been made fraudulently, shall, subject to this section, be so liable, notwithstanding that the misrepresentation was not made fraudulently.

(2) It is a defence to an action under sub-section (1) that the person by whom the representation was made had reasonable grounds to believe, and did believe up to the time the contract was made, that the representation was true.

(3) Sub-section (2) does not apply to or in relation to an action against a party to a contract arising out of a misrepresentation by a person acting for or on behalf of that party where—

- (a) the defence specified in sub-section (2) would be available to that person; and
- (b) the reasonable grounds for belief held by that person that the representation was true arose out of an act or omission by that party,

unless the defence specified in sub-section (2) would be available to that party if he were the person by whom the misrepresentation was made.

(4) Where in proceedings arising out of a contract it is proved that a person has rescinded, or is entitled to rescind, the contract on the ground of misrepresentation other than fraudulent misrepresentation, the court, after consideration of the consequences of the rescission, and the consequences of a declaration under this sub-section, in the circumstances of the case, may, if it considers it just and equitable to do so, declare the contract to be subsisting and award such damages as it considers fair and reasonable in view of the misrepresentation.

- (5) Damages may be awarded against a person under sub-section (4) whether or not he is liable for damages under sub-section (1) but—
- (a) a court shall, in assessing damages under a provision of this section, take into account any award of damages under any other provision of this section, or of damages or compensation under any other law; and
- (b) in assessing damages or compensation in proceedings under any other law relating to a contract, the court shall take into account any award of damages under this section.

Exclusion clauses.

5. If an agreement contains a provision that would exclude or restrict—

- (a) any liability to which a party to a contract may be subject by reason of a misrepresentation made by him before the contract was made; or

(b) any remedy available to another party to the contract by reason of such a misrepresentation, that provision shall be of no effect except to the extent (if any) to which, in any proceedings arising out of the contract, the court may allow reliance on it as being fair and reasonable in the circumstances of the case.

6. (1) Where in the course of trade or commerce a person makes a misrepresentation—

Misrepresentation in trade or commerce an offence.

(a) for the purpose of causing or inducing another person to enter into a contract; or

(b) for the purpose of causing or inducing another person to pay any pecuniary amount, or to make over or transfer any real or personal property, to the person by whom the misrepresentation is made or to any other person,

the person by whom the misrepresentation is made is guilty of an offence against this Ordinance punishable, on conviction, by a fine not exceeding \$1,000.

(2) Where the misrepresentation referred to in sub-section (1) is made—

(a) by a person acting in the course of his employment—his employer; or

(b) by a person duly authorized to act on behalf of another person—that other person,

is also guilty of an offence against this Ordinance punishable, on conviction, by a fine not exceeding \$1,000.

(3) Where in proceedings under this section it is proved that a misrepresentation in fact acted as a material inducement to a person—

(a) to enter into a contract; or

(b) to pay any pecuniary amount, or to make over or transfer any real or personal property, to the person by whom the misrepresentation was made, or to any other person,

and that, in consequence, the person by whom the misrepresentation was made derived any direct or indirect consideration or material advantage, it shall be presumed, unless the contrary is otherwise established, that the misrepresentation was made for the purpose of inducing the person to whom it was made to enter into that contract, to pay that pecuniary amount, or to make over or transfer that property, as the case requires.

(4) It is a defence to a prosecution for an offence under this section that—

(a) the person by whom the representation was made believed upon reasonable grounds that the representation was true; or

(b) where the defendant is not the person by whom the representation was made—

(i) the defendant took all reasonable precautions to prevent the commission of offences against this

section by persons acting on his behalf or in his employment; or

- (ii) the defendant did not know, and could not reasonably be expected to have known, that the representation had been made, or that it was untrue.

(5) A person convicted of an offence under this section is not liable to prosecution under another law of the Territory for an offence arising out of the same facts.

Application.

7. Nothing in this Ordinance applies to or in relation to a misrepresentation, or an agreement, made before the commencement of this Ordinance.