

AN ORDINANCE

To amend the Law relating to Misrepresentation.

I, THE ADMINISTRATOR of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated this twenty-sixth day of May, 1977.

A. R. CUTLER
Administrator.

By His Excellency's Command,
A. A. STALEY
Minister of State for the Capital Territory.

LAW REFORM (MISREPRESENTATION) ORDINANCE 1977

1. This Ordinance may be cited as the *Law Reform (Misrepresentation) Ordinance 1977*.^{*} Short title.

2. In this Ordinance, unless the contrary intention appears, "court" Definition.
includes an arbitrator.

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 a State or 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 30 May 1977.

(c) a person who receives any direct or indirect 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—

- (a) where the representation was made by the defendant—the defendant had reasonable grounds for believing, and did believe up to the time the contract was made, that the representation was true; and
- (b) where the representation was made by a person acting for or on behalf of the defendant—both the defendant and that person had reasonable grounds for believing, and did believe up to the time the contract was made, that the representation was true.

Damages
in lieu of
rescission.

5. (1) 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.

(2) Damages may be awarded against a person under sub-section (1) whether or not he is liable for damages under sub-section 4 (1) but—

- (a) a court shall, in assessing damages under a provision of section 4 or this section, take into account any award of damages under this section or section 4, as the case requires, 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 Ordinance.

Exclusion
clauses.

6. 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.

7. (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) It is a defence to a prosecution for an offence under this section that the person by whom the representation was made believed upon reasonable grounds that the representation was true.

8. (1) Where the misrepresentation referred to in sub-section 7 (1) is made—

Negligent misrepresentation.

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

(2) It is a defence to a prosecution for an offence against this section that—

- (a) the defendant took reasonable precautions to prevent the commission of offences against this section by persons acting on his behalf or in his employment; or
- (b) that the defendant did not know, and could not reasonably be expected to have known, that the representation was made or that it was untrue.

9. (1) Where in proceedings under section 7 or 8 it is proved that a misrepresentation in fact acted as a material inducement to a person—

Presumption in certain cases.

- (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 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.

(2) A person convicted of an offence under section 7 or 8 is not liable to prosecution under another law of the Territory for an offence arising out of the same facts.

Application.

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