



Republic of Namibia
Annotated Statutes

Trade Practices Act 76 of 1976 (RSA)

(RSA GG 5150)

brought into force in South Africa and South West Africa
on 1 April 1977 by RSA Proc. 60 of 1977 (RSA GG 5485)
(see section 19 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: Section 23 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel." **There were no amendments to the Act in South Africa prior to the date of transfer.**

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Commerce) Transfer Proclamation, AG 28 of 1978, dated 28 April 1978. (The first amendment to the Act in South Africa, the *Trade Practices Amendment Act 78 of 1978*, came into force shortly after the date of transfer, on 9 June 1978.) None of the amendments to the Act in South Africa after the date of transfer were applicable to South West Africa because none were made expressly so applicable.

ACT

To provide for the control of certain advertisements; to restrict the giving or supply of benefits and the use of trade coupons in connection with the sale of goods or the rendering or provision of certain services; to prohibit or control certain trade practices; to repeal the Trade Coupons Act, 1935; and to provide for incidental matters.

(Afrikaans text signed by the State President)
(Assented to 1 June 1976)

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BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

Definitions

1. In this Act, unless the context otherwise indicates -

“advertisement” means any written, illustrated, visual or other descriptive material or oral statement, communication, representation or reference distributed to members of the public or brought to their notice in any manner whatsoever and which is intended to -

- (a) promote the sale or leasing of goods or encourage the use thereof or draw attention to the nature, properties, advantages or uses of goods or to the manner in, conditions on or prices at which goods may be purchased, leased or otherwise acquired; or
- (b) promote or encourage the use of any service or draw attention to the nature, properties, advantages or uses of any service or the manner in, conditions on or prices at which any service is rendered or provided;

“benefit” means any prize, reward, gift, service, concession, admittance free or at a reduced charge to any place of entertainment, free insurance or insurance at a reduced rate, or any benefit or advantage of any kind whatsoever;

“business” means any business which -

- (a) sells, imports, manufactures, extracts, packages, assembles, leases or produces any goods; or
- (b) renders or provides services;

“committee” means the Trade Practices Advisory Committee established under section 2;

“consumer” includes any person who makes use of any service;

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“goods” include incorporeal movable and immovable property;

“guide price” means any price suggested or recommended by any manufacturer, producer, extractor, packager, assembler, lessor or distributor of any goods or by any association of dealers in any goods or by agreement between such dealers as the retail selling price, in general or in any particular area, of such goods;

“inspector” means any inspector designated under section 5(b);

“Minister” means the Minister of Economic Affairs;

“secretary” means the Secretary for Commerce;

“sell” includes agree to sell, or mark with a selling price, or offer, advertise, keep, expose, transmit, send, convey or deliver for sale, or to exchange, or to dispose of to any person in any manner for a consideration; and “sold”, “selling” and “sale” have corresponding meanings;

“service” does not include any service rendered or provided by any person in the practising of any profession in respect of which his name has in terms of any Act of Parliament been entered into any roll or register;

“this Act” includes any notice published or given thereunder;

“trade coupon” means anything whatsoever which, either by itself or in connection with any other thing or act, entitles or purports to entitle the holder thereof to receive, or to participate in any competition for, any benefit;

“trade practice” does not include any trade practice which in the opinion of the Minister is a monopolistic condition referred to in section 2(1) of the Regulation of Monopolistic Conditions Act, 1955 (Act No. 24 of 1955).

**[The Regulation of Monopolistic Conditions Act 24 of 1955
has been replaced by the Competition Act 2 of 2003.]**

Establishment of Trade Practices Advisory Committee

2. (1) There shall be a Trade Practices Advisory Committee appointed by the Minister, one of whose members shall be designated as chairman and one as vice-chairman.

(2) The Minister shall appoint as members of the committee -

(a) not fewer than seven persons from among at least eighteen persons whose names have been submitted for that purpose by bodies which in the opinion of the Minister represent each of the categories -

(i) marketing;

(ii) advertising;

(iii) commerce;

(iv) industry;

(v) consumer affairs; and

(vi) mail orders; and

(b) not more than eight and not fewer than two members competent to advise him on the application of legislation relating to the protection of consumers.

(3) If after the expiry of a period of three months from the date on which the secretary in writing requested the bodies referred to in subsection (2)(a) to submit a list of persons as contemplated in that subsection, such bodies have failed to submit the said list to the said secretary or have submitted to the said secretary a list of persons which is defective in some or other respect, the Minister shall appoint suitable persons as members of the committee in the place of the persons he would have appointed if the said bodies had not so failed to submit the said list or had not submitted a list defective in some or other respect.

(4) A member of the committee shall hold office for such period, but not more than three years, and on such conditions as the Minister may determine at the time of his appointment: Provided that any member shall, subject to the provisions of subsections (2) and (3), on the expiry of his term of office be eligible for reappointment.

(5) If any member of the committee dies, or resigns by notice in writing addressed to the Minister, the Minister may with due regard to the provisions of subsection (2), appoint any person as successor to such member for the unexpired period of office of such member.

Meetings of committee

3. (1) The committee shall meet at such times and places as the chairman or, if he is absent, the vice-chairman may determine.

[The word "committee" is misspelt in the *Government Gazette*, as reproduced above.]

(2) The quorum for and the procedure at any meeting of the committee shall be determined by the Minister: Provided that a quorum shall consist of not fewer than seven members and that persons in the employ of the State shall not constitute a majority of a quorum.

Remuneration and allowances of members of committee

4. Any member of the committee who is not in the full-time employ of the State, shall in connection with the activities of the committee be paid such remuneration and allowances as may be determined generally or in any particular case by the Minister in consultation with the Minister of Finance.

Delegation of powers and designation of inspectors by secretary

5. The secretary may -

(a) delegate to one or to more than one officer of the Department of Commerce, any power conferred upon him by this Act, other than a power referred to in section 6;

(b) designate officers of the Department of Commerce as inspectors to exercise, subject to his control, the functions of inspectors under this Act.

Furnishing of information to secretary by certain persons

6. (1) The secretary may, from time to time, in respect of any matter specified in this Act, by notice in writing, sent by post or delivered, order any person to furnish in writing, before a date specified in the notice, to the secretary any information requested in such notice

and relating to the business of such person: Provided that any information desired with a view to the exercise of any power conferred upon the Minister or the committee under this Act, may only be requested on the instructions of and on behalf of the Minister or the committee, as the case may be.

(2) No person shall in reply to a notice referred to in subsection (1) furnish information which is false or incorrect in material respects.

(3) Information furnished pursuant to subsection (1) shall not be disclosed to any person save for the purposes of this Act, or in a court of law in a prosecution arising in terms of this Act.

Powers of inspectors

7. (1) Any inspector furnished with inspection authority in writing by the secretary, may conduct investigations to gather such information as the secretary may desire or to determine whether the provisions of this Act are being or have been complied with, and may for that purpose at all reasonable times -

(a) enter any place in respect of which he has reason to believe that -

(i) there are on or in it any goods, books or other documents; or

(ii) it is connected with any goods, service, books or other documents,

to which the provisions of this Act are applicable;

(b) inspect any goods, books or other documents which may be inspected under this Act, or order that, for the purposes of inspection, such goods, books or other documents be placed at his disposal;

(c) seize and retain any goods, books or other documents which may relate to any prosecution under this Act: Provided that the person from whose possession or custody books or other documents were taken when it were so seized, shall, as long as such books or other documents are in the possession or custody of the inspector concerned, at his request be allowed, at his own expense and under supervision of the inspector, to make copies of or take extracts from such books or other documents at any reasonable time.

(2) Any person in charge of any goods, books or other documents which are being inspected by any inspector referred to in subsection (1), or any manager, agent or employee of such person, shall at the request of any such inspector render such assistance as may be necessary for the inspection of such goods, books or other documents.

(3) No person shall -

(a) fail on demand to put at the disposal of any inspector referred to in subsection (1), anything in his possession or under his control or on his premises which may relate to any inspection; or

(b) fail to comply with any order given under subsection (1)(b) or any request made under subsection (2); or

(c) hinder or obstruct any inspector referred to in subsection (1) in the exercise of his powers under this section; or

[The word “exercise” is misspelt in the *Government Gazette*, as reproduced above.]

(d) falsely hold himself out to be an inspector referred to in subsection (1).

(4) Any inspector shall issue a receipt to the owner or the person in control of anything seized and retained under this section.

(5) Any inspector who has been furnished with inspection authority in writing contemplated in subsection (1) and who exercises any power in terms of this section, shall, at the request of any person affected by such exercising, produce such inspection authority to such person.

Secrecy

8. No person shall in respect of any business disclose any information which came to his knowledge in the performance of his duties or functions in terms of this Act, except -

- (a) for the purpose of performing his duties or functions in terms of this Act; or
- (b) when required by order of any competent court or in terms of any law in respect of criminal proceedings; or
- (c) when authorized beforehand thereto in writing by the secretary or any person acting on behalf of and on the instructions of the business in question.

Prohibition of certain advertisements, statements, communications, descriptions and indications

9. No person shall -

- (a) publish or display any advertisement which is false or misleading in material respects or cause such advertisement to be published or displayed; or
- (b) in connection with the sale or leasing of goods, directly or indirectly make any statement or communication or give any description or indication which is false or misleading in material respects in respect of the nature, properties, advantages or uses of such goods or in respect of the manner in, conditions on or prices at which such goods may be purchased, leased or otherwise acquired; or
- (c) in connection with the rendering or provision of any service, directly or indirectly make any statement or communication or give any description or indication which is false or misleading in material respects in respect of the nature, properties, advantages or uses of such service or in respect of the manner in, conditions on or prices at which such service is rendered or provided.

Prohibition of delivery, sale or publication of trade coupons in connection with sale of goods or rendering or provision of services

10. Subject to the provisions of section 11, no person shall -

- (a) in connection with the sale or leasing of any goods or the rendering or provision of any service, supply or give, or offer or promise to supply or give, any trade coupon; or

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- (b) sell any trade coupon by the same transaction at which he sells or leases any other goods or renders or provides any service; or
- (c) sell, supply or give to any person engaged in the sale or leasing of any goods or in the rendering or provision of any service, any trade coupon to be issued in connection with the sale or leasing of such goods or the rendering or provision of such service; or
- (d) publish any trade coupon in any newspaper, journal, magazine, pamphlet, book or other printed matter,

if it is a condition of such trade coupon that the person to whom it is supplied, given, offered or promised, must buy or hire any goods or make use of any service in respect of which he must give any consideration before he is entitled to receive, or to participate in any competition for, any relevant benefit.

Exceptions

11. The provisions of section 10 shall not be so construed as to prohibit -
- (a) the payment or offer of any commission or remuneration in respect of his services to any person engaged in the sale or leasing or distribution of any goods or in the rendering or provision of any service; or
 - (b) the allowance of a discount on the price or rental paid or payable by any purchaser or lessee for any goods or any person for the rendering or provision of any service, or the offer to allow any such discount; or
 - (c)
 - (i) the supply or giving to any purchaser or lessee of any goods, of a document or token entitling the holder thereof to receive on demand payment of a sum of money bearing a proportion to the price or rental paid for such goods; or
 - (ii) the supply or giving to any person making use of any service, of a document or token entitling the holder thereof to receive on demand payment of a sum of money bearing a proportion to the price paid for the rendering or provision of such service:

Provided that the proportion, and the person by whom and the place at which such sum of money will be paid, shall be clearly set forth on the document or token; or
 - (d) the supply to or the acquisition by any person engaged in the sale or leasing of goods or in the rendering or provision of any service, of the documents or tokens referred to in paragraph (c) in order that, subject to the provisions of this Act, such documents or tokens may be issued in connection with the sale or leasing of such goods or the rendering or provision of any such service; or
 - (e) the supply or giving to a purchaser or lessee of any goods, of a document or token entitling the holder thereof to receive on demand, at his option, either a sum of money or goods specified therein: Provided that -
 - (i) the goods so claimable have been produced or manufactured by the producer or manufacturer of the goods purchased or leased and are of the same kind as the goods purchased or leased or have been manufactured from materials substantially of the same kind as the materials from which the goods purchased or leased were manufactured; and

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- (ii) the person by whom and the place at which such sum of money or such goods will be paid or delivered, shall be clearly set forth on the document or token; or
- (f) the sale, supply or giving by any person who sells or supplies goods to any person engaged in the sale or leasing of any goods, of documents or tokens referred to in paragraph (c)(i) or (e) on condition that such documents or tokens shall not be issued or disposed of by him otherwise than in connection with the sale or leasing of the goods so sold or supplied to him by the first-mentioned person; or
- (g) the inclusion in any printed matter of any policy of insurance or any undertaking to give any policy of insurance free or at a reduced rate provided such policy or undertaking is not connected with the sale of goods, not being such printed matter; or
- (h) the giving or the offer to any purchaser or lessee of goods, or to any person who makes use of a service, of any warranty, any undertaking to render or provide any service or any other undertaking if such warranty or undertaking is given or offered in respect of and applies only to goods purchased or leased by such purchaser or lessee or to the service rendered or provided to such person.

Prohibition or restriction of giving or supply of benefits

12. (1) Subject to the provisions of section 16, the Minister may, in connection with the sale or leasing of any goods or the rendering or provision of any service, by notice in the *Gazette* prohibit the giving or supply of any benefit or impose in respect thereof such conditions as he may think fit.

(2) Different notices may in terms of subsection (1) be published in respect of different goods, services or benefits.

Indications in respect of prices of goods and rendering or provision of services

13. (1) No person who sells or leases goods shall, in any advertisement or in any other way -

- (a) give a false or misleading indication that such goods are sold or leased by him at a price which is equal to or less than a guide price or than the price at which such or similar goods were previously sold or leased by him; or
- (b) give an indication that such goods are sold or leased by him at a price which is less than the price at which such goods are actually sold or leased by him.

(2) No person who renders or provides any service shall in any advertisement or in any other way -

- (a) give a false or misleading indication that such service is rendered or provided by him at a price which is equal to or less than the price at which such or any similar service was previously rendered or provided by him; or
- (b) give an indication that such service is rendered or provided by him at a price which is less than the price at which such service is actually rendered or provided by him.

Particulars in respect of advertisements

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14. (1) Subject to the provisions of section 16, the Minister may by notice in the *Gazette* prescribe the particulars (including indications, descriptions or depictions) which in respect of-

- (a) the nature, properties, advantages or uses of any goods or service; or
- (b) the manner in, conditions on or prices at which goods may be purchased, hired or otherwise acquired or any service is rendered or provided,

shall form part or shall not form part of any advertisement in which such goods are or service is advertised.

(2) Different notices may in terms of subsection (1) be published in respect of different particulars, goods, services or advertisements.

Prohibition of certain trade practices

15. (1) If the Minister is of the opinion that any trade practice may directly or indirectly injure -

- (a) the relations between businesses and persons who are engaged in the sale or leasing of any goods or in the rendering or provision of any service; or
- (b) the relations between businesses and consumers,

and is satisfied that it is necessary or expedient in the interests of such persons or consumers or businesses that such trade practice be prohibited, restricted or controlled, the Minister may, subject to the provisions of section 16, by notice in the *Gazette* prohibit such trade practice or impose in respect thereof such conditions as he may think fit.

(2) Different notices may in terms of subsection (1) be published in respect of different trade practices, goods or services.

Prerequisites for the publication of certain notices

16. (1) Before the publication of any notice under section 12, 14 or 15 the Minister shall -

- (a) cause to be published in the *Gazette* a provisional notice -
 - (i) stating the purport of the notice which he intends to publish under the section in question; and
 - (ii) in which all interested persons are requested to lodge objections or representations regarding the proposed notice, in writing with the secretary before a date specified in the provisional notice, which shall be a date not earlier than thirty days after the date of publication of the said provisional notice;
- (b) submit to the committee the said provisional notice and any representations and objections lodged in terms of paragraph (a)(ii).

(2) The committee shall consider the documents submitted to it in terms of subsection (1)(b) and shall make in respect thereof a recommendation in writing to the Minister.

(3) After consideration of any recommendation referred to in subsection (2), but not later than six months after the date upon which the said recommendation was made by the committee, the Minister may publish the notice in question in the *Gazette* under section 12, 14 or 15, as the case may be: Provided that, if the Minister publishes any such notice, the purport of such notice shall not in any material respect differ from the purport of any recommendation made by the committee under subsection (2) in respect thereof.

(4) Any recommendation referred to in subsection (2) shall be published by the Minister in the *Gazette* not later than the date of the publication of the notice to which such recommendation relates.

Temporary prohibition or control in respect of certain benefits and trade practices

17. (1) The secretary may, on the recommendation of the committee and for a period not exceeding six months, by notice in the *Gazette* prohibit, or impose conditions in respect of -

- (a) the giving or supply of any benefit in connection with the sale or leasing of any goods or the rendering or provision of any service; or
- (b) any trade practice which, in the opinion of the committee, may directly or indirectly injure -
 - (i) the relations between businesses and persons engaged in the sale or leasing of any goods or in the rendering or provision of any service; or
 - (ii) the relations between businesses and consumers,

if the committee is satisfied that, in the interest of such persons or consumers, it is necessary or expedient to prohibit or control such trade practice,

if a notice under section 12 or 15, as the case may be, has not yet been published in respect of such benefit or trade practice.

(2) Any notice published under subsection (1) shall lapse if a notice under section 12 or 15, as the case may be, is published in respect of any benefit or trade practice mentioned in the firstmentioned notice.

(3) Different notices may in terms of subsection (1) be published in respect of different benefits, trade practices, goods or services.

(4) The committee may make a recommendation referred to in subsection (1) of its own accord or at the request of any other person: Provided that if any such request is made by the secretary, the committee shall be obliged to consider such request, and thereupon it may make such a recommendation or refuse to make it for such reasons as it may furnish in writing.

Special defences

18. (1) Subject to the provisions of subsection (2), no person shall be convicted of any offence under this Act if he proves that the act or omission with which he is charged and which constitutes such offence is due to -

- (a) a reasonable mistake by him in respect of the relevant facts; or

(b) the fact that he relied reasonably upon any information given to him by any other person.

(2) Any person charged with any offence under this Act and who intends to allege at his trial that -

(a) the act or omission with which he is charged and which constitutes such offence is due to the fact that he relied reasonably on information given to him by any other person; or

(b) such offence was committed by any other person,

shall advise the prosecutor, at least seven days before the date of his trial, in writing of his intention together with any information at his disposal which may identify, or be of aid in the identification of, such other person: Provided that the court trying such person may condone the failure to advise the prosecutor in the said manner.

(3) No person shall be convicted of any offence under section 9(a) if he proves -

(a) that it is his occupation or business to publish or display or cause to be published or displayed advertisements; and

(b) that he published or displayed or caused to be published or displayed the advertisement in question in good faith and in the ordinary course of business and that he did not know and could not reasonably be expected to have known that such advertisement was false or misleading in material respects.

Offences and penalties

19. Any person who contravenes or fails to comply with any provision of this Act, shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Limitation of prosecution

20. No person shall be prosecuted for any offence under this Act if a period of one year has expired from the date on which such offence was committed.

Limitation of institution of certain actions

21. No person shall have any right of action in respect of any trade coupon or benefit supplied or given to him in contravention of any provision of this Act.

Acts or omissions by managers, agents or employees

22. (1) Whenever any manager, agent or employee of any person does or omits to do any act which it would be an offence under this Act for such person to do or omit to do, then, unless it is proved that -

(a) in doing or omitting to do that act, such manager, agent or employee was acting without the connivance or the permission of such person; and

(b) all reasonable steps were taken by such person to prevent any such act or the omission to do any such act; and

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- (c) the act or omission charged, whether lawful or unlawful, was not within the scope of the authority or in the course of the employment of such manager, agent or employee,

such person shall be presumed himself to have done or omitted to do that act and shall be liable to be convicted and sentenced in respect thereof, and the fact that he issued instructions forbidding any such act or omission shall not of itself be sufficient proof that he took all reasonable steps to prevent such act or omission.

(2) Whenever any manager, agent or employee of any person does or omits to do any act which it would be an offence under this Act for such person to do or omit to do, such manager, agent or employee shall be liable to be convicted and sentenced in respect thereof as if he were such person.

Application of Act to South West Africa

23. This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.

Repeal of Act 18 of 1935

24. The Trade Coupons Act, 1935 (Act No. 18 of 1935), is hereby repealed.

Short title and commencement

25. (1) This Act shall be called the Trade Practices Act, 1975, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may in terms of subsection (1) be fixed in respect of different provisions of this Act.