



ANNO VICESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1979

No. 41 of 1979

An Act to amend the Door to Door Sales Act, 1971.

[Assented to 15th March, 1979]

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

- Short titles.** 1. (1) This Act may be cited as the "Door to Door Sales Act Amendment Act, 1979".
- (2) The Door to Door Sales Act, 1971, is hereinafter referred to as "the principal Act".
- (3) The principal Act, as amended by this Act, may be cited as the "Door to Door Sales Act, 1971-1979".
- Commence-ment.** 2. This Act shall come into operation on a day to be fixed by proclamation.
- Repeal of s. 4 of principal Act.** 3. Section 4 of the principal Act is repealed.
- Amendment of principal Act, s. 5— Interpretation.** 4. Section 5 of the principal Act is amended—
- (a) by striking out from subsection (1) the definitions of "dealer" and "goods" and inserting in lieu thereof the following definitions:—
- "book" means any book, engraving, lithograph, picture or any other like matter whether illustrated or not:
- "cooling-off period" in relation to a contract or agreement to which this Act applies means—
- (a) in relation to a contract or agreement for the sale of books, the period of fourteen days commencing on the day on which the contract or agreement is entered into;
- or
- (b) in relation to a contract or agreement that is not for the sale of books, the period of eight days commencing on the day on which the contract or agreement is entered into:

“dealer” in relation to a contract or agreement for the sale of goods or the supply of services means a person (not being the vendor or the purchaser) who—

(a) carries on negotiations with a view to the formation of a contract or agreement for the sale of the goods or the supply of the services;

and

(b) either—

(i) does not act as agent for a party to the contract or agreement;

or

(ii) is in the course of the negotiations constituted an agent of the purchaser:

“goods” includes—

(a) rights in respect of goods or services (including rights relating to the burial, cremation or disposal of the remains of any person);

and

(c) any rights or interests of a prescribed kind,

but does not include goods of a class excluded by regulation from the provisions of this Act:

“the prescribed amount” in relation to a contract or agreement to which this Act applies means—

(a) where an amount has been prescribed in relation to goods and services generally, that amount;

or

(b) where different amounts have been prescribed in relation to different classes of goods or services, the amount appropriate to the goods or services the subject of the contract or agreement::

(b) by striking out from subsection (1) the definition of “sell” and inserting in lieu thereof the following definitions:—

“sale”—

(a) in relation to tangible goods, includes the hiring out of the goods;

and

(b) in relation to goods consisting of rights or interests, includes the granting, conferring or assignment of the rights or interests,

and the verb “to sell” has a corresponding meaning:

“services” does not include any services of a class excluded by regulation from the provisions of this Act::

(c) by inserting in subsection (1) after the definition of “vendor” the following definition:—

“void” means void *ab initio*;

and

(d) by striking out subsection (2) and inserting in lieu thereof the following subsections:—

(2) The Governor may, by proclamation, exempt any persons, or persons of a specified class, from the provisions of this Act to such extent as may be specified in the proclamation, and the operation of this Act shall be modified accordingly.

(3) The Governor may, by subsequent proclamation, vary or revoke a proclamation under this section.

Amendment of
principal Act,
s. 6—
Application
of Act.

5. Section 6 of the principal Act is amended—

(a) by inserting in subsection (1) before the passage “where the total consideration” the passage “(whether or not the law of this State is the proper law of the contract or agreement and whether or not the contract or agreement is made in this State)”;

(b) by striking out from subsection (1) the passage “twenty dollars or such other higher amount as is prescribed” and inserting in lieu thereof the passage “the prescribed amount”;

(c) by striking out from subsection (1) the passage “at the place”, firstly occurring, and inserting in lieu thereof the passage “at any place within this State”;

(d) by striking out paragraph (a) of subsection (1) and inserting in lieu thereof the following paragraph:—

(a) to any contract of employment;;

(e) by striking out paragraph (d) of subsection (1) and inserting in lieu thereof the following paragraphs:—

(d) to any contract or agreement where the vendor or dealer at the unsolicited request of the purchaser attends at the place where the purchaser resides or is employed by his employer for the purpose of carrying on negotiations leading to the making of the contract or agreement;

(d 1) to any contract or agreement where the vendor is not engaged in the business of selling goods or supplying services 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;;

and

(f) by striking out subsection (4) and inserting in lieu thereof the following subsections:—

(4) For the purposes of paragraph (d) of subsection (1) of this section, in determining whether the request of the purchaser is unsolicited no regard shall be had to the fact that the vendor or dealer or any other person had, by way of

advertisement addressed to the public at large solicited his request.

(4a) In any proceedings, whether criminal or civil, the burden of proving that the contract or agreement is a contract or agreement to which this Act does not apply by virtue of any of paragraphs (a) to (i) of subsection (1) of this section or by virtue of a proclamation made under subsection (2) of this section, shall lie on the person making that assertion.

6. Sections 7 and 8 of the principal Act are repealed and the following sections are enacted and inserted in their place:—

Repeal of ss. 7 and 8 of principal Act and enactment of sections in their place.

7. (1) A contract or agreement to which this Act applies—

Formal requirements in relation to contracts and agreements.

(a) must be in the form of a written document that sets out in full the terms of the contract or agreement;

(b) must be signed by the vendor and the purchaser;

(c) must not contain any provision to the effect that—

(i) the contract or agreement may be enforced by the vendor against the purchaser in any place other than this State;

or

(ii) the law of any place other than this State is the proper law of the contract or agreement, or the law to be applied in relation to any matter affecting or arising out of the contract or agreement;

(d) must have printed immediately above the place provided for the signature of the purchaser in capital letters in bold black type of dimensions not less than the dimensions of the type face known as eighteen point Times the words "This contract is subject to a cooling-off period" and in bold black type of dimensions not less than the dimensions of the type face known as ten point Times—

(i) where the contract or agreement is for the sale of books—a statement in the form of the first schedule to this Act;

or

(ii) where the contract or agreement is not for the sale of books—a statement in the form of the second schedule to this Act.

(2) A person who invites a prospective purchaser to sign a contract or agreement to which this Act applies—

(a) shall ensure that the contract or agreement has been first signed by the vendor;

and

(b) shall, forthwith after the contract or agreement has been signed by the purchaser, complete the statement in the form of the first or second schedule to this Act, as the case may be, in the manner indicated in the schedule and give the purchaser a duplicate copy of the contract or agreement.

(3) Where any provision of this section is not complied with—
 (a) the vendor under the contract or agreement;
 (b) any dealer involved in negotiations with the purchaser;
 and
 (c) any person negotiating with the purchaser in relation to the contract or agreement on behalf of the vendor or a dealer,
 shall each be guilty of an offence and each liable to a penalty not exceeding five hundred dollars.

Vendor, etc.,
 not to accept
 payment
 during
 cooling-off
 period.

8. Any vendor or dealer who accepts or receives from the purchaser under a contract or agreement to which this Act applies or under a contract or agreement collateral or ancillary thereto any deposit or other consideration whether monetary or otherwise paid or given during the cooling-off period shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

Rescission
 or non-
 confirmation
 of contract
 or agreement.

8a. (1) A contract or agreement to which this Act applies that is for the sale of books shall not be enforceable unless or until the purchaser notifies the vendor by notice in writing signed by the purchaser and given to the vendor before the expiration of the cooling-off period but not less than five days after the commencement of the cooling-off period that he confirms the contract or agreement and where such a notice is not given the contract or agreement shall be void.

(2) Neither a vendor nor a dealer shall—

(a) furnish to the purchaser any document or form suitable for giving notification under subsection (1) of this section unless it is in the form prescribed;

or

(b) obtain or attempt to obtain notification under that subsection or authority from the purchaser to act on behalf of the purchaser in giving such a notification.

Penalty: Five hundred dollars.

(3) A contract or agreement to which this Act applies that is not for the sale of books may be rescinded by the purchaser by giving the vendor notice in writing in the form, or to the effect, of the notice set out in the second schedule to this Act before the expiration of the cooling-off period and where such notice is given the contract or agreement shall be void.

(4) A contract or agreement in relation to which any non-compliance with section 7 of this Act occurs may be rescinded by the purchaser by giving the vendor notice in writing to that effect within a reasonable time after he, in fact, becomes aware of the non-compliance and where such a notice is given the contract or agreement shall be void.

Guarantees,
 indemnities,
 securities
 also void.

8b. Where, in pursuance of this Act, any contract or agreement becomes void by virtue of non-confirmation or rescission—

(a) any contract of guarantee or indemnity relating to the contract or agreement;

or

(b) any security given in relation to the contract or agreement,
 shall be void.

8c. (1) Where a vendor or dealer accepts or receives any deposit or other consideration whether monetary or otherwise from the purchaser under a contract or agreement that, in pursuance of this Act, becomes void by virtue of non-confirmation or rescission or under a contract or agreement that is collateral or ancillary to any such contract or agreement, the purchaser may, subject to this section, recover from the vendor or dealer, as the case may be, as a debt due to the purchaser—

Recovery of consideration and return of goods.

(a) the amount of the deposit or other monetary consideration;

or

(b) where the consideration is not monetary, an amount equal to the value of that consideration.

(2) Where goods have been delivered to a purchaser under a contract or agreement that, in pursuance of this Act, becomes void by virtue of non-confirmation or rescission (being rescission under subsection (3) of section 8a of this Act), the purchaser shall—

(a) upon demand by the vendor or dealer made within twenty-eight days after the goods were delivered to the purchaser, make the goods available for return to the vendor at the place at which they were delivered to the purchaser;

and

(b) take reasonable care of the goods until the expiration of that period, or, where such a demand has been made, until the return of the goods.

(3) Where a vendor or dealer does not exercise the right to demand the return of goods under subsection (2) of this section, the goods shall become the property of the purchaser free of any right, title, interest, lien or charge.

(4) Where a vendor or dealer demands the return of the goods in accordance with subsection (2) of this section, the vendor or dealer shall be deemed to have the same remedies at law and in equity against the purchaser in relation to the goods as he would have had, had there been no contract or agreement and had the purchaser been a voluntary bailee of the goods.

(5) Where goods have been delivered to a purchaser under a contract or agreement that, in pursuance of this Act, becomes void by virtue of rescission under subsection (4) of section 8a of this Act, any amount recoverable under subsection (1) of this section shall, unless the purchaser has made the goods available for return to the vendor or dealer in their original condition, be reduced by an amount equal to the value of the use or benefit, if any, derived by the purchaser from the goods.

(6) Where any service has been supplied to a purchaser under a contract or agreement that, in pursuance of this Act, becomes void by virtue of rescission any amount recoverable by the purchaser under subsection (1) of this section shall be reduced by an amount equal to the value, if any, of the service so supplied.

7. Section 9 of the principal Act is amended by striking out from subsection (1) the passage "Two hundred dollars" and inserting in lieu thereof the passage "Five hundred dollars".

Amendment of principal Act, s. 9—
Certain information to be disclosed.

Enactment of
s. 9a of
principal Act.

8. The following section is enacted and inserted in Part II of the principal Act after section 9 thereof:—

Use of
coercion
to induce
purchaser to
enter into
contract or
agreement.

9a. Where a person uses, or causes or permits another person to use, physical force, undue harassment or coercion in the course of, or in order to induce a person to enter into, negotiations leading to, or which may lead to, the making of a contract or agreement to which this Act applies, that firstmentioned person shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

Amendment of
principal Act,
s. 11—

9. Section 11 of the principal Act is amended by striking out subsection (2).

Demands or
assertions
based on
unenforceable
contracts or
agreements.

10. The following sections are enacted and inserted in the principal Act after section 11 thereof:—

Enactment of
ss. 11a and 11b
of principal
Act.

11a. Where the vendor under a contract or agreement for the sale of goods or the supply of services commits an offence against this Act in relation to that contract or agreement, any person who has derived or would, if the contract or agreement were carried out, expect to derive direct or indirect financial benefit therefrom shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

Certain persons
deriving
financial benefit
from door to
door sales
vicariously
liable for
offences.

11b. In proceedings for an offence against this Act it shall be a defence for the defendant to prove—

Defence.

(a) that he had reasonable grounds for believing and did in fact believe—

(i) that the negotiations leading to the making of the contract or agreement the subject of the proceedings were not carried on with the purchaser in person wholly or partly at the place where the purchaser resides or is employed by his employer;

or

(ii) that the contract or agreement the subject of the proceedings was a contract or agreement of a kind referred to in any of paragraphs (a) to (i) of subsection (1) of section 6 of this Act;

or

(b) that he could not reasonably be expected to have known that the negotiations leading to the making of the contract or agreement the subject of the proceedings were carried on with the purchaser in person wholly or partly at the place where the purchaser resides or is employed by his employer.

Enactment of
ss. 14a and
14b of
principal Act.
Evidentiary.

11. The following sections are enacted and inserted in the principal Act after section 14 thereof:—

14a. (1) In proceedings in respect of an offence against this Act, where it appears to the court from perusal of a document, that the document has been prepared, sent or published by or on behalf of a person whose name appears thereon, the document may be admitted as evidence in those proceedings and shall, in the absence of proof to the contrary, be accepted as proof that the document was prepared, sent or published by or on behalf of that person.

(2) In proceedings in respect of an offence against this Act, an allegation in the complaint that the defendant is a body corporate incorporated under the law of another State or a Territory of the Commonwealth shall, in the absence of proof to the contrary, be accepted as proof of the matter alleged.

14b. Any notice authorized by this Act to be given by the purchaser to the vendor under a contract or agreement to which this Act applies shall be deemed to have been given to the vendor if it is delivered personally or posted by pre-paid letter to any address indicated in any document setting out any of the terms of the contract or agreement as being an address of the vendor.

Service of notices.

12. Section 15 of the principal Act is amended by inserting after the present contents (which are hereby designated subsection (1) thereof) the following subsection:—

Amendment of principal Act, s. 15— Procedure for offences.

(2) Proceedings in respect of an offence against this Act may be commenced at any time within twelve months of the day on which the offence is alleged to have been committed.

13. The schedule to the principal Act is repealed and the following schedules are enacted and inserted in its place:—

Repeal of schedule of principal Act and enactment of schedules in its place.

FIRST SCHEDULE
STATEMENT

To
(Here the vendor or dealer must insert the name and address of the purchaser)

TAKE NOTICE:

- 1. This contract or agreement is unenforceable against you unless or until you notify the vendor by notice in writing signed by you that you confirm the contract or agreement.
- 2. If you wish to confirm the contract or agreement, the notice must be given to the vendor not less than five nor more than fourteen days after the date of the contract or agreement.

SECOND SCHEDULE
STATEMENT

To
(Here the vendor or dealer must insert the name and address of the purchaser)

TAKE NOTICE:

1. You are entitled to bring this contract or agreement to an end by giving the vendor notice in writing in, or to the effect of, the following form:—

To
(Here the vendor or dealer must insert the name and address of the vendor)

TAKE NOTICE that I hereby rescind the contract or agreement dated the day of 19.....

(Here the vendor or dealer must insert the date of the contract or agreement)

being

(Here the vendor or dealer must insert a concise description of the contract or agreement)

Dated the day of 19..

Signed.....

(Purchaser)

2. If you wish to bring the contract or agreement to an end, the notice must be delivered personally or posted by pre-paid letter to the vendor at the address indicated above within eight days after the date of the contract or agreement.

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

K. D. SEAMAN, Governor