

# EMPLOYMENT



*Writing job advertisements can be a minefield, and many employers do not understand their legal obligations when it comes to the wording of their advertisements.*

*To limit the possibility of misleading and deceptive conduct regarding the nature, availability and the terms and conditions of employment, pertinent information should be included in advertisements.*

*Whether the advertisement is appearing in a publication or online the same legislative provisions apply.*

*Publishers can ensure that most misleading advertisements are modified or eliminated before they ever reach job seekers.*

Publishers should aim to prevent misleading and deceptive employment and business opportunity advertisements appearing before they reach readers. As well as giving credibility to our publications, it minimises hardship to job seekers and assists regulatory authorities in identifying potential scams.

We also need to ensure that those placing the advertisements understand the requirements under Federal and State legislation which prohibits discrimination in employment advertising.

Under consumer protection legislation there are provisions to prevent misleading and deceptive job and business opportunity advertisements.

***Publishers must be cautious as there are times when misleading claims made within advertisements may be seen to be endorsed by the publisher.***

This can happen particularly with business opportunity advertisements, which may be potential scams. This can place the publisher at danger of breaching relevant legislation.

## THE LAW

Misleading job and business opportunity advertisements can constitute a civil or criminal offence under the Australian Consumer Law.

For this to apply, it is not necessary to prove that anyone has been misled; rather, it is the impression created in the minds of the audience that is relevant regardless of the intended message.

Section 31 of the Australian Consumer Law specifically prohibits a company from doing anything likely to mislead people about the availability, nature, terms or conditions of employment. It also has a criminal counterpart, which carries steep penalties.

Section 37 prohibits false or misleading representations about the profitability or viability of home-operated businesses.

It is particularly relevant to 'get rich quick' and 'work from home' schemes sometimes advertised in newspapers and magazines. This section has also been applied in cases involving franchise arrangements. This provision also has a criminal counterpart.

Whilst section 21 prohibits businesses from engaging in 'unconscionable conduct' when dealing with consumers.

Unconscionable conduct refers to a range of behaviour that may be considered harsh or oppressive. The aim of this section is to prevent businesses from taking advantage of a vulnerable or disadvantaged party.

Advertisers should take particular care when dealing with young or inexperienced job seekers, or those with a limited grasp of the English language.

In some circumstances, publishers of misleading advertisements might themselves be at risk of breaching the Australian Consumer Law.

## SITUATIONS OR POSITIONS VACANT

This category should be specifically for employment involving full-time, part-time or casual work. These positions will offer a regular paid wage or salary, with other provisions for holiday and sick leave etc. If payment is other than by wage or salary then this should be clearly stated in the advertisement.

Some advertisements for employment are too small to provide the relevant terms and conditions in any great detail. However, they should include the nature of the work involved and contact details.

**Positions which don't involve an employer/employee relationship should be advertised under such headings as:**

- » self-employment;
- » business opportunities;
- » independent contractors; or
- » independent agents/sub-agents.

These types of advertisements are often vague and do not always provide all the details that are needed for those looking for employment.

Phrases such as "management prospects", "travelling", "room for promotion" "potential to earn \$XXX" are unclear and can be misleading in smaller advertisements. If these terms are used there should be enough room within the advertisement to explain the meaning behind them.

Therefore, it is very important that these types of employment opportunities ARE NOT placed in positions or situations vacant as there is the chance that the could unintentionally mislead readers.



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## BUSINESS OPPORTUNITIES AND SELF EMPLOYMENT

Misleading or deceptive business opportunity advertisements are often promoted on the basis of offering 'work from home'.

Consumer protection legislation contains specific provisions relating to misleading and deceptive conduct in relation to claims about the risk and profitability of these home-based business and self-employment advertisements.

It is important the advertisements disclose the nature of the business, along with any associated costs that may be involved.

### Check any advertisements that...

- » fail to provide enough information;
- » fail to identify the nature of the opportunity;
- » target people who are disadvantaged such as people with limited employment history or poor language skills;
- » request bank account or credit card details;
- » make claims of guaranteed income with little effort or risk;
- » require payment of an up-front fee for business plans, start-up materials or software.

Below are two examples of unacceptable business opportunity advertisements.

*'Would you like to earn \$1,000 per week? Simple, pleasant work you can do at home. Send self-addressed envelope to Fred Smith, PO Box 000 Smith Town NSW 1234.'*

*'How would you like to be paid every time someone pays their phone bill? Call 0412 345 678.'*

## TRAINING COURSES

There have been many cases regarding the guarantee of employment at the conclusion of training courses.

Quite often there are no positions at all, the fine print of the training contract states that the employer will hire according to current needs and economic conditions. It is simply a ploy to encourage people to pay for courses that they do not need.

If a position requires the candidate to undertake training at their own expense prior to commencing their employment then these advertisements should not be placed in the classification of "situations/positions vacant".

## ADVERTISING CHECKLIST

### Check that advertisements...

- » clearly identify the advertiser, by providing the name of the business or contact person, the full street address and phone number;

- » clearly state the true nature of the business opportunity including a description of position in clear simple terms;
- » clearly state the product, service or industry involved; and
- » state if a cash investment is required, and if so, the dollar amount.

### DO NOT ACCEPT ADVERTISEMENTS WHICH INCLUDE...

- » only a PO Box number;
- » exaggerated earnings or projected incomes;
- » undisclosed costs for calls to 1900, 015 or 0055 numbers; and
- » no details of the product, service or industry involved.

## ADVERTISERS' DETAILS

Publishers should ensure that they have adequate systems in place to identify who placed a specific advertisement including:

- » company/business name;
- » full name and phone number of the contact person; and
- » complete street address.

This enables law enforcement agencies to follow up concerns about misleading, deceptive advertisements.

