

UNSOLICITED GOODS AND SERVICES.

No. 85 of 1973.

AN ACT relating to the sending of unsolicited goods,
the making of charges for directory entries and
the rendering of certain unrequested services,
and for incidental and other purposes.

[Assented to 21st December, 1973.]

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

1. This Act may be cited as the *Unsolicited Goods and Services Act, 1973*. Citation.

2. This Act shall come into operation on a date to be fixed by proclamation. Commencement.

Interpreta-
tion.

3. (1) In this Act, unless the contrary intention appears—

“directory” includes any publication of a similar nature to a directory but does not include a newspaper published in good faith as a newspaper at regular intervals or a publication published, or to be published, by or under the authority of the Postmaster-General;

“making”, in relation to an entry in a directory, means including, or arranging for the inclusion of, the entry;

“prescribed service” means a service for the time being prescribed as being a service to which this Act applies;

“price” includes a charge of any description;

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

“send” includes deliver, and “sent” and “sender” have corresponding meanings;

“sender” in relation to unsolicited goods means the person who sent those goods whether from a place within or outside the State and includes a person on whose behalf those goods were sent and a person claiming through or under either of those persons;

“supply” includes—

(a) in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and

(b) in relation to services—provide, grant or confer;

“the Court” means a court of competent jurisdiction;

“unsolicited goods” means goods that have been sent whether from a place within or outside the State by a person in the course of a trade or business to a person within the State with a view to the recipient acquiring or hiring those goods or an interest in those goods where the recipient has not requested that the goods be so sent to him.

4. For the purposes of this Act—

Unsolicited goods.

- (a) where goods of a kind similar to the goods that a person has requested be sent to him are sent with a view to satisfying that request, those goods are not for that reason alone unsolicited goods;
- (b) a recipient 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 recipient other than rights or obligations relating to goods described in the form; and
- (c) any reference to the supply of goods or services by a person shall be construed as including a reference to the supply of goods or services under arrangements to which that person is a party.

5. (1) A person shall not assert a right to payment from a recipient for unsolicited goods.

Assertion of right to payment for unsolicited goods.

(2) It is a defence to a prosecution for a contravention of subsection (1) of this section if the defendant proves—

- (a) that his contravention was due to his believing on reasonable grounds that a request had been made by the recipient of the unsolicited goods that the goods be sent to him;
- (b) that if the goods had been sent as a result of that request, they would not have been unsolicited goods; and
- (c) in a case where he became aware or ought on reasonable grounds to have become aware after sending the goods that such a request had not been made, that he informed that recipient to the effect that the recipient was not liable to pay for the goods.

False orders.

6. A person shall not make a request in the name of another person that goods be sent to that other person where, if those goods were sent to that other person, those goods would be unsolicited goods unless the person making the request has the authority of that other person to make that request.

Penalty: Two hundred dollars.

Liability of recipient of unsolicited goods.

7. (1) A person to whom unsolicited goods are supplied is not liable to make any payment for the goods.

(2) A person to whom unsolicited goods are supplied 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 period specified in subsection (5) of this section.

(3) Subject to subsection (4) of this section, where, on or after the coming into operation of this Act, a person sends unsolicited goods to another person—

- (a) the sender is not entitled after the expiration of the period specified in subsection (5) of this section to take action for the recovery of the goods from the recipient; and
- (b) upon the expiration of that period the goods become, by force of this section, the property of the recipient freed and discharged from all liens and charges of any description.

(4) The provisions of subsection (3) of this section do not apply to or in relation to unsolicited goods sent to a person if—

- (a) the person has at any time during the period specified in subsection (5) of this section unreasonably refused to permit the sender or the owner of the goods to take possession of the goods;
- (b) the sender or the owner of the goods has within that period taken possession of the goods;
- (c) the goods were received by the recipient in circumstances in which he knew, or might reasonably be expected to have known, that the goods were not intended for him; or
- (d) the goods were the subject of a lien or charge of any description at the time when the goods were received by the recipient, in circumstances in which he knew, or might reasonably be expected to have known, that the goods were the subject of such a lien or charge.

(5) The period referred to in this section is—

(a) if the person who receives the unsolicited goods gives notice with respect to the goods to the sender in accordance with subsection (6) of this section—

(i) the period of one month next following the day on which the notice is given; or

(ii) the period of three months next following the day on which the person received the goods,

whichever first expires; and

(b) in any other case—the period of three months next following the day on which the person received the goods.

(6) A notice under subsection (5) of this section 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 are unsolicited goods.

Directory
entries and
prescribed
services.

8. (1) Subject to section 10 of this Act the provisions of this section apply to and in relation to a contract or agreement for the making of a directory entry or the rendering of a prescribed service if the offer to enter into the contract or agreement was made or accepted in this State or at the time the offer was made or accepted a party to the contract or agreement was resident or carrying on business in the State, but not otherwise.

(2) A person is not liable to make any payment, and is entitled to recover any payment made by him, in full or part satisfaction of a charge or fee

for the making of an entry in a directory or the rendering of a prescribed service unless he has authorized the making of the entry or the rendering of that service.

(3) A person shall not be taken for the purposes of this section to have authorized the making of an entry in a directory or the rendering of a prescribed service unless—

- (a) a document authorizing the making of the entry or the rendering of the service has been signed by the person or by another person authorized by him;
- (b) a copy of the document has been given to the person before the right to payment of a charge or fee is asserted;
- (c) in the case of the making of an entry in a directory, the document specifies the name of the directory, the name and address of the person publishing the directory and particulars of the entry inserted or proposed to be inserted;
- (d) in the case of the rendering of a prescribed service, the document specifies the particulars of the service rendered or proposed to be rendered; and
- (e) in each case, the document specifies the amount of the charge or fee or the basis on which the charge or fee is, or is to be, calculated.

9. A person shall not assert a right to payment from any other person of a charge or fee for—

- (a) the making in a directory of an entry relating to that other person or to the profession, business, trade or occupation of that other person; or

Assertion of right to payment for making a directory entry or rendering a prescribed service.

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(b) the rendering of a prescribed service, whether made or to be made or rendered or to be rendered by him, or by any other person, wholly in the State or partly in the State, unless he has reasonable cause to believe that such other person has authorized the making of the entry or the rendering of the service.

Sections 8
and 9 not to
apply to
certain
matters.

10. Sections 8 and 9 of this Act do not apply to or in relation to—

(a) the making of a payment or the assertion of a right to payment pursuant to a contract or agreement relating to the making of a directory entry or the rendering of a prescribed service—

(i) made or entered into before the coming into operation of this Act;
or

(ii) arising from the acceptance of an offer made before the coming into operation of this Act;

or

(b) the making of a payment or the assertion of a right to payment pursuant to a contract or agreement relating to the rendering of a service that became a prescribed service after the commencement of this Act being a contract or agreement—

(i) made or entered into before the service became a prescribed service;
or

(ii) arising from the acceptance of an offer made before the service became a prescribed service.

11. (1) For the purposes of this Act, a person shall be taken to assert a right to payment from another person for unsolicited goods or of a charge or fee for the making of an entry in a directory or the rendering of a prescribed service if he—

What constitutes an assertion.

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

(2) The receipt by any person of an invoice or other document that—

- (a) sets out the price of any goods; or
- (b) asserts or implies that payment should be made for any goods, or that payment of a charge or fee should be made for the making of a directory entry or the rendering of a prescribed service,

and that was sent or purports to have been sent by or on behalf of the person who sent those goods, or who made or proposes to make that entry, or rendered or proposes to render that service, shall be deemed to be an assertion of a right to payment except where that invoice or other document states as prominently or more prominently that no claim is made for any such payment.

12. Any person who—

Certain acts prohibited.

- (a) asserts an intention to bring legal proceedings to enforce payment for unsolicited goods, the making of a directory entry or the rendering of a prescribed service;

- (b) publishes or causes to be published the name of a person not liable to make payment for unsolicited goods, the making of a directory entry or the rendering of a prescribed service on a list or record of debtors or defaulters or asserts an intention of so doing; or
- (c) invokes any other collection procedure to enforce payment for unsolicited goods, the making of a directory entry or the rendering of a prescribed service or asserts an intention so to do,

unless he has reasonable cause to believe that he has a right to assert a right to payment for the goods, the making of the directory entry or the rendering of the prescribed service is guilty of an offence.

Certain proceedings not to be commenced or continued.

13. Proceedings shall not be commenced or continued to enforce payment for—

- (a) goods sent to a person outside the State where, had the goods been sent to a person in this State, the goods would be unsolicited goods; or
- (b) making a directory entry or rendering outside this State a service which, if rendered in this State, would have been a prescribed service, unless in relation to the contract for making the directory entry or rendering the service subsection (2) of section 8 of this Act or a provision in the law of another State or Territory of the Commonwealth that corresponds to that subsection had been complied with.

Offences.

14. (1) A person who contravenes or fails to comply with any provision of this Act is guilty of an offence punishable, on conviction, where no other penalty is expressly provided, by a fine not exceeding five hundred dollars.

(2) Where an act or omission of a person is both an offence against this Act and an offence under a law of the Commonwealth and that person is convicted of an offence under the law of the Commonwealth, he is not liable to be convicted of the other of those offences.

15. Proceedings for offences against this Act shall be disposed of in a summary manner before a Court of Petty Sessions.

Summary proceedings.

16. (1) Where, in a proceeding under this Act in respect of any act or thing done by a body corporate it is necessary to establish the intention of the body corporate it is sufficient to show that a servant or agent of the body corporate by whom the relevant act or thing was done had that intention.

Acts done by servants or agents of body corporate.

(2) Any act done or course of conduct engaged in on behalf of a body corporate by a director, agent or servant of the body corporate or by any other person at the direction or with the consent or agreement (whether express or implied) of a director, agent or servant of the body corporate shall be deemed, for the purposes of this Act, to have been done or engaged in also by the body corporate.

17. Where a person charged with an offence against this Act is a body corporate, a person who is concerned or takes part in the management of the body corporate may be charged with a like offence and where the body corporate is convicted of the offence a person who is so concerned or takes part in the management of the body corporate may be convicted of the like offence unless he proves that—

Offences by bodies corporate.

- (a) the offence committed by the body corporate was committed without his knowledge;

- (b) he was not in a position to influence the conduct of the body corporate in relation to the commission of the offence by it; or
- (c) he, being in such a position, used all due diligence to prevent the commission of the offence by the body corporate.

Evidence.

18. In proceedings under this Act,—

- (a) where it appears to the Court from the perusal of an invoice or other document that—

- (i) the document is relevant to the facts in issue; and
- (ii) purports to have been sent or published by or on behalf of any person,

the document may be admitted in evidence in those proceedings without formal proof of the sending or publishing of it, or of the authentication of it, and the document shall be *prima facie* evidence that any statement, representation, assertion or implication contained therein—

- (iii) was actually made;
 - (iv) was made on the day on which it is alleged that it was made; and
 - (v) was made by the person by or on whose behalf the document purports to have been sent or published;
- (b) 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 proved;
 - (c) an allegation that a defendant is a body corporate incorporated under the law of a State or Territory of the Commonwealth, not being this State, shall be *prima facie* evidence that the defendant is a body corporate incorporated under the law of that State or Territory;

- (d) in the case of a contravention constituted by asserting a right to payment from a person for unsolicited goods, the burden lies on the defendant of proving that the defendant had reasonable cause to believe that there was a right to payment;
- (e) in the case of a contravention constituted by asserting a right to payment from a person of a charge or fee for the making of an entry in a directory or the rendering of a prescribed service, the burden lies on the defendant of proving that the defendant knew or had reasonable cause to believe that the person had authorized the making of the entry or the rendering of the service; and
- (f) in the case of a contravention constituted by a person requesting in the name of another person that goods be sent to that other person, the burden lies on the defendant of proving that the defendant had the authority of that other person to make the request.

19. (1) The Governor in Council may, by notice in writing published in the *Government Gazette*, declare that the provisions of this Act, other than this section, do not apply or did not at a particular time apply to—

Power to declare certain transactions and publications not to be subject to this Act.

- (a) a specified transaction or class of transactions;
- (b) a specified transaction effected by a specified person; or
- (c) a specified directory or other publication.

(2) A declaration under subsection (1) of this section may be made subject to such terms and conditions as the Governor in Council determines and specifies in the notice.

(3) The Governor in Council may, by notice in writing published in the *Government Gazette*, revoke a declaration made under subsection (1) of this section.

(4) The revocation of a declaration under subsection (3) does not affect the previous operation of the declaration or anything done or suffered in accordance with the declaration or a right, privilege or obligation acquired, accrued or incurred under the declaration.

(5) For the purposes of subsection (1) of this section "transaction" includes any arrangements made in connexion with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not.

Regulations. 20. (1) The Governor may make such regulations as are necessary or expedient for the purpose of giving effect to the provisions and objects of this Act.

(2) Without limiting the generality of subsection (1) of this section, the regulations may—

- (a) prescribe a specified service or a specified class of service as a service to which this Act applies; and
 - (b) provide for and prescribe penalties not exceeding in each case two hundred dollars for a breach of a provision of the regulations.
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