

## UNSOLICITED GOODS AND SERVICES BILL

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### EXPLANATORY NOTE

THIS Bill, which is designed to provide greater protection for the recipients of unsolicited goods or of invoices in respect of unordered goods or services, is based on a report of the Contracts and Commercial Law Reform Committee. Many of the provisions of the Bill follow the provisions of statutes already in force in the United Kingdom and in a number of Australian States. The relevant provisions of those statutes are referred to in footnotes to the clauses of the Bill.

*Clause 1* relates to the Short Title.

*Clause 2: Subclause (1)* defines terms used in the Bill.

*Subclause (2)* provides that for the purposes of the Act any invoice or similar document stating the amount of any payment shall be regarded as asserting a right to payment unless it contains a conspicuous statement that no claim is made to the payment.

*Clause 3* provides that where unsolicited goods are sent to any person with a view to his acquiring them and he neither agrees to acquire them nor agrees to return them they will become his if the sender does not retake possession of them within 3 months and the recipient does not unreasonably refuse to permit the sender to do so. This transfer of ownership will be accelerated if the recipient gives the sender written notice that the goods are in the recipient's possession and the sender does not retake possession of them within 1 month.

*Clause 4* makes it an offence to demand payment for unsolicited goods sent (after the commencement of the Act) to another person with a view to his acquiring them.

*Clause 5* makes it an offence for any person to threaten to bring legal proceedings or to invoke other collection procedures with a view to obtaining payment for what he knows or ought to know are unsolicited goods sent (after the commencement of the Act) to another person with a view to his acquiring them.

*Clause 6* provides that the recipient of unsolicited goods is not liable—

- (a) To make any payment for the goods unless he agrees to acquire them or does any act in relation to them which is inconsistent with the ownership of the sender; or

- (b) 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 prescribed by *clause 3*.

*Clause 7* makes it an offence for any person to make a request in the name of another person that goods be sent to that other person if the person who makes the request does not have the express or implied authority of that other person to do so.

*Clause 8*: Subclause (1) re-enacts, in an amended form, section 9 (6) of the Consumer Information Act 1969. The subclause makes it an offence for any person, who does not have reasonable cause to believe that there is a right to payment, to send to another person any invoice in respect of goods or services that have not been ordered or requested by the person to whom the invoice is sent.

The new subclause differs from the existing provision in three main respects—

- (a) It is now expressly stated that the sending of the invoice is an offence only if the person sending it does not have reasonable cause to believe there is a right to payment:
- (b) It does not exempt invoices which bear the words “no payment due unless you buy or order”:
- (c) It sets out two specific defences to a prosecution for an offence against the clause.

*Subclause (2)* specifies a defence that is available to carriers and to persons who deliver invoices or other documents as agents or servants.

*Subclause (3)* specifies a defence that is available where an invoice or other document is sent to its recipient by mistake.

*Subclause (4)* repeals section 9 (6) of the Consumer Information Act 1969.

*Clause 9* applies to any service that is for the time being declared to be a prescribed service by an Order in Council made under the Act.

*Subclause (1)* of the clause provides that in respect of such services no person shall be liable to make payment unless there has been signed by him or on his behalf an order complying with this clause or a note complying with this clause, and, in the case of a note of agreement to the charge, before the note was signed, a copy of it was supplied, for retention by him, to him or to a person acting on his behalf.

*Subclauses (2) and (3)* make it an offence to demand payment, or assert a right to payment, for any charge that is not recoverable by virtue of the provisions of *subclause (1)* of this clause.

*Subclause (4)* requires that an order for a prescribed service may be made only by means of an order form or other stationery belonging to the person to whom, or to whose trade or business, the service is to be provided and bearing in print the name and address (or one or more of the addresses of that person).

The subclause also requires that a note of a person’s agreement to a charge for a prescribed service shall state the amount of the charge immediately above the place for signature and shall set out or give reasonable particulars of the service to be rendered.

*Subclause (5)* provides for the making of Orders in Council declaring services to be prescribed services for the purposes of this Act.

*Subclause (6)* makes it clear that payments due under contracts entered into before the commencement of any such Order in Council are not affected.

*Clause 10* provides that a person who does not wish to receive from any other person any unsolicited goods or material may notify that other person accordingly by giving an appropriate notice to him.

The notice will come into force on the 30th day after the day on which it is given and remain in force for a period of 3 years.

The recipient of the notice will commit an offence if, within that period of 3 years, he sends unsolicited goods or material to the person by whom the notice was given.

This clause is additional to those recommended by the Contracts and Commercial Law Reform Committee.

*Clause 11: Subclause (2)* is designed to prevent proceedings being brought in New Zealand to enforce payments for—

- (a) Unsolicited goods sent to a person in another country; or
- (b) Prescribed services rendered in another country unless clause 9 (1), or the corresponding provision in the law of that other country, has been complied with.

*Subclause (3)* makes it an offence for persons in New Zealand to send unsolicited goods or material to other countries where the recipients of those goods or that material do not wish to receive them and have notified the sender accordingly.

This clause will not apply unless the Governor-General has, by Order in Council, directed that the provisions of this clause apply with respect to the country in question.

*Clause 12* prescribes the general penalty for offences against the Act. That penalty is, in the case of an individual, a fine not exceeding \$500 and, in the case of a body corporate, a fine not exceeding \$1,000.

*Clause 13* relates to offences by corporations. It provides that where an offence under this Act is committed by a body corporate, an officer of the body corporate or any other person acting in the capacity of any such officer shall be guilty of that offence as well if the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, that officer or other person.

*Clause 14* makes the mere production without formal proof of certain documents prima facie evidence of their contents and of the fact that they were sent.

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*Hon. Dr Finlay*

## UNSOLICITED GOODS AND SERVICES

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### ANALYSIS

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### A BILL INTITULED

**An Act to provide greater protection for the recipients of unsolicited goods or of invoices in respect of unordered goods or services**

5 **BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Unsolicited Goods and Services Act 1975.

10 2. **Interpretation**—(1) In this Act, unless the context otherwise requires,—  
“Acquire” includes hire:

“Country” includes any State, territory, province, or other part of a country:

“Prescribed service” means a service for the time being declared by the Governor-General by Order in Council made under section 9 (5) of this Act to be a prescribed service for the purposes of this Act: 5

“Send” includes deliver, and “sender” shall be construed accordingly:

“Unsolicited” means, in relation to goods or material sent to any person, that they are sent without any prior request made by him or on his behalf. 10

(2) For the purposes of this Act any invoice or similar document stating the amount of any payment shall be regarded as asserting a right to the payment unless it contains a conspicuous statement that no claim is made to the payment. 15

Cf. Unsolicited Goods and Services Act 1971, s. 6 (U.K.)

**3. Rights of recipient of unsolicited goods**—(1) Where after the commencement of this Act unsolicited goods are sent to any person with a view to his acquiring them and that person neither agrees to acquire them nor agrees to return them then if— 20

(a) During the period of 3 months beginning with the day on which the recipient receives the goods the sender does not take possession of them and the recipient does not unreasonably refuse to permit the sender to do so; or 25

(b) Not less than 30 days before the expiration of the period of 3 months mentioned in paragraph (a) of this subsection the recipient gives notice to the sender in accordance with subsections (2) and (3) of this section and, during the period of 30 days beginning with the day on which the notice is given to the sender, the sender does not take possession of the goods and the recipient does not unreasonably refuse to permit the sender to do so,— 30 35

the recipient may as between himself and the sender, use, deal with, or dispose of them as if they were an unconditional gift to him, and any right of the sender to the goods shall be extinguished. 40

(2) Every notice under paragraph (b) of subsection (1) of this section shall be in writing and shall—

(a) Describe the goods to which it relates; and

- (b) State the recipient's name and address and, if possession of the goods in question may not be taken by the sender at that address, the address at which it may be so taken; and
- 5 (c) Contain a statement, however expressed, that the goods are unsolicited.
- (3) Every such notice may be given—
- (a) By delivering it to the sender; or
- 10 (b) By leaving at his usual or last known place of abode or business or at any address specified as the sender's address in any document which relates to the unsolicited goods and which has been given or sent to the recipient by the sender; or
- (c) By posting it in a letter addressed to the sender by name at that place of abode or business or address.
- 15 (4) If any such notice is posted in accordance with paragraph (c) of subsection (3) of this section, it shall be deemed to have been given to the sender of the goods on the fourth day after the day on which it was posted, and in
- 20 proving delivery it shall be sufficient to prove that the letter was properly addressed and posted.
- (5) In this section "sender", in relation to any goods, includes any person on whose behalf or with whose consent the goods are sent, and any other person claiming through
- 25 or under the sender or any such person.

Cf. Unsolicited Goods and Services Act 1971, s. 1 (U.K.)

- 4. Demands for payment**—Every person commits an offence who, not having reasonable cause to believe there is a right to payment, in the course of any trade or business makes a
- 30 demand for payment, or asserts a present or prospective right to payment, for what he knows or ought to know are unsolicited goods sent (after the commencement of this Act) to another person with a view to his acquiring them.

35 Cf. Unsolicited Goods and Services Act 1971, s. 2 (1) (U.K.)

- 5. Threats regarding payment**—(1) Every person commits an offence who, not having reasonable cause to believe there is a right to payment, in the course of any trade or business and with a view to obtaining payment for what he knows
- 40 or ought to know are unsolicited goods sent (after the commencement of this Act) to another person with a view to his acquiring them—

- (a) Brings or threatens to bring any legal proceedings; or
  - (b) Places or causes to be placed the name of any person on a list of defaulters or debtors or threatens to do so; or
  - (c) Invokes or causes to be invoked any other collection procedures or threatens to do so. 5
  - (2) Every person who commits an offence against this section is liable on summary conviction—
  - (a) In the case of an individual, to a fine not exceeding \$750; or 10
  - (b) In the case of a body corporate, to a fine not exceeding \$1,500.
- Cf. Unsolicited Goods and Services Act 1971, s. 2 (2) (U.K.)

**6. Liability for payment and duty of care**—Notwithstanding any Act or rule of law to the contrary, the recipient of unsolicited goods is not liable—

- (a) To make any payment for the goods unless he agrees to acquire them or does any act in relation to them which is inconsistent with the ownership of the sender; or 20
- (b) 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 prescribed by section 3 of this Act. 25

Cf. Unordered Goods and Services Act 1972, s. 6 (South Australia)

**7. Ordering goods without authority**—(1) No person shall 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 unsolicited goods unless the first-mentioned person has the express or implied authority of that other person to make that request. 30

(2) Every person who acts in contravention of subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$300. 35

Cf. Unordered Goods and Services Act 1972, s. 11 (South Australia)

**8. Invoices for unordered goods and services**—(1) Every person commits an offence who, not having reasonable cause to believe there is a right to payment, sends to another person any invoice, or document that has the appearance of an 40

invoice, in respect of goods or services that have not been ordered or requested by the person to whom the invoice or document has been sent.

5 (2) Even though a person has no reasonable cause to believe that there is a right to payment in respect of any goods or services, it shall be a good defence to a prosecution for sending to another person, contrary to the provisions of this section, an invoice or other document in respect of those goods or services if the defendant proves—

10 (a) That he merely delivered the invoice or other document and did so as the agent or servant of another person or in the course of the defendant's business as a carrier; and

15 (b) That he had no personal interest in the payment of any amount (other than a delivery fee) to which the invoice or other document related.

(3) It shall be a good defence to a prosecution for sending to another person, contrary to the provisions of this section, an invoice or other document in respect of any goods or 20 services if the defendant proves that the invoice or other document was sent to its recipient by mistake.

(4) Subsection (6) of section 9 of the Consumer Information Act 1969 is hereby consequentially repealed.

**9. Unsolicited services—**(1) No person shall be liable to 25 make any payment, and shall be entitled to recover any payment made by him, by way of charge for a prescribed service unless there has been signed by him or on his behalf an order complying with this section or a note complying with this section of his agreement to the charge, and, in the case of a 30 note of agreement to the charge, before the note was signed, a copy of it was supplied, for retention by him, to him or to a person acting on his behalf.

(2) No person shall, in a case where a payment in respect of a charge would, in the absence of an order or note of agree- 35 ment to the charge complying with this section, be recoverable from him in accordance with subsection (1) of this section demand payment, or assert a present or prospective right to payment, of the charge or any part of it, without having reasonable cause to believe that the prescribed service to which 40 the charge relates was ordered in accordance with this section or that a proper note of agreement has been duly signed.

(3) Every person commits an offence who acts in contravention of subsection (2) of this section.

(4) For the purposes of subsection (1) of this section, an order for a prescribed service may be made only by means of an order form or other stationery belonging to the person to whom, or to whose trade or business, the service is to be provided and bearing in print the name and address (or one or more of the addresses) of that person; and the note required by this section of a person's agreement to a charge shall state the amount of the charge immediately above the place for signature and shall set out or give reasonable particulars of the service to be rendered. 5

(5) The Governor-General may from time to time, by Order in Council, declare any service to be a prescribed service for the purposes of this Act. 10

(6) Nothing in this section shall apply to a payment due under a contract entered into before the commencement of the relevant Order in Council declaring the service to which the contract relates to be a prescribed service, or entered into by the acceptance of an offer made before that commencement. 15

Cf. Unsolicited Goods and Services Act 1971, s. 3 (U.K.) 20

**10. Notice not to send unsolicited goods or material—**

(1) Any person who does not wish to receive from any other person any unsolicited goods or material or any further unsolicited goods or material or any unsolicited goods or material of a specified kind or class may, by notice in writing in accordance with subsections (2) and (3) of this section, notify that other person accordingly. 25

(2) Every notice under this section shall—

- (a) Be signed by the person by whom it is given; and
- (b) State the name and address of the person by whom it is given; and 30
- (c) Inform the person to whom it is addressed that the person by whom it is given does not wish to receive—

(i) Any unsolicited goods or material or any further unsolicited goods or material from the person to whom the notice is addressed; or 35

(ii) Any unsolicited goods or material of a kind or class specified in the notice from the person to whom the notice is addressed. 40

(3) Every notice under this section may be given—

- (a) By delivering it to the person to whom it is addressed; or

- (b) By leaving it at the usual or last known place of abode or business of that person or at any address specified as that person's address in any document which relates to unsolicited goods or material and which has been given or sent to the person giving the notice by the person to whom the notice is addressed; or
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- (c) By posting it in a registered letter addressed to that person by name at that place of abode or business or address.
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- (4) If any such notice is posted in accordance with paragraph (c) of subsection (3) of this section, it shall be deemed to have been given to the person to whom it is addressed on the fourth day after the day on which it was posted, and in
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- proving delivery it shall be sufficient to prove that the letter was properly addressed and posted.
- (5) Every person commits an offence who, being a person to whom a notice under this section has been given, sends, within the period of 3 years commencing with the 30th day
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- after the day on which the notice was given to him and in contravention of that notice, any unsolicited goods or material to the person by whom the notice was given.

**11. Unsolicited goods sent overseas—**(1) The Governor-General may from time to time, by Order in Council, direct

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that the provisions of this section shall apply with respect to any country specified in the order.

(2) Proceedings shall not be commenced or continued before a Court to enforce payment for—

(a) Goods sent to a person in a country to which this section applies where, had the goods been sent to a person in New Zealand, the goods would be unsolicited goods; or

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(b) Rendering in a country to which this section applies a service which, if rendered in New Zealand would have been a prescribed service, unless in relation to the contract for rendering the service subsection (1) of section 9 of this Act or a provision in the law of that country, being a provision that corresponds to that subsection, has been complied with.

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(3) Every person commits an offence who, in New Zealand, sends unsolicited goods or material to a person in a country outside New Zealand if—

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(a) That country is a country to which this section applies; and

- (b) The sender of the goods or material has received in New Zealand from the person to whom they are sent a notice in terms of section 10 (1) of this Act or in terms of a provision in the law of the country outside New Zealand corresponding to section 10 (1) of this Act; and 5
- (c) The sending of the goods or material would have constituted an offence against section 10 (5) of this Act or against a provision in the law of the country outside New Zealand corresponding to section 10 (5) of this Act if all actions involved in the sending and receipt of the notice and in the sending of the goods or material had taken place in New Zealand or in the country outside New Zealand respectively. 10

Cf. Unordered Goods and Services Act 1972, s. 12 (South Australia) 15

**12. General penalty**—Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable on summary conviction—

- (a) In the case of an individual, to a fine not exceeding \$500; or 20
- (b) In the case of a body corporate, to a fine not exceeding \$1,000.

**13. Offences by corporations**—(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the body corporate, or of any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 25 30

(2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate. 35

Cf. Unsolicited Goods and Services Act 1971, s. 5 (U.K.)

**14. Admissibility of certain documents**—(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— 40

- (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  
5 without formal proof of the sending or publishing thereof, or  
of the authentication thereof.

(2) Any writing admitted in evidence pursuant to sub-  
section (1) of this section shall be prima facie evidence that  
any statement, representation, assertion, or implication con-  
10 tained therein—

- (a) Was actually made; and
- (b) Was made on the day on which it is alleged that it  
was made; and
- (c) Was made by the person whose name appears thereon  
15 as sending or publishing the writing.

Cf. Unordered Goods and Services Act 1972, s. 14 (South  
Australia)