



ANNO VICESIMO PRIMO

ELIZABETHAE II REGINAE**A.D. 1972**

No. 22 of 1972

An Act relating to the sending of unordered goods, the making of charges for directory entries and the rendering of certain unrequested services and for other purposes.

[Assented to 30th March, 1972]

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. This Act may be cited as the "Unordered Goods and Services Act, 1972".

**Commence-
ment.**

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—

"directory entry" means an entry in a directory or other similar publication relating to a person or relating to the trade, business, profession or calling of a person but does not include an entry in a newspaper or periodical that is published in good faith as a newspaper or periodical at regular intervals:

"prescribed directory or prescribed publication" means a directory or other similar publication for the time being prescribed as a directory or publication for the purposes of subsection (4) of this section:

“prescribed publisher” means a person for the time being prescribed as a publisher for the purposes of subsection (4) of this section:

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

“recipient” in relation to unordered goods means the person to whom those goods were sent by the sender:

“send” includes deliver:

“sender” in relation to unordered goods means the person who sent those goods whether from a place within or without the State and includes a person on whose behalf those goods were sent and a person claiming through or under that first or second mentioned person:

“unordered goods” means goods that have been sent whether from a place within or without the State by a person in the course of a trade or business to a person within the State with a view to that person acquiring or hiring those goods or an interest in those goods where that person has not requested that the goods be so sent to him.

(2) For the purposes of the definition of “unordered goods”, 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 unordered goods.

(3) For the purposes of this Act, a person 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 first-mentioned person other than rights or obligations relating to goods described in the form.

(4) This Act does not apply to or in relation to—

(a) a contract or agreement for the making of a directory entry—

(i) in a directory or other similar publication published or to be published by or under the authority of the Postmaster-General for the Commonwealth or by or under the authority of a prescribed publisher;

or

(ii) in a prescribed directory or prescribed publication;

or

(b) the assertion of a right to payment of a charge or fee under such a contract or agreement.

Effect of
sending
unordered
goods.

4. (1) Subject to subsection (2) of this section, where after the commencement of this Act a recipient receives unordered goods, the goods shall, upon the expiration of the relevant period, by operation of this section, become the property of the recipient freed and discharged from all liens and charges of any description.

(2) Subsection (1) of this section does not apply to or in relation to unordered goods—

(a) of which the recipient has at any time during the relevant period unreasonably refused to permit the sender or the owner of the goods to take possession;

(b) of which the sender or the owner of the goods has within the relevant period taken possession;

or

(c) that were received by the recipient in circumstances in which the recipient knew, or might reasonably be expected to have known, that the goods were not intended for him.

(3) In this section “relevant period” means—

(a) where the recipient of the unordered goods gives notice with respect to the goods to the sender in accordance with subsection (4) of this section the period of one month next following the day on which the notice is given or the period of three months next following the day on which the recipient received the goods, whichever first expires;

and

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

(4) A notice under subsection (3) of this section shall be in writing and shall—

(a) state the name and address of the recipient of 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 recipient;

and

(c) contain a statement to the effect that the goods are unordered goods.

Assertion of
right to
payment for
unordered
goods.

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

Penalty: Five hundred dollars.

(2) In proceedings for an offence that is a contravention of subsection (1) of this section, without limiting the generality of that subsection:—

- (a) the receipt by a recipient of a prescribed document relating to unordered goods that was sent by or on behalf of a person shall be deemed to be an assertion by that person of a right to payment from the recipient for the goods;

and

- (b) a prescribed 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.

(3) 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 unordered 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 unordered 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.

(4) In this section “prescribed document” in relation to unordered goods means a writing that asserts or implies that payment should be made for the goods or that sets out the price of the goods.

6. Notwithstanding any Act or law to the contrary, the recipient of unordered goods is not liable to make any payment for the goods and is not liable for any loss of or injury to the goods other than loss or injury arising from his wilful and unlawful disposal, wilful and unlawful destruction or wilful and unlawful damaging of the goods during the relevant period as defined in section 4 of this Act.

Liability of recipient.

7. (1) Subject to section 9 of this Act, a person is not liable to make any payment and is entitled to recover a payment made by him in full or part satisfaction of a charge or fee under a contract or agreement to or in relation to which this subsection applies unless there has been signed by that person or a person authorized by him in that behalf a note complying with this section and that first-mentioned person has been supplied with a copy of the note as signed by him or on his behalf.

Directory entries and prescribed services.

(2) Subsection (1) of this section applies 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.

(3) In order to comply with this section a note referred to in subsection (1) of this section shall, in relation to a contract or agreement for the making of a directory entry, specify—

- (a) the particulars of the entry inserted or proposed to be inserted;
 - (b) the amount of the charge or fee or the basis on which the charge or fee to be charged is or is to be calculated;
 - (c) the name of the directory or other similar publication in relation to an entry in which the charge or fee is payable;
- and
- (d) the name and address of the person publishing the directory or other similar publication.

(4) In order to comply with this section a note referred to in subsection (1) of this section shall, in relation to a contract or agreement for the rendering of a prescribed service, specify—

- (a) the particulars of the service rendered or proposed to be rendered;
- and
- (b) the amount of the charge or fee for the service or the basis on which the charge or fee to be charged is or is to be calculated.

Asserting a right to payment for directory entries or prescribed services.

8. (1) A person shall not assert a right to payment of any charge or fee for the making of a directory entry or the rendering of a prescribed service, whether made or to be made or rendered or to be rendered by him or another person and whether made or to be made or rendered or to be rendered wholly or partly in the State, unless he has reasonable cause to believe (proof of which shall lie upon him) that a note complying with section 7 of this Act has been signed by or on behalf of the person against or in relation to whom that right is asserted.

Penalty: Five hundred dollars.

(2) In proceedings for an offence that is a contravention of subsection (1) of this section without limiting the generality of that subsection, the receipt by a person of a prescribed document relating to a directory entry or prescribed service that was sent or purports

to have been sent by or on behalf of the person who made or proposes to make that entry or rendered or proposes to render that service shall be deemed to be an assertion by that person of a right to payment from the first-mentioned person of a charge or fee for the making of the directory entry or the rendering of the prescribed service as the case may be.

(3) In this section "prescribed document" in relation to a directory entry or prescribed service means a writing that asserts or implies that the payment of a charge or fee should be made for the making of the directory entry or the rendering of the prescribed service or that sets out the price for the making of the directory entry or rendering of the prescribed service.

9. Sections 7 and 8 of this Act do not apply to or in relation to—

Sections 7 and 8 not to apply to certain matters.

(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 commencement of this Act;

or

(ii) arising from the acceptance of an offer made before the commencement 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.

10. Any person who—

Certain acts Prohibited.

(a) asserts an intention to bring legal proceedings to enforce payment for unordered 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 unordered 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 unordered 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 unordered goods, the making of the directory entry or the rendering of the prescribed service is guilty of an offence.

Penalty: Five hundred dollars.

False orders.

11. 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 unordered goods unless the first-mentioned person has the authority (proof of which lies on him) of that other person to make that request.

Penalty: Two hundred dollars.

Certain proceedings not to be commenced or continued.

12. Proceedings shall not be commenced or continued before a court in this State 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 unordered 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 (1) of section 7 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 by bodies corporate.

13. 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 the act or omission constituting the offence took place without his knowledge or consent.

14. (1) In proceedings for an offence against this Act, where it appears to the court before which those proceedings are brought, from a perusal of a writing, that— Evidentiary.

(a) the writing is relevant to the facts in issue;

and

(b) the writing has been sent or published by a person whose name appears thereon,

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

(c) was actually made;

(d) was made on the day on which it is alleged that it was made;

and

(e) was made by the person whose name appears thereon as sending or publishing the writing.

(2) In proceedings for an offence against this Act, an allegation that the 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.

15. Proceedings for offences against this Act shall be disposed of summarily. Summary proceedings.

16. (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. Regulations.

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

(a) prescribe a directory or other similar publication as a directory or publication to and in relation to which the Act does not apply;

- (b) prescribe a publisher as a publisher to and in relation to whom this Act does not apply;
- (c) prescribe a service as a service to which this Act applies; and
- (d) provide for and prescribe penalties not exceeding in each case two hundred dollars for a breach of a provision of the regulations.

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

M. L. OLIPHANT, Governor