

UNSOLICITED GOODS AND SERVICES ACT.

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 89, 1974.

An Act relating to the sending of certain unsolicited goods, the making of charges for directory entries and the rendering of certain unrequested services; and for purposes connected therewith. [Assented to, 10th December, 1974.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows : —

1. This Act may be cited as the "Unsolicited Goods and **Short title.** Services Act, 1974".

2.

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No. 89, 1974 **2.** (1) This section and section 1 shall commence on the date of assent to this Act.
Commence-
ment.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Interpre-
tation. **3.** (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“directory” includes any list, circular or other publication that is of a similar nature to, or purports or is held out by the publisher to be, a directory, but does not include—

- (a) a newspaper published in good faith as a newspaper at regular intervals; or
- (b) a publication published, or to be published, by or under the authority of the Postmaster-General for the Commonwealth;

“prescribed goods” means—

- (a) books, periodicals and other publications;
- (b) gramophone records; and
- (c) any other goods prescribed as goods to which this Act applies,

but, notwithstanding paragraphs (a) and (b), does not include—

- (d) any goods prescribed as goods to which this Act does not apply; or

(e)

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- (e) where any goods are prescribed as goods to No. 89, 1974 which, when they are sent to a person in prescribed circumstances or subject to prescribed conditions, this Act does not apply—those goods when sent to a person in those circumstances or subject to those conditions;

“prescribed service” means a service prescribed as a service to which this Act applies;

“recipient”, in relation to unsolicited goods, means the person to whom the goods were sent by the sender;

“regulations” means regulations made under this Act;

“send” includes deliver;

“sender”, in relation to unsolicited goods, includes—

- (a) a person on whose behalf the goods are sent by another person;
- (b) a person who is a party to arrangements under which the goods are sent; and
- (c) a person claiming through or under any person referred to in paragraph (a) or (b);

“unsolicited goods” means goods that—

- (a) are, on or after the day on which this section commences, sent from a place in or outside the State by a person in the course of trade or business to another person in the State with a view to the other person’s acquiring or hiring those goods or acquiring an interest in them, where the other person has not requested that the goods be so sent to him; and
- (b) are, at the time they are received by the recipient, prescribed goods.

(2)

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No. 89, 1974 (2) Where goods of a kind similar to goods that a person has requested be sent to him are sent with a view to satisfying that request, the goods so sent are not, for that reason alone, unsolicited goods for the purposes of this Act.

(3) For the purposes of this Act, a person shall be deemed not to have requested that goods be sent to him if the request was made on, or constituted by, a form provided by, or that appears to have been provided by, the sender of the goods, and the form or any part of the form or any document of which the form is a part directly or indirectly relates to, affects or evidences the creation of rights or obligations of the firstmentioned person other than rights or obligations relating to goods described in the form.

**Liability
in respect
of
unsolicited
goods.**

4. (1) A recipient of unsolicited goods is not liable to make any payment for the goods.

(2) A recipient of unsolicited goods is not liable for the loss of, or damage to, the goods other than loss or damage resulting from the doing by him of a wilful and unlawful act in relation to the goods during the relevant period.

(3) Subject to subsection (5), a sender of unsolicited goods is not entitled after the expiration of the relevant period to take action for the recovery of the goods from the recipient.

(4) Subject to subsection (5), upon the expiration of the relevant period, unsolicited goods become, by force of this section, the property of the recipient, freed and discharged from all liens and charges of any description.

(5) Subsections (3) and (4) do not apply to, or in relation to, unsolicited goods sent to a recipient—

(a) if he has at any time during the relevant period unreasonably refused to permit the sender or owner of the goods to take possession of them;

(b)

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- (b) if the sender or owner of the goods has taken possession of them during the relevant period; or
- (c) if the goods were received by him in circumstances in which he knew, or might reasonably be expected to have known, that they were not intended for him.

(6) The relevant period referred to in subsections (2), (3), (4) and (5) is, in relation to any unsolicited goods—

- (a) if the recipient of the goods gives notice with respect to the goods to the sender in accordance with subsection (7) within two months after the day on which he receives the goods—the period commencing at the time he receives the goods and extending until the expiration of one month next following the day on which the notice is given; and
- (b) in any other case—the period commencing at the time the recipient receives the goods and extending until the expiration of three months next following the day on which he receives the goods.

(7) A notice under subsection (6) shall be in writing and shall—

- (a) state the name and address of the person who received the goods;
- (b) state the address at which possession may be taken of the goods if it is an address other than that of the person; and
- (c) contain a statement to the effect that the goods were sent to the person without his request.

(8) A notice under subsection (6) may, without prejudice to any other method of giving notice, be given by post, and shall be deemed to be properly addressed if it is addressed to the sender or the person who, from any matter

stated

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No. 89, 1974 stated on the goods, or on any document, package or other thing containing, or sent with the goods, appears to be the sender, and to—

- (a) the place stated on the goods, or on any document, package or other thing containing, or sent with, the goods, to be the address of the sender; or
- (b) if no place is so stated, a place which the recipient has reasonable cause to believe to be the address of the sender.

Assertion of right to payment for unsolicited goods.

5. A person shall not, in the State, knowing that goods are unsolicited goods, assert a right to payment for those goods from the recipient.

Penalty : \$500.

False orders.

6. A person shall not make a request that goods be sent to another person where, if those goods were sent to that other person, they would be unsolicited goods unless the first-mentioned person has the authority (proof of which shall lie on him) of the other person to make that request.

Penalty : \$200.

Liability in respect of directory entries and prescribed services.

7. (1) A person is not liable to pay any charge or fee for—

- (a) the making, whether in or outside the State, of an entry in a directory; or
- (b) the rendering, whether in or outside the State, of a prescribed service,

unless he has authorised the making of the entry or the rendering of the service.

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(2) If, before or after the commencement of this No. 89, 1974 section—

(a) a person has paid, or pays, any charge or fee—

(i) for the making, whether in or outside the State, of an entry in a directory, whether the entry has been made or not; or

(ii) for the rendering, whether in or outside the State, of a prescribed service, whether the prescribed service has been rendered or not,

to a person who has asserted a right to payment of that charge or fee before the payment is made; and

(b) that entry in a directory or that rendering of a prescribed service, as the case may be, has not been authorised by the firstmentioned person,

then the firstmentioned person may recover the amount so paid from the secondmentioned person as a debt in a court of competent jurisdiction.

(3) A proceeding brought in a court under subsection (2) to recover an amount paid may only be commenced within twelve months after the time when the amount was paid.

8. A person shall not, in the State, knowing that he is asserting a right to payment of a charge or fee for—

(a) the making by himself or by another person, whether in or outside the State, of an entry in a directory, whether the entry has been made or not;

or

(b)

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- No. 89, 1974 (b) the rendering by himself or by another person, whether in or outside the State, of a prescribed service, whether the prescribed service has been rendered or not,

assert a right to payment of the charge or fee unless he has reasonable cause to believe (proof of which shall lie on him) that the person against or in relation to whom the right is asserted has authorised the making of the entry or the rendering of the service.

Penalty : \$500.

Regulations relating to directory entries and prescribed services.

9. Regulations may make provision to the effect that the making of an entry in a directory or the rendering of a prescribed service shall, for the purposes of sections 7 and 8, be deemed not to be authorised unless the making of the entry in the directory or the rendering of the prescribed service is authorised in a prescribed manner.

What constitutes an assertion of a right.

10. (1) For the purposes of sections 5, 7 and 8, a person asserts a right to payment for unsolicited goods or to a payment of a charge or fee for the making of an entry in a directory or the rendering of a prescribed service if he—

- (a) makes a demand for the payment or asserts a present or prospective right to the payment;
- (b) threatens to bring any legal proceedings with a view to obtaining the payment;
- (c) places or causes to be placed the name of a person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment;
- (d) invokes or causes to be invoked any other collection procedure, or threatens to do so, with a view to obtaining the payment; or

(e)

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- (e) sends any invoice or other document stating the amount of the payment or setting out the price of the goods or the charge or fee for the making of the entry or the rendering of the prescribed service and not stating as prominently (or more prominently) that no claim is made to the payment, or to payment of the price, charge or fee, as the case may be. No. 89, 1974

(2) For the purposes of subsection (1) (e), an invoice or other document purporting to have been sent by or on behalf of a person shall be deemed to have been sent by that person unless the contrary is established.

(3) Where an assertion of a right to a payment referred to in subsection (1) is constituted by or contained in any written or verbal communication, the assertion shall, for the purposes of sections 5 and 8, be taken to be made in the State if the communication, whether made or sent to a person in the State from within or from outside the State, is received by a person in the State.

11. A person who is a director, within the meaning of the Companies Act, 1961, or an employee, of a corporation which commits an offence against this Act is guilty of the same offence, and liable to be punished accordingly, unless— Offences by corporations

- (a) the offence committed by the corporation was committed without the knowledge of that person;
- (b) that person was not in a position to influence the conduct of the corporation in relation to the commission of the offence by it; or
- (c) that person, being in such a position, used all due diligence to prevent the commission of the offence by the corporation.

12.

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No. 89, 1974 **12.** (1) Proceedings for an offence against this Act
 Proceedings. may—

- (a) be taken and prosecuted by any person acting with the authority in writing of the Minister; and
- (b) be disposed of summarily by an industrial magistrate appointed under the Industrial Arbitration Act, 1940, or a court of petty sessions held before a stipendiary magistrate sitting alone.

(2) In a prosecution for such an offence, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority without proof of the Minister's signature.

(3) The provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before an industrial magistrate and to appeals from an industrial magistrate to the Industrial Commission of New South Wales shall apply to proceedings before an industrial magistrate or a court of petty sessions held before a stipendiary magistrate for offences against this Act as if the proceedings were proceedings under that Act.

(4) Any such proceedings may be commenced by information laid at any time within twelve months after the time when the offence is alleged to have been committed.

Regulations. **13.** (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations may be made so as to apply differently according to such factors as may be specified in the regulations.

(3)

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(3) A regulation that prescribes goods may describe No. 89, 1974 goods by reference to a class of goods.

(4) A regulation that prescribes a service may describe a service by reference to a class of services.