

WESTERN AUSTRALIA

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# DOOR TO DOOR TRADING ACT 1987

(No. 7 of 1987)

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# DOOR TO DOOR TRADING ACT

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No. 7 of 1987

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**AN ACT to make provision with respect to door to door trading and to repeal the *Door to Door (Sales) Act 1964*, and for related purposes.**

[Assented to 5 June 1987]

**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:—

## PART I—PRELIMINARY

### Short title

1. This Act may be cited as the *Door to Door Trading Act 1987*.

**Commencement**

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

**Interpretation**

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

“business” includes a trade or profession;

“commencement day” means the day fixed under section 2;

“consumer” means a person (not being a body corporate) to whom goods or services are, or are to be, supplied under a contract or proposed contract to which that person is, or is to be, a party;

“cooling-off period” in relation to a prescribed contract means the period of 10 days commencing on and including the day on which the contract is made;

“contract to which this Act applies” means a contract to which this Act applies by virtue of section 4;

“credit” includes any form of financial accommodation;

“dealer” means a person who, in the course of door to door trading—

(a) enters into negotiations with another person with a view to the making of a contract for the supply of goods or services to that other person; or

(b) calls on another person for the purpose of entering into such negotiations,

(whether or not that person is or is to be the supplier of the goods or services);

“door to door trading” means the trading practice under which—

(a) a person—

(i) goes from place to place; or

(ii) makes telephone calls,

seeking out persons who may be prepared to enter, as consumers, into contracts for the supply of goods or services; and

(b) that person or some other person then or subsequently enters into negotiations with those prospective consumers with a view to the making of such contracts;

“goods” includes anything growing on, or attached to, land that is severable from the land;

“negotiation” includes any discussion or dealing directed towards the making of a contract (whether or not the terms of the contract are open to negotiation); and “to negotiate” has a corresponding meaning;

“prescribed contract” has the meaning assigned by section 6;

“public holiday” means a public holiday under the *Public and Bank Holidays Act 1972*;

“related contract or instrument” in relation to a contract to which this Act applies means—

- (a) a contract of guarantee or indemnity that is related to the contract;
- (b) an instrument related to the contract that creates a mortgage or charge in favour of the supplier or dealer, or a person nominated by the supplier or dealer; or
- (c) any other contract or instrument (not being an instrument of the kind referred to in paragraph (b)) that is collateral or related to the contract;

“rescission” in relation to a contract means avoidance of the contract as from its beginning;

“services” includes rights or benefits of any kind except the supply of goods;

“supplier” in relation to a contract or proposed contract for the supply of goods or services, means the person by whom the goods or services are, or are to be, supplied under the contract or proposed contract;

“supply” includes—

- (a) in relation to goods, the conferral of a right to goods or a right to the possession or use of goods;
- (b) in relation to services, the conferral of a right to services;

“trade premises”, of a supplier, means premises that constitute an established place of business of the supplier, or an agent of the supplier;

## (2) In this Act—

- (a) a reference to the supply of goods or services extends to the supply of both goods and services;
- (b) a reference to the consumer or supplier under a contract for the supply of goods or services extends to any person to whom the rights of the original consumer or supplier under the contract are assigned or transferred, or pass by operation of law; and
- (c) a reference to negotiation of a contract to which this Act applies is a reference to negotiation of a contract that would, on its formation, be a contract to which this Act applies.

(3) For the purposes of this Act, a contract is a contract for the supply of goods or services to a person (being a party to the contract) if it provides for the supply of goods or services either to that person or to some other person but on the order of that person.

## PART II—CONTRACTS TO WHICH THIS ACT APPLIES

*Division 1—Contracts generally***Criteria for determining whether contract is one to which this Act applies**

4. (1) Subject to this section, this Act applies to a contract for the supply of goods or services to a consumer (whether or not the law of Western Australia is the proper law of the contract) if the following conditions are satisfied—

- (a) negotiations leading to the formation of the contract (whether or not they are the only negotiations that precede the formation of the contract) take place between the consumer and a dealer in each other's presence in Western Australia at a place other than trade premises of the supplier; and
- (b) the dealer attends at that place—
  - (i) in the course of door to door trading; and
  - (ii) otherwise than at the unsolicited invitation of the consumer.

(2) For the purposes of subsection (1)(b)—

- (a) in determining whether an invitation is solicited or unsolicited, any solicitation by way of advertisement addressed to the public or a substantial section of the public shall be disregarded; but
- (b) except as provided in paragraph (a), where an invitation arises from a communication initiated by the supplier or dealer, or a person acting on behalf of the supplier or dealer, the invitation shall not be regarded as unsolicited.

(3) This Act does not apply to—

- (a) a contract made by a consumer in the course of, or in connection with, a business carried on by the consumer; or
- (b) a contract of a kind excluded by regulation from the application of this Act.

(4) In proceedings in which it is alleged that a contract for the supply of goods or services is a contract to which this Act applies, the contract shall be presumed to be such a contract in the absence of proof to the contrary.

### **Certain contractual terms prohibited**

5. (1) A contract to which this Act applies must not contain—

- (a) a provision purporting to provide that the contract, or any proceeding arising from the contract, is governed by the law of a place other than Western Australia;
- (b) a provision purporting to provide that legal proceedings arising out of, or in relation to, the contract are justiciable only by the courts of a place other than Western Australia;
- (c) a provision purporting to exclude, restrict or modify any right conferred on a consumer by this Act; or
- (d) a provision of a kind prohibited by the regulations.

(2) Where a contract to which this Act applies contains a provision contrary to subsection (1), the provision is void and the supplier and the dealer are each guilty of an offence.

Penalty: \$1 000.

(3) In this section—

“contract to which this Act applies” includes a related contract or instrument.

*Division 2—Prescribed contracts***Definition of prescribed contract**

6. (1) Subject to this section, a contract to which this Act applies is a prescribed contract if the total consideration payable by the consumer under, or in respect of, the contract—

- (a) is not ascertainable at the time of the making of the contract; or
- (b) is ascertainable at the time of the making of the contract and exceeds the prescribed amount.

(2) Where—

- (a) 2 or more contracts relate to substantially the same transaction;  
and
- (b) the transaction could have been effected by a single contract which would, in that case, have constituted a prescribed contract,

then each of the contracts that would not, if it stood alone, constitute a prescribed contract becomes a prescribed contract and, for the purpose of ascertaining the cooling-off period in relation to such a contract, it shall be deemed to have been made when the last of the contracts was made.

(3) The following are not prescribed contracts—

- (a) a contract of insurance;
- (b) a contract solely for the provision of credit; or
- (c) a contract of a kind declared by the regulations not to be a prescribed contract.

(4) In proceedings in which it is alleged that a contract for the supply of goods or services is a prescribed contract, the contract shall be presumed to be such a contract in the absence of proof to the contrary.

(5) In this section—

“the prescribed amount” means \$50 or such other amount as may be prescribed.



**Requirements in relation to prescribed contracts**

7. (1) The following requirements must be complied with in relation to a prescribed contract—

- (a) the contract must set out in full all the contractual terms, including—
  - (i) the total consideration to be paid or provided by the consumer or, if the total consideration is not ascertainable at the time the contract is made, the manner in which it is to be calculated; and
  - (ii) if the contract provides for the carrying out of work of a prescribed nature, detailed particulars of the work (including any such particulars required by the regulations);
- (b) the contractual terms must be printed or typewritten (apart from any insertions or amendments to the printed or typewritten form, which may be handwritten);
- (c) the making of the contract must be completed by the consumer signing the contract after it has already been executed by or on behalf of the supplier;
- (d) the consumer must be given a duplicate of the contract immediately after the making of the contract;
- (e) where the dealer is not the supplier, the contract must set out the full name and address of the dealer and identify that person as the dealer;
- (f) the contract must contain immediately above the place provided for the signature of the consumer the statement “THIS CONTRACT IS SUBJECT TO A COOLING-OFF PERIOD OF TEN DAYS” printed in upper case in type not smaller than 18-point;
- (g) the consumer must be given 2 notices at or immediately before the making of the contract—
  - (i) one being a notice, in the prescribed form, explaining the right of the consumer to rescind the contract; and
  - (ii) the other being a notice, in the prescribed form, that may be used by the consumer to rescind the contract;

(h) the notices referred to in paragraph (g) must—

- (i) be printed or typewritten (apart from any insertion, which may be handwritten);
  - (ii) set out the full name and address of the supplier and identify that person as the supplier; and
  - (iii) be separate from, and not attached to, any other document;
- (i) the printing or typewriting of the contract, the statement referred to in paragraph (f), and the notices referred to in paragraph (g), must be readily legible and conform with the requirements of the regulations; and
- (j) any handwriting (apart from a signature or initial) in the contract or a notice referred to in paragraph (g) must be readily legible.

(2) If any of the requirements of subsection (1) is not complied with, the supplier and the dealer are each guilty of an offence.

Penalty: \$1 000.

(3) Where a consumer acknowledges in writing receipt of a document required to be given under subsection (1), the acknowledgement is evidence, but not conclusive evidence, that the document was given to the consumer as required by that subsection.

### **Consideration not to be accepted from consumer nor services supplied before expiration of cooling-off period**

8. (1) If a supplier or dealer accepts any money or other consideration from a consumer under a prescribed contract or a related contract or instrument before the expiration of the cooling-off period, the supplier and the dealer are each guilty of an offence.

Penalty: \$1 000.

(2) Subject to subsection (3), if services are supplied under a prescribed contract before the expiration of the cooling-off period, the supplier is guilty of an offence.

Penalty: \$1 000.

(3) Subsection (2) does not apply to the supply of services of a kind excluded by the regulations from the application of that subsection.

## PART III—REGULATION OF DOOR TO DOOR TRADING PRACTICES

**Dealers not to call during certain hours**

**9.** Except by prior appointment, no dealer shall call on a person—

- (a) at any time on a public holiday; or
- (b) on any other day—
  - (i) between midnight and 9.00 a.m.; or
  - (ii) between 8.00 p.m. and midnight,

for the purpose of negotiating a contract to which this Act applies or for an incidental or related purpose.

Penalty: \$1 000.

**Dealers to leave premises when so requested**

**10.** A dealer who calls at premises for the purpose of negotiating a contract to which this Act applies or for an incidental or related purpose shall leave the premises at the request of the occupier of the premises or any person acting with the actual or implied authority of the occupier.

Penalty: \$1 000.

**Dealers to indicate their purpose for making calls**

**11.** A dealer who calls on a person for the purpose of negotiating a contract to which this Act applies or for an incidental or related purpose shall, as soon as it is practicable to do so—

- (a) make known to that person the purpose of the call; and
- (b) produce to that person an identity card setting out—
  - (i) the dealer's full name and address; and
  - (ii) if the dealer is not the supplier, the supplier's full name and address.

Penalty: \$500.

**Offence to harass or coerce**

**12.** (1) No dealer or other person shall, for the purpose of, or in the course of, negotiating a contract to which this Act applies, harass or coerce a consumer.

Penalty: \$1 000.

(2) No dealer or other person shall harass or coerce a consumer for the purpose of dissuading or preventing the consumer from exercising a right conferred on the consumer by this Act.

Penalty: \$1 000.

**PART IV—RESCISSION OF CONTRACTS TO WHICH THIS ACT  
APPLIES**

**Right of consumer to rescind contracts  
to which this Act applies**

**13.** (1) A consumer may rescind a contract to which this Act applies (whether or not the contract is a prescribed contract) within 6 months of the date of the contract—

- (a) if the contract or a related contract or instrument contains a provision contrary to section 5; or
- (b) if the supplier or a dealer commits an offence against Part III in the course of, or in relation to, the negotiations leading to the formation of the contract.

(2) A consumer may rescind a prescribed contract—

- (a) at any time before the expiration of the cooling-off period; or
- (b) if there has been a failure to comply with any of the requirements of section 7(1) in relation to the contract, within 6 months of the date of the contract.

(3) A right of rescission conferred by this section may be exercised—

- (a) notwithstanding affirmation of the contract by the consumer;  
and
- (b) notwithstanding that the contract has been fully executed.

**Exercise of right of rescission**

**14.** (1) A consumer exercises a right of rescission conferred by this Part by giving notice of rescission to the supplier.

(2) The notice of rescission—

- (a) must be in writing in the form prescribed by the regulations or in a form that clearly indicates an intention on the part of the consumer to rescind the contract;
- (b) must (except in the case of a notice given in respect of a prescribed contract during the cooling-off period) state the ground of rescission; and
- (c) must be given to the supplier—
  - (i) by delivering it personally to the supplier; or
  - (ii) by delivering it, or sending it by post, in an envelope addressed to the supplier, to the supplier's address.

(3) A notice of rescission sent by post to a supplier in accordance with subsection (2) shall be deemed to have been given to the supplier at the time of posting.

(4) In this section, a reference to the supplier's address is a reference to—

- (a) a place at which the supplier resides or carries on business; or
- (b) the supplier's address as shown on a notice given to the consumer under this Act.

**Restitution following rescission**

**15.** (1) Where a contract to which this Act applies is rescinded under this Part restitution shall be made by the parties to the contract as follows—

- (a) the supplier shall return or refund to the consumer any consideration or the value of any consideration given by the consumer under the contract or a related contract or instrument; and
- (b) the consumer shall—
  - (i) return or refund to the supplier any goods or the value (as at the date of supply) of any goods received from the supplier under the contract; and

- (ii) pay to the supplier the value of any services supplied under the contract up to the time of rescission (but not including the value of any such services supplied under a prescribed contract before the expiration of the cooling-off period in contravention of this Act).

(2) Where the consumer makes goods available for collection by the supplier at the place at which they were received from the supplier for the period of 28 days from the date of rescission of the contract and the supplier fails to collect the goods before the expiration of that period, the consumer shall be deemed to have made restitution in respect of those goods as required by subsection (1) and the goods shall become the property of the consumer free of any other right or interest.

(3) Where the consumer returns goods to the supplier under this section but has failed to take reasonable care of the goods, the consumer is liable to pay compensation to the supplier for the damage to or depreciation in the value of the goods, but the consumer is not liable for any such damage or depreciation attributable to normal use of the goods or circumstances beyond the control of the consumer.

(4) Where restitution of goods is not possible (whether because the goods have been consumed or affixed to land, because a third party has acquired an interest in the goods, or for any other reason), the impossibility of restitution of the goods is not a bar to rescission under this Part but, in that event, the consumer is liable to pay to the supplier the value of the goods.

(5) The obligations imposed by this section may be enforced by action in any court of competent jurisdiction.

(6) A court convicting a supplier of an offence against this Act is competent to make orders, on the application of the prosecutor, for the enforcement of obligations imposed by this section.

(7) A person who fails to comply with an order under subsection (6) is guilty of an offence.

Penalty: \$1 000.

### **Related contract or instrument also void**

**16.** (1) Subject to subsection (2), where a contract to which this Act applies is rescinded under this Part, any related contract or instrument is void.

(2) This section does not affect the operation of the *Credit Act 1984* in its application to a tied loan contract as defined in that Act.

**Consumers not competent to waive rights**

**17.** The consumer under a contract to which this Act applies is not competent to waive any right conferred by this Part.

**Prohibition of action to recover amount under contract in certain circumstances**

**18.** (1) Where a contract to which this Act applies has been rescinded, or is capable of being rescinded, under this Part, no person shall, for the purpose of recovering an amount alleged to be payable by the consumer under the contract or a related contract or instrument—

- (a) bring, or assert an intention to bring, legal proceedings against the consumer;
- (b) place the name of the consumer, or cause the name of the consumer to be placed, on any list of defaulters or debtors, or assert an intention of placing the name of the consumer, or causing the name of the consumer to be placed, on any such list;  
or
- (c) take any other action against the consumer.

Penalty: \$1 000.

(2) It is a defence to a charge for an offence against subsection (1) to prove that, at the time of the alleged offence, the defendant did not know, and could not reasonably be expected to have known, that the contract had been rescinded or was capable of being rescinded.

(3) Where a person is convicted of an offence against subsection (1) (b), the court may order the person responsible for keeping any list on which the name of the consumer has been wrongfully placed to remove the name from that list.

(4) A person who fails to comply with an order under subsection (3) is guilty of an offence.

Penalty: \$1 000.

**PART V—MISCELLANEOUS****Prohibition of share hawking unaffected by this Act**

**19.** This Act does not derogate from section 552 of the *Companies (Western Australia) Code*.

### **Vicarious liability**

**20.** (1) Where an offence against this Act is committed by an agent or employee, the principal or employer is also guilty of an offence and liable to the same penalty as is prescribed for the firstmentioned offence unless it is proved that the principal or employer could not by the exercise of reasonable diligence have prevented the commission of the offence by the agent or employee.

(2) Where an offence against this Act is committed by a body corporate, every director of the body corporate is also guilty of an offence and liable to the same penalty as is prescribed for the firstmentioned offence unless it is proved that the director could not by the exercise of reasonable diligence have prevented the commission of the offence by the body corporate.

(3) Where an offence against this Act is committed by a supplier or dealer in relation to a contract to which this Act applies, any person who has derived or would, if the contract were carried out, expect to derive a direct or indirect financial benefit from the contract is guilty of an offence and liable to the same penalty as is prescribed for the firstmentioned offence unless it is proved that that person could not by the exercise of reasonable diligence have prevented the commission of the offence by the supplier or dealer.

### **Evidentiary provision**

**21.** In proceedings for an offence against this Act, an allegation in the complaint that the defendant was, in relation to conduct to which the charge relates, acting as a dealer shall, in the absence of proof to the contrary, be accepted as proof that the defendant was acting in that capacity.

### **Regulations**

**22.** The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

### **Repeal and saving provision**

**23.** (1) The *Door to Door (Sales) Act 1964* is repealed.

(2) Notwithstanding the repeal effected by subsection (1) the *Door to Door (Sales) Act 1964* continues to apply to contracts made before the commencement day (and this Act does not apply to any such contract).

(3) This Act applies to a contract made on or after the commencement day notwithstanding that negotiations leading to the formation of the contract may have taken place before the commencement day.