



Australian
Competition &
Consumer
Commission

MISLEADING JOB AND BUSINESS OPPORTUNITY ADS

HOW TO HANDLE THEM



AUGUST 2011



CONTENTS

Introduction	1
What the law says.....	2
Potentially misleading ads	3
The role of publishers	5
Online ads	9
Appendixes	12
Further information.....	14

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra ACT 2601

© Commonwealth of Australia 2011

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968* no part may be reproduced by any process without permission from the Australian Competition and Consumer Commission. Requests and inquiries concerning reproduction and rights should be addressed to the Director Publishing, Australian Competition and Consumer Commission, GPO Box 3131, Canberra ACT 2602.

Important notice

Please note that this guide is a summary designed to give you the basic information you need. It does not cover the whole of the *Competition and Consumer Act 2010* (the Act) and is not a substitute for professional advice.

Moreover, because it avoids legal language wherever possible there may be some generalisations about the application of the Act. Some of the provisions referred to have exceptions or important qualifications. In most cases the particular circumstances of the conduct need to be taken into account when determining the application of the Act to that conduct.

ISBN 1 921964 12 1

ACCC_08/11_46529_402

INTRODUCTION

Misleading job and business opportunity advertisements cause job seekers a great deal of hardship and difficulty. Even worse, some scams are dressed up as job opportunities and can actually cost job seekers money. Young people and people whose native language is not English are especially at risk.

Misleading job and business opportunity advertisements carry heavy penalties under the Australian Consumer Law (ACL), which is contained in a schedule to the *Competition and Consumer Act 2010*, ranging up to \$1.1 million for the most serious breaches. The ACL is applicable nationally to all states and territories. The Australian Competition and Consumer Commission (the ACCC) does not hesitate to take action when businesses are taking advantage of job seekers, particularly when those affected are vulnerable or disadvantaged.

This manual is produced in cooperation with Job Watch and the Australian Publishers' Bureau. It has been designed to help advertising staff of newspapers, websites and other places where job advertisements are found, to stop the publishing of misleading job and business opportunity ads.

It explains the key requirements under the ACL clearly and concisely, and provides examples of advertisements that might contravene the ACL. There is also a checklist provided at the end to which staff can refer when assessing advertisements, as well as a list of contacts who can assist.

Publishers are the first line of defence against misleading or deceptive advertisements and can help by:

- > examining advertisements for misleading content
- > placing accepted advertisements in the most appropriate category
- > collecting enough information on advertisers so that they can be located.

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

The job 'advertisements' produced in this publication are entirely fictitious. Any resemblance to advertisements actually placed is coincidental. No reference to real individuals or organisations is intended.

WHAT THE LAW SAYS

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

Section 18 contains wide-ranging prohibitions against misleading or deceptive conduct.

For this section 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. Silence can be just as misleading as overt statements.

Section 31 specifically prohibits a company from doing anything likely to mislead people about the availability, nature, terms or conditions of employment.

This is the primary section of the ACL which outlaws misleading or deceptive advertisements relating to employment. It also has a criminal counterpart, under s. 153 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. As with s. 31, this provision also has a criminal counterpart in s. 159 of the ACL.

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, publishers¹ of misleading advertisements might themselves be at risk of breaching the ACL. By publishing misleading information, publishers can be seen as adopting or endorsing it.

It is often difficult to locate parties placing misleading advertisements, particularly those involving fraudulent business opportunities. The most effective strategy is one based on cooperative efforts to reduce the number of job scams advertised in the first place.

These guidelines will help publishers to appropriately vet advertisements and provide their readers with a more reliable service.

¹ Both print and electronic publishers.

POTENTIALLY MISLEADING ADS

Multinational company needs sales representatives in your area now! Outstanding remuneration packages, management prospects and travel opportunities for the right person! Excellent product that sells itself, all sales leads pre-approved.

Call Alex at Homestout Imports today for an interview, and begin planning your new life!

Not enough information provided

Often job advertisements will leave out key information, such as:

- > nature of work
- > key terms and conditions, such as employment type (e.g. casual/full-time/commission), remuneration, holidays, education/training requirements
- > location.

These kinds of advertisements can easily lead to confusion among job seekers. Advertisements should clearly state the important information, even if the amount of space is limited.

Security guard positions. Full training provided. Positions guaranteed on completion of course.

Call Security Services Training Academy on 1800 9455 1247 for more information.

Internationally recognised IT consulting company has a wide range of vacancies available across all areas of IT. We have long-term government contracts to fill immediately.

A+ Networking, MCSE and R32/S13 certified applicants especially desirable.

Not advertising an actual job

Training schemes

Some advertisements placed in the 'positions vacant' section are actually promoting training courses. Sometimes, the promoter will offer 'guaranteed employment' at the completion of the course, which must be undertaken at the applicant's expense.

While these advertisements do sometimes offer genuine training and employment prospects, some are simply well-worded ways to convince job seekers to pay for a position that doesn't exist, and training they probably don't need.

Recruitment

Increasingly common, particularly in the information technology market, are vague advertisements for 'positions' which do not list the specifics of the job. These are actually placed by recruitment consultants who wish to increase their database of job seekers—often no actual position is available.

Great sales and marketing opportunities are available in your area now! Excellent rates of pay, full training provided! Call 0055 1172 2346 to apply now!

Students and pensioners welcome!

0055 or 1900/SMS schemes

One especially cynical scam involves 0055 or 1900 phone numbers. People respond to the ad by calling a number for information about the job and to apply. It then takes five minutes to figure out that there is no job involved—at \$4.95 per minute.

Typically the advertiser is not offering jobs, but claims to run an ‘employment agency’ of sorts. Some papers refuse to run 0055 and 1900-based ‘job’ ads.

Similar schemes using premium rate SMS numbers have also recently been reported.

Would you like to earn \$1000 p/w filling envelopes, \$2 an envelope? Simple, pleasant work you can do at home. Send self-addressed envelope to Fred Smith, PO Box 000, Smith Town.

Get rich quick/‘Bizops’

These ads are almost never what they seem. They appear to offer paid work for ‘filling envelopes’, but are generally fronts for get-rich-quick schemes.

The postal box number instead of a street address is usually a give-away. People who reply are not offered jobs but are asked to send \$25 or more, usually in cash or money order, to receive an application form or information kit. After they send the money they hear nothing more. Or it is a scheme which involves them spending more on photocopying or postage to try and get other people to join up.

The scheme inevitably collapses when it fails to attract new entrants. Thousands of Australians have fallen victim to these scams. Far from getting a job, many have lost hundreds of dollars. The only one to make money is the promoter who placed the original ad.

Outstanding opportunity available for international students from China, Hong Kong and Korea! Earn \$000’s per month. No commission selling, must have current work or student visa.

Call Wright-O’Reilly Consulting to participate in our upcoming obligation-free information session.

Taking advantage of disadvantage

An advertisement will often call for those with limited employment history or language skills to apply for positions. These ads are typically placed in student newspapers or on university billboards to attract foreign students.

Applicants may be offered an unpaid ‘trial position’, be offered ‘training’ at a fee or even extorted through threats of calling in immigration authorities and claiming breaches of work visa conditions.

THE ROLE OF PUBLISHERS

As the primary point of contact for advertisers, publishers can help put a stop to misleading job and business opportunity ads before they reach job seekers. Not only does this benefit job seekers, but it also helps improve the general quality and credibility of employment advertising.

Many newspapers now head their employment columns with a general warning along these lines:

Advertisers please note

Much hardship and difficulty is caused to job seekers by misleading advertising placed in the employment columns.

Our Positions Vacant/Situations Vacant columns are reserved for advertisements which carry a specific and genuine offer of employment.

Ads for 'Business Opportunities', 'Commission-only' training courses and employment services should be submitted under those headings.

Placing misleading ads is an offence against the ACL and all advertisements are subject to the publisher's approval. For further advice, contact the Australian Competition and Consumer Commission on 1300 302 502 or your state consumer affairs agency.

It is strongly recommended that all publishers run such a notice, clearly positioned, with every issue that contains employment advertisements. It is also recommended that publishers provide a point of contact within their organisation where job seekers can notify them of misleading or scam employment ads.

Advertisers' details

Publishers should ensure that they have adequate systems in place to identify who placed a specific advertisement, and that they have collected enough detail to contact the party. This should include the company name, the full name and phone number of the contact person, and street address. Maintaining a register of complaints and an appropriate complaints management system will also help to identify problem advertisers. Information provided in the ad and details given to the publisher should be cross-referenced.

Systems that allow this kind of accountability greatly enhance the ability of publishers, law enforcement and consumer affairs agencies (including the ACCC) to follow up concerns about misleading, deceptive or fraudulent advertisements.

Staff training

The best defences against misleading job advertisements are well-trained staff, supported by clear procedures.

Regular, brief training sessions should be held to:

- > train new staff
- > refresh the knowledge of existing staff
- > allow for sharing of experience and feedback
- > help identify changing trends and problem advertisers.

The ACCC, your state/territory consumer affairs agency and organisations such as Job Watch could be approached to participate in such sessions. They are a good opportunity to swap notes—especially if there are indications of new scams emerging.

Equally important are the procedures you have in place. This manual is designed to form the base of such procedures, particularly the checklist provided at the end. The ACCC also has a wide range of material available which may be of assistance, including the comprehensive *Best and Fairest* compliance training package.

Split-screens

Many publishers use split-screens to help staff members whose job is taking and entering ads. One side of the screen is used to enter the ad while the other outlines the publisher's policy and vetting criteria for acceptance and placement of ads.

This system enables staff to check on potential advertisers' account numbers, names or telephone numbers to determine whether they have an outstanding debt or a record of placing bogus ads.

Categories and specific issues

The categories that advertisements are placed under can often have a greater effect on job seekers than the actual wording of the advertisement. Many job and business opportunity advertisements are potentially misleading simply because they appear under inappropriate headings. A classic example is advertisements for training appearing under 'positions vacant'.

It is important to place all advertisements under the right heading.

Situations vacant, positions vacant

Essentially, 'Situations vacant' or 'Positions vacant' should be reserved for positions involving work as a full-time, part-time or casual employee *unless* there is a specific category reserved for casual or part-time vacancies.

Typically, such jobs will offer a regular paid wage or salary and at least some conditions such as holiday pay, sick leave, work cover or workers' compensation.

When a job ad appears in 'Positions vacant' and the remuneration is other than wages/salary, it should be clearly stated in the advertisement, for example 'Taxi Driver, bailee contract' or 'Computer programmer, 3-month fixed-term contract'.

Many advertisements for genuine positions are much too small to spell out such terms and conditions in any detail. They should, however, describe the nature of the work and/or employing business, and give a street address or fixed phone number for inquiries.

Example

Kitchenhand. Award Rates. Experience in food prep, cooking, dish washing essential in hotel/café, Ace Bar, Smith Street, Melbourne. Phone 9699 0000 after 11.00 am.

It is important that short advertisements do not use vague terms such as ‘management prospects’, ‘job with travel’, ‘earn up to \$xxx’, or ‘openings in many departments’. These kinds of statements may be acceptable in longer advertisements with enough space to explain the exact meaning. In the shorter advertisement they could potentially mislead job seekers when not detailed.

Example

Workers wanted by marketing company. No experience necessary, training provided. Good rates. Apply to PO Box 9, Chelsea 3999.

Advertisements that fail to meet these minimum criteria are almost certainly more appropriately placed in one of the other categories discussed below. The checklist at the end of this booklet may help you decide which section these advertisements should be placed in.

Other categories

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

- > Self-employment
- > Business opportunities
- > Independent contractors
- > Independent agents/sub-agents.

It is important that these kinds of advertisements are not placed in the same section as general ‘Positions vacant’ advertisements. They generally don't spell out the unique terms and conditions completely, often inadvertently misleading job seekers.

Unfortunately most advertisements for such work throw very little light on the real nature of the contract between the company and its staff, for example sales representative or sub-agent. In practice it will probably often be very difficult for employment advertising staff to get much more information from such advertisers.

Commission-only

Commission-only work typically involves selling goods or services for a percentage of sales receipts. Some common examples of commission work might include door-to-door sales, telephone canvassing and commission-based soliciting for charities.

The terms of commission-only contracts vary enormously; however, they are often stacked heavily against the salesperson. Common problems include:

- > promises of 'guaranteed income' when income depends entirely on the number of sales made
- > failure to make promised payments to cover expenses
- > initial payment of a 'retainer', from which money is subsequently deducted for 'sales leads', 'administrative support' and 'display materials'
- > fees and charges for training which were not stated in the initial advertisement.

To avoid misleading job seekers, the exact terms of remuneration should be specified in the ad, for example 'commission-only' or 'rate per 1000'. Commission-only advertisements which do not state the nature of remuneration are at risk of contravening the ACL.

Business and self-employment opportunities

The ACL contains provisions specifically dealing with home-based and self-employment business opportunities. These provisions outlaw false and misleading representations for these types of business, particularly those concerning the risk or profitability of the business.

'Self-employment' or 'Business opportunities' advertisements typically seek capital investment or the purchase of stocks, although this is not always immediately apparent. It is important that such ads specify the nature of the business and make it clear that they involve the risk of investment.

When the advertised opportunity involves the purchase of financial instruments, such as shares or derivatives, there may be additional legal requirements under other legislation, particularly the *Corporations Act 2001*.

Job-related services

Advertisements offering employment-related services to job seekers should be placed under headings such as 'Employment services' or 'Training'. The kinds of services placed in these sections might include:

- > resumé
- > portfolios for modelling or artistic design applicants
- > employment agencies
- > training and tuition, e.g. hairdressing, cosmetics or computing.

To avoid confusing (and potentially misleading) job seekers, these kinds of advertisements should not be placed in the same section as genuine 'Positions vacant' advertisements.

Often, advertisements for training services are thinly disguised as genuine 'Positions vacant' advertisements. A common example being training courses which guarantee employment following completion of the course. As a general rule, if a position involves the payment of fees for training to secure employment, the advertisement should not be placed in the general 'Positions vacant' section.

ONLINE ADS

The internet is now one of the primary avenues through which job seekers view advertisements. Some websites are stand-alone businesses, while others may be online extensions of a newspaper publishing group or recruitment agency.

It is important to remember that the same laws that apply to print advertisements also apply to those online. However, online advertisements also raise some issues unique to that medium.

Website links in advertisements

It is common to see embedded links in online advertisements that point job seekers to further information about the actual position or the company advertising the vacancy. Sometimes, these kinds of links will also be placed in printed advertisements, encouraging the job seeker to refer to the company website for further information.

While this practice does not raise concerns in itself, it should be noted that any linked information is subject to the same concerns as the advertisements itself. Statements on a linked website which mislead the job seeker are just as illegal as those in the advertisements.

Information presented by way of a link should not attempt to change the main message of the advertisement. If the impression created by the advertisement is then contradicted by information on the linked page, it may contravene the ACL.

It is important that all advertisements meet the minimum information levels described previously. An ad mentioning only a website link is unlikely to meet these levels.

Disclaimers and fine print

Many websites use a disclaimer to stipulate terms, conditions and limitations of the information presented on the site. This information should be easily found and viewed. Placing important terms and conditions in hard-to-read 'fine print' or behind an obscure link is not sufficient.

The cautions contained in the 'website links in advertisements' section above also apply to disclaimers and legal notices.

Emailed jobs vacant

While many reputable employment agencies and employment advertising websites may offer email-based communications, it should be kept in mind that the prevalence of fraudulent spam mail may have created negative stereotypes in the minds of potential job seekers. Many may disregard emailed advertisements without even viewing them.

If you choose to offer such a service, ensure that subscribers can easily request to be unsubscribed from your mailing list. Failure to do so could result in penalties under the legislation governing spam email.

Checklist

This checklist gives an overview of the main issues that employment advertising staff should be aware of to identify possibly misleading advertisements.

Advertisers should be made aware that misleading job and business opportunity ads are illegal. Penalties of up to \$1.1 million may be imposed on companies who mislead or deceive job seekers about the availability, nature and terms or conditions related to employment. Job seekers who have suffered loss or damage as a result of such advertisements may also be able to seek damages or other orders.

1. Has the advertiser been adequately identified?

An advertiser has been adequately identified if the following information was provided:

- > the company name
- > the full name of the contact person and telephone number
- > a street address.

Many dubious advertisers only provide a post office number or 0055/1900 number which makes tracing them difficult. 'Envelope stuffing' advertisements are a classic example of an advertiser seeking anonymity.

Genuine advertisers will not mind including the above details.

2. Does the advertisement adequately identify the nature of the work?

Advertisements can mislead potential job seekers when they don't clearly describe the job on offer. The advertisement should clearly describe the work involved in the position, for example driver, clerk, receptionist. It is also desirable that the advertisement identify the industry that the position is within, such as information technology and agriculture.

Advertisements for salespeople should include at least basic information about the product being sold—persons with experience selling insurance are unlikely to be interested in a job selling knives!

3. Is the advertisement under the appropriate classification?

Advertisements can mislead job seekers simply because they are placed under an inappropriate heading. The 'employment' offered could in fact be:

- > Positions vacant/employment (salary/wages)
- > Independent contracting (work done by people using their own tools or their own business and who should issue an invoice with ABN or ACN)
- > Sales/marketing/commission-only (remuneration based on percentage sold)
- > Business/self-employment opportunities (buying goods or paying to enter a scheme)
- > Employment services (e.g. modelling portfolios, employment agencies, resumés or prospective employer list)
- > Training and tuition (includes all education courses).

While it is unlikely that publishers will have specific headings for every conceivable situation, it is essential that advertisements be placed in the category which most closely describes the position or service involved.

If you are still unsure about the most suitable heading, your industry association may be able to provide assistance identifying the nature of the advertisement.

4. Does the advertisement detail terms of remuneration?

Many potential job seekers are misled because of non-disclosure (or inadequate disclosure) of remuneration. This is particularly prevalent when the position is offered on a commission-only basis. The advertisement should include some details about how remuneration will come about, for example:

- > the actual salary or wages to be paid (e.g. \$55 000 p.a. or \$400 pw + o/t)
- > that income is negotiable or based on the age/skills/experience of the applicant (e.g. salary negotiable, wages negotiable, award conditions, casual rates); in these cases, broad estimates or details of the applicable award may be helpful
- > when payment is on a commission-only, or 'base + commission' basis
- > that payment is on a piece-rate basis (e.g. \$28 per 1000 leaflets).

APPENDIXES

Suggested letter to advertisers about potentially misleading ads

Dear Sir/Madam

I am writing to express concern about the content of the advertisement you submitted on _____ for publication in _____.

The Australian Competition and Consumer Commission (the ACCC) has asked us to assist in stopping the placement of misleading job advertisements, which are prohibited by the Australian Consumer Law (ACL). We value our reputation and take these legislative requirements very seriously.

Most misleading employment and business opportunity advertisements have insufficient information to allow readers to fully understand the nature of the work offered, the pay offered or how they will be paid. It is the policy of this publication to ensure that advertisements comply with the law. When we are in doubt about a particular advertisement we suggest that the advertiser reconsider it.

The ACCC has prosecuted individuals or organisations for contraventions of the ACL related to misleading employment advertisements. Under the ACL, a court may impose maximum fines (per offence) of \$1.1 million for misleading advertising.

I have enclosed a copy of a guideline (see attached) issued by the ACCC to help advertisers compose employment advertisements that do not mislead readers.

In our view, your proposed advertisement does not meet the requirements of these guidelines. I look forward to receiving your revised advertisement, or your reasons why you believe it should be accepted in its original form. We have no obligation to publish an advertisement if we are in doubt about its compliance with the law.

If you need further information about the law, I suggest you contact the ACCC Infocentre on 1300 302 502 for further information regarding your responsibilities under the ACL.

Employment Advertising Manager

Advertising guideline

Below is a brief sample guideline which publishers may wish to provide to their advertisers, particularly when they are concerned that the content of advertisements may risk misleading job seekers.

Alternatively, you may wish to direct advertisers to the ACCC Infocentre on 1300 302 502 to request further information about their obligations under the ACL or the Competition and Consumer Act more broadly.

Guideline on employment advertising

Why job ads should be accurate

Job seekers are entitled to accurate information about employment opportunities.

There are a number of ways that advertisements can mislead. Information about remuneration, the work involved, work conditions, future prospects and expected financial returns can all be presented in misleading ways. Advertisers who overstate remuneration or other important aspects—or who mislead by omission—risk prosecution and heavy penalties under the ACL.

Is your advertisement under the right heading?

Employment advertising sections are broken up into various categories. It is misleading to place an advertisement under the wrong heading—e.g. under ‘Employment’ when you are really offering a ‘business opportunity’.

Below are definitions of several common category headings. If the publication you wish to advertise in does not carry a full range of headings, it is up to you to make sure that what you are advertising is clearly stated so as not to give a misleading impression to readers.

Employment/Positions vacant/Situations vacant involves work as an employee for a regular paid salary or wage (e.g. \$x per week, or \$x per annum), and conditions such as holiday pay and sick leave. If the publication does not offer separate sections for full-time, part-time and casual work, you should be careful to detail the conditions and hours involved.

Independent contracting (sometimes known as sub-contracting) can involve asking for work to be done by people under contract with their own tools of trade (e.g. courier van or building tools).

Generally, independent contractors have more flexibility than employees. Often they can choose their own hours and sometimes they contract work out to others. Unlike the traditional master–servant relationship between employers and their employees, independent contractors have more control over the daily operations of their work. Independent contracting is more of a business-to-business relationship.

Commission-only involves selling goods or services and being paid a percentage of what is sold (e.g. selling encyclopedias, telephone canvassing or insurance sales).

Business opportunities are when people are asked to buy goods or pay for entrance into a scheme (e.g. party plan, herbal products, pots and pans, clothes mail order schemes or franchises).

Employment services includes modelling portfolios, employment agencies, resumés or prospective employer lists.

Training and tuition includes all education courses (e.g. TAFE courses, hairdressing, beautician and computing).

How much are you paying?

Are you conveying an accurate impression of the amount and method of remuneration? If you are advertising under 'Employment' or 'Commission-only sales' you should state one of the following:

- > the actual salary to be paid (e.g. \$35 000 p.a. or \$400 pw + o/t)
- > that the income is to be negotiated
- > that payment is on a commission-only basis
- > that payment is on a piece-rate basis (e.g. \$28 per 1000 leaflets)
- > or whatever details the readers need to assess the likely income.

If you are placing advertisements under 'Self-employment/Business opportunities', you should clearly state the realistically expected return of the venture and be able to provide proof of the figures you quote. You should also ensure that you are complying with any disclosure requirements you may have under the law, especially the *Corporations Act 2001*.

What is the product to be sold or nature of the business opportunity?

If you are advertising a sales position or offering a business opportunity, state the nature of the product or business in the advertisement. The applicant is entitled to accurate information before responding.

Will it cost anything?

When there is a charge for a product or service associated with the 'job' it is recommended that this be mentioned in the advertisement to avoid misleading job seekers. If there is a chance that the applicant will not receive employment following the training, it is also important that this be clearly stated.

Prospective job seekers should not be forced to call a premium rate number (1900 or 0055) to investigate potential vacancies.

FURTHER INFORMATION

ACCC website: www.accc.gov.au

ACCC Infocentre: 1300 302 502

Job Watch Victoria: (03) 9662 9458

