



AUSTRALIAN CAPITAL TERRITORY

Door-to-Door Trading Act 1991

No. 7 of 1991

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AUSTRALIAN CAPITAL TERRITORY

Door-to-Door Trading Act 1991

No. 7 of 1991

An Act to make provision with respect to door-to-door trading

[Notified in ACT Gazette S 9: 5 March 1991]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Door-to-Door Trading Act 1991*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
(2) Subject to subsection (3), the remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the expiration of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision shall, by force of this subsection, commence on the expiration of that period.

Interpretation

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

“business” includes a trade or profession;

“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;

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

“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;

“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 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 grown 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);

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

“public holiday” does not include a bank holiday;

“related contact 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; and
- (b) in relation to services—the conferral of a right to services;

“trade premises”, in relation to 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 shall be read as including a reference 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 shall be read as including a reference 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 shall be read as including 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

Contracts to which 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 the Territory is the proper law of the contract) if—

- (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 the Territory 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) Subject to subsection (3), for the purposes of paragraph (1) (b) in determining whether an invitation is solicited or unsolicited, any solicitation by way of—

- (a) printed or written material delivered but not addressed personally to the consumer; or

- (b) advertisement addressed to the public or a substantial section of the public;

shall be disregarded, but 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) Where an invitation referred to in paragraph (1) (b) 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.

(4) 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 the regulations from the application of this Act.

(5) 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 shall 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 the Territory;
- (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 the Territory;
- (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 in contravention of subsection (1), the provision is void and the supplier and the dealer are each guilty of an offence punishable, on conviction, by—

- (a) if the offender is a natural person—a fine not exceeding \$5,000;
- (b) if the offender is a body corporate—a fine not exceeding \$25,000.

(3) In this section—

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

Division 2—Prescribed contracts

Prescribed contracts

6. (1) 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 \$50, or if another amount is prescribed, that amount.

(2) Where—

- (a) 2 or more contracts relate substantially to 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;
- (c) a contract for the supply of goods or services by a charitable organisation;
- (d) 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 subsection (3)—

“charitable organisation” means an organisation, corporate or unincorporate, found or carried on for a benevolent or charitable purpose, other than one found or carried on for the purposes of securing pecuniary benefit for its members.

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) if 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 10 DAYS” printed in upper case in type not smaller than 18 point;
- (g) subject to subsection (2), 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;
- (j) 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;
- (k) any handwriting (apart from a signature or initial) in the contract or a notice referred to in paragraph (g) must be readily legible.

(2) Before giving the notice referred to in subparagraph (1) (g) (i) to a consumer, the dealer shall read the notice aloud to the consumer.

Penalty: \$2,000.

(3) If any of the requirements of subsection (1) is, without reasonable excuse, not complied with, the supplier and the dealer are each guilty of an offence punishable, on conviction, by—

- (a) if the offender is a natural person—a fine not exceeding \$5,000; or
- (b) if the offender is a body corporate—a fine not exceeding \$25,000.

(4) Where a consumer acknowledges, in writing, receipt of a document required to be given under subsection (1), the acknowledgment is, in the absence of proof to the contrary, evidence that the document was given to the consumer in accordance with that subsection.

Cooling-off period—acceptance of consideration, supply of services

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.

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

(3) A person who, without reasonable excuse, contravenes subsection (1) or (2) is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000.

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

Hours of trading

- 9.** Except by prior appointment, a dealer shall not call on a person—
- (a) at any time on Good Friday, Easter Sunday or Christmas Day;
 - (b) on a Saturday, Sunday (other than Easter Sunday) or public holiday (other than Good Friday or Christmas Day) between midnight and 9.00 a.m. or between 5.00 p.m. and midnight; or
 - (c) on any other day, between midnight and 9.00 a.m. or 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: \$2,000.

Duties of dealers

10. (1) 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 not, without reasonable excuse, fail to leave the premises when requested to do so by the occupier of the premises or any person acting with the actual or implied authority of the occupier.

Penalty: \$2,000.

(2) 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 a 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.

(3) A dealer who, without reasonable excuse, contravenes subsection (2) is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000.

Harassment or coercion

11. (1) A dealer or other person shall not, for the purpose of, or in the course of, negotiating a contract to which this Act applies, harass or coerce a consumer.

Penalty: \$5,000.

(2) A dealer or other person shall not 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: \$5,000.

PART IV—RESCISSION OF CONTRACTS TO WHICH THIS ACT APPLIES**Rescission—right of consumer**

12. (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 contracts.

(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 subsection 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.

(4) The rights conferred by this section are in addition to and do not derogate from any other rights that the consumer may have at law or in equity.

Exercise of right of rescission

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

- (2) A notice of rescission shall—
 - (a) be in the prescribed form, or in a form that clearly indicates an intention on the part of the consumer to rescind the contract;
 - (b) 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) 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) 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

14. (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;
- (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 as at the date of supply.

(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, without reasonable excuse, contravenes an order under subsection (6) is guilty of an offence punishable, on conviction by—

- (a) if the offender is a natural person—a fine not exceeding \$5,000; or
- (b) if the offender is a body corporate—a fine not exceeding \$25,000.

Related contracts or instruments

15. (1) 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 1985* in its application to a tied loan contract.

Waiver of rights

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

Prohibition of certain actions

17. (1) Where a contract to which this Act applies has been rescinded, or is capable of being rescinded, under this Part, a person shall not, 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.

(2) Subsection (1) (a) does not prohibit—

- (a) the bringing of, or the asserting of an intention to bring, legal proceedings to determine whether or not a contract to which this Part applies has been or is capable of being, rescinded under this Part; or
- (b) the continuation of such proceedings (for the purpose of recovering an amount alleged to be payable by the consumer under the contract or a related contract or instrument) where it is determined that the contract has not been, or is not capable of being, rescinded.

(3) 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 have been expected to have known, that the contract had been rescinded or was capable of being rescinded.

(4) Where a person is convicted of an offence against paragraph (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.

(5) A person who, without reasonable excuse, contravenes subsection (1), or an order under subsection (4), is guilty of an offence punishable, on conviction, by—

- (a) if the offender is a natural person—a fine not exceeding \$5,000; or
- (b) if the offender is a body corporate—a fine not exceeding \$25,000.

PART V—MISCELLANEOUS**Conduct of directors, servants and agents**

18. (1) Where, for the purposes of a prosecution for an offence against this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person includes a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body's or person's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where an offence against this Act is committed by a supplier or dealer in relation to a contract to which this Act applies, any other 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 first-mentioned offence, unless the other person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct by the supplier or dealer.

(5) 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 first-mentioned 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.

(6) Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1), (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(7) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(8) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

Evidentiary provision

19. 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 evidence that the defendant was acting in that capacity.

Regulations

20. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Repeal and saving

21. (1) The *Door-to-door Sales Act 1969* and the *Door-to-door Sales Act 1976* are repealed.

(2) Notwithstanding the repeal effected by subsection (1), the *Door-to-door Sales Act 1969* continues to apply to contracts made before the date of commencement of this Act (and this Act does not apply to any such contract).

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

[Presentation speech made in Assembly on 15 August 1990.]

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