



ANNO VICESIMO

ELIZABETHAE II REGINAE

A.D. 1971

No. 78 of 1971

An Act relating to certain selling practices and for other purposes.

[Assented to 18th November, 1971]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the "Door to Door Sales Act, 1971".

Commencement.

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

Division of Act.

3. This Act is divided as follows:—

PART I—PRELIMINARY

PART II—DOOR TO DOOR SALES

PART III—MISCELLANEOUS.

Operation of Book Purchasers Protection Act, 1963-1964, not affected.

4. This Act shall not be construed as affecting, limiting or restricting the operation or effect of the Book Purchasers Protection Act, 1963, as amended.

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

“dealer” in relation to a contract or agreement for the sale of goods or the supply of services, means the person not being the vendor under such a contract or agreement or an agent of such a vendor by whom or on whose behalf negotiations leading to the making of that contract or agreement were carried out and includes the servant and agent of that person.:

“goods” includes—

(a) services and rights in respect of goods or services;

and

(b) rights relating to the burial, cremation or disposal of the remains of any person,

but does not include any goods, services or any rights in respect of goods or services for the time being declared by proclamation not to be included within the meaning of goods for the purposes of this section:

“purchaser” in relation to a contract or agreement for the sale of goods or the supply of services, includes the person to whom those goods are sold or to be sold or to whom the services are supplied or to be supplied:

“sell” in relation to goods, includes—

(a) the disposal of the ownership thereof or of any right to possession or to the full or limited use thereof or of any proprietary interest therein;

and

(b) the disposal of the possession thereof or of any right to possession or to the full or limited use thereof or of any proprietary interest therein, whether or not accompanied by any disposal of the ownership thereof,

and “sale” and “sold” shall be construed accordingly:

“vendor” in relation to a contract or agreement for the sale of goods or the supply of services, includes the person who sells or is to sell those goods or the person who supplies the services or who is to supply the services and includes any servant or agent of that person.

(2) The Governor may by proclamation declare any goods, services or any rights in respect of goods or services not to be included within the meaning of goods for the purposes of this section and may by proclamation revoke or vary any such declaration.

PART II

PART II

DOOR TO DOOR SALES

Application
of Act.

6. (1) Except as provided in this section, this Act applies to any contract or agreement for the sale of goods or the supply of services where the total consideration (less any amount comprised in that total consideration attributable to interest under a revolving credit account) payable under the contract or agreement or under that contract or agreement and any contract or agreement collateral or ancillary thereto, exceeds twenty dollars or such other higher amount as is prescribed and the negotiations leading to the making of that contract or agreement are or have been carried on with the purchaser in person wholly or partly at the place where the purchaser resides or is employed by his employer, if any, but this Act does not apply—

(a) to any contract to which the Book Purchasers Protection Act, 1963, as amended, applies;

(b) to any contract or agreement where the purchaser is a body corporate;

(c) to any contract or agreement made before the commencement of this Act;

(d) to any contract or agreement that is the result of—

(i) any unsolicited inquiry about the goods, or goods of the type, that are the subject of the contract or agreement where the inquiry is made by the purchaser to the vendor or to the dealer and communicated to the vendor or to the dealer at the ordinary place of business of the vendor or dealer or at the place of residence of a servant or agent of the vendor or dealer;

(ii) any unsolicited request made by the purchaser to the vendor or to the dealer, and communicated to the vendor or dealer at the ordinary place of business of the vendor or dealer or at the place of residence of a servant or agent of the vendor or dealer to attend at the place where the purchaser resides or is employed by his employer for the purpose of negotiating the sale and purchase of the goods;

or

(iii) any unsolicited request made by the purchaser to a vendor, who is not usually engaged in the business of selling goods under contracts or agreements the negotiations leading to the making of which are carried on with the purchaser in person wholly or partly at the

place where the purchaser resides or is employed by his employer, if any, wherever that request is communicated to the vendor or an agent of the vendor.

- (e) to any contract or agreement entered into between the purchaser and the vendor while the purchaser is present at the ordinary place of business of the vendor or the dealer;
- (f) to any contract or agreement that arises from a written offer signed by the purchaser while he is present at the ordinary place of business of the vendor or the dealer;
- (g) to any contract or agreement where the purchaser is a person whose trade or business is that of buying and selling goods of the same kind as the goods the subject of the contract or agreement;
- (h) to any contract or agreement entered into by a purchaser in the ordinary course of his trade, business, profession or calling;

or

- (i) to any contract or agreement, or any contract or agreement of a class, for the time being declared by proclamation to be a contract or agreement or class of contracts or agreements to which this Act shall not apply.

(2) The Governor may by proclamation declare that this Act shall not apply to any contract or agreement or any contract or agreement of a class and may by proclamation revoke or vary any such declaration.

(3) For the purposes of subsection (1) of this section, where negotiations leading to the making of a contract or agreement have been carried on with the purchaser wholly or partly at a place where a person, not being the purchaser, vendor or dealer, resides, those negotiations shall be deemed to have been carried on wholly or, as the case may be, partly at the place where the purchaser resides.

(4) For the purposes of subsection (1) of this section in determining whether an inquiry or request is an unsolicited inquiry or request no regard shall be had to the fact that the vendor, dealer or any other person had, by way of advertisement addressed to the public at large or a section of the public, solicited that inquiry or request.

(5) In subsection (4) of this section—

“advertisement” includes every form of advertising (whether or not accompanied by or in association with spoken or written words or other writing or sounds and whether or not contained or issued in a publication) by the display of notices or by means of catalogues, price lists, labels, cards

PART II

or other documents or material or by the exhibition of cinematograph films or of pictures or photographs, or by means of radio or television, or in any other way.

Unenforce-
ability of
certain
contracts.

7. (1) A contract or agreement to which this Act applies shall not be enforceable unless—

(a) the contract or agreement is in writing and sets out all the terms of the contract or agreement including the total amount, or the method by which that total amount will be ascertained, payable by the purchaser thereunder;

(b) at least two copies of the contract or agreement have been signed by the purchaser as such and by all the other parties to the contract or agreement;

and

(c) the vendor or dealer has, as soon as practicable after the contract or agreement was made, served personally or by post on the purchaser—

(i) the duplicate copy of the contract or agreement;
and

(ii) a Statement in or to the effect of the form of the Schedule to this Act duly completed by the vendor or dealer in accordance with the instructions contained in that Schedule,

and has obtained from the purchaser an acknowledgment in writing of the receipt of the copy and the Statement.

(2) For the purpose of this Act, a contract or agreement to which this Act applies shall be deemed to have been made at the time at which, but for this Act, it would have become binding on all the parties thereto.

(3) The vendor or dealer shall not accept or receive from the purchaser under a contract or agreement to which this Act applies any deposit or other consideration, whether monetary or otherwise until he is satisfied that the purchaser has not, pursuant to this Act, terminated and no longer has the right so to terminate the contract or agreement.

Penalty: Two hundred dollars.

(4) If—

(a) a contract or agreement to which this Act applies is pursuant to subsection (1) of this section unenforceable;

or

(b) a contract or agreement to which this Act applies contains a provision that, or from which it may reasonably be inferred that, the contract or agreement may be enforced by the vendor against the purchaser in any place other than this State or that any matter affecting or arising out

of the contract or agreement may be determined in accordance with the law of any place other than this State or that the law of any place other than this State is the law that shall apply or shall be applied in relation to any matter affecting or arising out of the contract or agreement,

the vendor or dealer and every person who, on behalf of the vendor took part in the negotiations with the purchaser in connection with the contract or agreement shall be guilty of an offence against this Act and shall, on conviction, be liable to a penalty not exceeding two hundred dollars.

(5) In proceedings for an offence that is a contravention of subsection (4) of this section it shall be a defence for the defendant to prove that he had reasonable grounds for believing and did in fact believe that the contract or agreement the subject of the proceedings was not a contract or agreement to which this Act applies.

(6) If a vendor or dealer accepts or receives from a purchaser under a contract or agreement to which this Act applies any deposit or other consideration whether monetary or otherwise—

(a) where that contract or agreement is, pursuant to subsection (1) of this section, unenforceable;

or

(b) in contravention of subsection (3) of this section,

the purchaser may sue for and recover from the vendor or dealer, as the case may be, as a debt due to the purchaser—

(c) the amount of that deposit or other consideration;

or

(d) where that consideration is not a monetary consideration, the amount of the monetary value of that consideration.

8. (1) A contract or agreement to which this Act applies may be terminated by the purchaser giving personally or by post, in the manner provided in this section, to the vendor a notice in or to the effect of the notice set out in the Appendix in the Schedule to this Act.

Determination
of contract
or agreement,
etc.

(2) A notice referred to in subsection (1) of this section shall, for all purposes, be deemed to have been given to the vendor if—

(a) it is delivered personally to the address shown in the Appendix to the Statement given to the purchaser under subsection (1) of section 7 of this Act;

or

(b) it is enclosed in a properly addressed, pre-paid letter posted to that address,

within eight days after the day on which the Statement referred to in subparagraph (ii) of paragraph (c) of subsection (1) of section 7 of this Act was served on the purchaser.

PART II

(3) Where a notice referred to in subsection (1) of this section has been given in accordance with subsection (2) of this section—

(a) the contract or agreement to which it relates shall by virtue of this subsection be void *ab initio*;

(b) the contract or agreement and any contract of guarantee relating to the contract or agreement shall be deemed never to have had effect;

and

(c) any security given by the purchaser in respect of money payable under the contract or agreement or given by a guarantor in respect of money payable under a contract of guarantee shall be deemed never to have been enforceable.

(4) If goods have been delivered to a purchaser by a vendor or dealer—

(a) under a contract or agreement that is, pursuant to subsection (1) of section 7 of this Act, unenforceable;

or

(b) under a contract or agreement that is terminated pursuant to this section whether those goods were so delivered before or after the contract or agreement was so terminated,

the purchaser—

(c) shall take reasonable care of the goods;

(d) shall deliver up those goods to the vendor or dealer at the place where those goods were delivered to him upon demand by the vendor or dealer;

and

(e) shall, if no demand is made within twenty-eight days of the delivery of those goods to him, become the owner of those goods free of any right, title, interest, lien or other charge.

(5) A purchaser may terminate a contract or agreement pursuant to subsection (1) of this section, notwithstanding—

(a) that the purchaser is unable to deliver up the goods the subject of the contract or agreement in accordance with the demand made by the vendor or dealer, pursuant to subsection (4) of this section, in the condition in which the goods were delivered to the purchaser, or at all;

or

(b) that the purchaser has failed to take reasonable care of those goods,

but the vendor or dealer shall have the same remedies, at law or in equity, against the purchaser in relation to those goods as he would have had, had there been no such contract or agreement and the purchaser was a voluntary bailee of those goods.

(6) If any service has been supplied to a purchaser by a vendor—

(a) under a contract or agreement that is, pursuant to subsection (1) of section 7 of this Act, unenforceable;

or

(b) under a contract or agreement that has been terminated pursuant to this section.

then—

(c) the purchaser shall not be obliged to make any payment to the vendor in respect of the supply of that service;

and

(d) the vendor shall be liable to make good to the purchaser any loss or detriment suffered by the purchaser resulting from or incidental to the supply of that service.

9. (1) A person who enters on any place to which this section applies with intent to enter into any negotiations leading to or which may lead to the making of a contract or agreement to which this Act applies shall forthwith inform the purchaser or prospective purchaser of—

Certain information to be disclosed.

(a) the name and business address of the vendor of the goods proposed to be the subject of the contract or agreement; and

(b) the fact that he intends to enter into negotiations which may lead to the making of such a contract or agreement.

Penalty: Two hundred dollars.

(2) This section applies to any place where a purchaser or prospective purchaser resides or is employed by his employer.

PART III

PART III

MISCELLANEOUS

10. The provisions of this Act do not derogate from the operation of section 374 of the Companies Act, 1962, as amended.

Operation of section 374 of the Companies Act not affected.

11. (1) A vendor who does not have reasonable cause to believe, proof of which reasonable cause shall lie upon him, that he has a right to receive a payment pursuant to a contract or agreement to which this Act applies, who—

Demands or assertions based on unenforceable contracts or agreements.

(a) asserts an intention to bring legal proceedings to enforce such a contract or agreement;

PART III

(b) places or causes to be placed the name of any person who would, were the contract or agreement an enforceable contract or agreement, be liable under the contract or agreement on any list of defaulters or debtors or who asserts any intention of so doing;

or

(c) invokes or causes to be invoked any other procedure for the enforcement or giving effect to such a contract or agreement,

shall be guilty of an offence against this Act and shall be liable upon conviction to a fine not exceeding two hundred dollars.

(2) In proceedings for an offence that is a contravention of subsection (1) of this section it shall be a defence for the defendant to prove that he had reasonable grounds for believing and did in fact believe that the contract and agreement the subject of the proceedings was not a contract or agreement to which this Act applies.

Offence by
body corporate.

12. Where a person convicted of an offence under this Act is a body corporate, every person concerned in the management of the body corporate may be convicted of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Offence by
purchaser.

13. (1) A purchaser shall not knowingly make a representation that is false or misleading in a material particular with intent to induce a vendor to believe that this Act does not apply to a contract or agreement.

Penalty: Two hundred dollars.

(2) Upon the conviction of a purchaser of an offence that is a contravention of subsection (1) of this section, this Act shall not apply and shall be deemed never to have applied to any contract or agreement in relation to which that offence was committed.

No waiving
of rights
under the Act.

14. A person is not competent to waive any rights he may have under this Act.

Procedure
for offences.

15. Proceedings in respect of offences against this Act shall be disposed of summarily.

Regulations.

16. The Governor may make such regulations as may be necessary or convenient for carrying into effect the provisions and objects of this Act.

THE SCHEDULE
STATEMENT

Section 7 (1).

To
(Insert name and address of the purchaser)

TAKE NOTICE that you are entitled to terminate the contract or agreement signed by you on the.....day of....., 19 ,
being

(here insert concise description of contract or agreement)
by giving notice* in the form of the Appendix to this Statement addressed to the address of the vendor shown in the Appendix any time within eight days after the day on which this Statement was served on you.

NOTICE

To
(Insert name and address of vendor)

TAKE NOTICE that I hereby terminate the contract or agreement referred to above.
Dated this.....day of....., 19 .

(Signed)
(Purchaser)

*The notice may be given—

(a) by delivering it personally to the address shown in the notice set out in the Appendix to this Statement;

or

(b) by properly addressing, pre-paying and posting, a letter containing the notice to that address,

within eight days after the day on which the purchaser was served with this Statement.

N.B.—If posting this notice you are recommended to send this notice by registered post in order to facilitate proof of the giving of the notice.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. M. NAPIER, Lieutenant-Governor