

R E P O R T

OF THE

CONTRACTS AND COMMERCIAL LAW REFORM
COMMITTEE

UNSOLICITED GOODS AND SERVICES

Presented to the Minister of Justice in
February 1974.

REPORT OF THE CONTRACTS AND COMMERCIAL
LAW REFORM COMMITTEE ON THE LAW GOVERNING
UNSOLICITED GOODS AND SERVICES

TO: The Minister of Justice

1. In April 1972, following a recommendation of the Law Revision Commission, the Contracts and Commercial Law Reform Committee was asked to consider and report on the need for legislation along the lines of the Unsolicited Goods and Services Act 1971 of the United Kingdom Parliament and the Unordered Goods and Services Act 1972 of South Australia. Copies of both Acts are annexed to this report.

2. The principal area of concern in New Zealand has been that of entries in directories and the practice of sending pro forma invoices in connection therewith. The patent aim is to mislead the recipient into paying for an unsought entry in the belief that some other person in the recipient's firm has arranged for the entry to be made, and a real likelihood of such confusion does exist. An attempt to deal with this abuse, which can be regarded as verging on fraud, was made in the Consumer Information Act 1969, s.9(6). This provides as follows:

"No person shall send or deliver to another person any invoice, or document that has the appearance of an invoice, in respect of goods that have not been ordered or requested by the person to whom the invoice or document has been sent or delivered, unless the words "no payment due unless you buy or order" appear on the face of the invoice or document in easily legible lettering of a height of not less than one-eighth of an inch."

"Goods" is defined in s.2 to include services.

It has become apparent, however, that pro forma invoices complying technically with this provision may nonetheless be misleading and a number of complaints continue to be received in the Department of Justice and the Department of Trade and Industry. In a report dated 12 April 1973 to his Minister the Secretary of Trade and Industry drew attention to the operations of one particular directory company, which was said to be charging \$42 for an entry, and had this to say:

"Without doubt the promoters of the operations in question would soon cease business if the recipients of these pro forma invoices were to destroy them. There have been numerous articles in newspapers and trade publications in this country and overseas on this subject and with so much publicity to warn people of the need to take care it is surprising that so many are still prepared to pay on a form that looks like an invoice or statement without adequate checks as to whether the goods or services are required and ignoring the warning intended by the words 'No payment due unless you buy or order.' So long as directory companies receive sufficient to justify the printing of even a small and worthless directory they are likely to continue to operate unless legislation can effectively prevent them."

The Minister indicated his desire to see this problem dealt with.

4. Both as members of the committee, and in some cases as individuals, we have seen samples of documents of the type that has been criticised and we are firmly of the view that further legislation is desirable to put an end to this practice.

Annexed to this report is a sample of the type of document that in our opinion is open to strong criticism.

5. The Committee has considered the provisions of the United Kingdom Act of 1971. This legislation goes well beyond the specific topic of pro forma invoices and deals with the field of unsolicited goods generally. Except in the field of directory entries it does not deal with unsolicited services. On the other hand these are covered by the Unordered Goods and Services Act 1972 of South Australia, the provisions of which we have also studied carefully. Similar enactments with relatively insignificant drafting differences have been enacted in:

<u>Victoria</u>	Division 4 of Part II of the Consumer Protection Act 1972
<u>Queensland</u>	The Unordered Goods and Services Act 1973
<u>Tasmania</u>	The Unordered Goods and Services Act 1973

Legislation along the same lines was also introduced in Western Australia in 1973, but we do not know if it has yet been passed.

6. The Australian legislation followed a consideration of the topic by the Standing Committee of Attorneys-General and clearly represents an effort to achieve a common approach in Australia. The passing of this legislation may have had - or may in future have - the effect of encouraging those whose activities prompted it to change their scene of operations to New Zealand as long as there are no similar controls here. We regard this as a further justification for prompt intervention by Parliament in this country in the general area of unordered goods and services although the need to follow the Australian legislation in close detail is not in our view of paramount importance.

7. The Committee favours the more concise approach of the United Kingdom enactment, which contains roughly half as many sections as the Australian statutes, and in this report we shall deal first with the United Kingdom Act and later draw attention to certain provisions of the South Australian Act which we consider might usefully be adopted in New Zealand. Copies of both Acts are annexed to this report.

8. We now proceed to comment briefly on the individual sections of the United Kingdom Act:

Section 6 is the interpretation section. The Committee considers that the definitions in that section are sufficiently applicable to New Zealand conditions to be followed here. However, we recommend the addition of a further definition:

"prescribed service" means a service for the time being declared by Order in Council to be a service to which this Act applies.

Under section 1 goods which are delivered to a person without his request become his property unless certain steps are taken to recover the goods as outlined in the section. This is a particularly good instance of a self-policing provision and we unreservedly recommend its adoption in New Zealand.

Section 2 makes it an offence for a person who delivers unsolicited goods to demand payment or to make any threats or to 'blacklist' a recipient as a defaulter. We recommend its adoption in New Zealand.

Section 3 deals exclusively with directory entries. The corresponding Australian provisions are also concerned primarily with directory entries, but they leave the way open for the inclusion of other services. We think that a similar provision should be included in any New Zealand legislation that substantially follows the overseas precedent, although we prefer the general draftsmanship of the United Kingdom section. No doubt the circumstances will be rare where a service is supplied in advance of payment without request in the hope that the recipient will pay for it. Nevertheless we feel that the Government should be able to act promptly if this happens and we accordingly recommend for New Zealand the South Australian approach.

However we are somewhat dubious whether the singling out of directory entries is justified and wonder whether a preferable approach might not be to bring into the legislation an improved version of s.9(6) of the Consumer Information Act, leaving the equivalent of the British s.3 to apply only to such services as may be prescribed by Order in Council. We develop this in paragraphs 10 and 11 of this report.

If the British section is to be adopted we recommend the following changes in it.

- (a) Inserting in section 3(1) after the words "by way of charge for" the words "a prescribed service or by way of charge for".

- (b) Adding a subsection along the following lines:

"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."

- (c) Altering subsection 4 in order to preserve contracts made before the date upon which the service becomes a prescribed service.

Section 4 makes it an offence to send literature relating to certain sexual matters to a person without his consent. This is to some extent already covered in New Zealand by section 7 of the Indecent Publications Amendment Act 1972. That section is however limited to the sending of literature which is itself indecent so that it is not as wide as the United Kingdom provision. We consider that the matter comes essentially within the sphere of the Indecent Publications Act, and if further legislation is thought desirable it should be by way of amendment to that Act. We have no recommendation to make.

Section 5 makes the officers of a body corporate vicariously responsible for the offences of the body corporate. The equivalent section in the South Australian Act is

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section 13. The main difference between the two provisions is that the onus of proof of knowledge on the part of the company officer is upon the prosecution in the United Kingdom Act, but not in the South Australian Act. The Committee expresses a preference for the United Kingdom approach which is more in line with recent analogous legislation in New Zealand: see Consumer Information Act 1969, s.18(3); Food and Drug Act 1969, s.30(3).

9. We now pass to those provisions of the Unordered Goods and Services Act 1972 (South Australia) which have no counterpart in the United Kingdom Act. In our view, the following provisions may merit adoption in New Zealand:

Under section 6 the recipient of the unordered goods is under no duty to take care of them. He is liable only for wilful damage or unlawful disposal thereof. We consider that such a provision is a desirable supplement and recommend it for any New Zealand legislation. Somewhat similar provisions are already to be found in s.10 of the Door to Door Sales Act 1967.

Section 11 makes it an offence to order goods to be sent to another person without his authority. Such a practice could be open to abuse and we recommend the adoption of a similar provision in any New Zealand legislation although we consider that the onus of proof should not be upon the defendant to establish that he had the

authority of the recipient of the goods to place an order.

Section 12 deals with problems of the extra-territorial effect of State legislation. Each of the four Australian statutes has a similar provision. This problem is not normally a matter of concern in New Zealand. The legislation that we propose will protect all New Zealand recipients of unsolicited goods and services, with the consequence that an overseas supplier could not bring an action in New Zealand. The only issue is whether New Zealand should prohibit proceedings before a New Zealand Court to enforce payment for unordered goods sent, entries made or services performed overseas. We can see no objection to this being done on a basis of reciprocity.

Section 14 makes the mere production without formal proof of certain documents prima facie evidence of their contents and the fact that they were sent. We recommend the adoption of subsection (1). Subsection (2) is not relevant to New Zealand conditions.

10. We referred in our consideration of s.3 of the United Kingdom Act to the alternative of building on s.9(6) of the Consumer Information Act 1969. One way of achieving the immediate objective of the Minister of Trade and Industry would be to remove from this subsection the qualification expressed in the last four lines and by adding for clarity the words "or services" after the word "goods" so that the section would then read:

"No person shall send or deliver to another person any invoice, or document that has the appearance of an 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 or delivered."

There are however less obvious defects in s.9(6) that we think should be dealt with if this provision is to be revised. As presently drafted it is an offence to send an invoice in error to a person who has received goods on a complimentary basis or to a person for whom goods have been ordered by another.

11. It seems to the Committee that both the United Kingdom and Australian Acts place too much emphasis on directory entries as such whereas the real point at issue is the pro forma invoicing that some directory organisations have used. There are several reputable directory concerns in New Zealand that may have a legitimate complaint about restrictions such as those imposed under the overseas legislation on the way on which they go about their daily business of obtaining legitimate orders. The Committee therefore proposes, as an alternative to the enactment of legislation specifically controlling directory concerns, the insertion of a provision along the lines of s.9(6) of the Consumer Information Act altered as we have indicated above. There would then be no need to refer specifically to directory entries in the legislation relating to unsolicited goods and services.



Chairman

M E M B E R S

Mr C.I. Patterson (Chairman)
Mr B.J. Cameron
Professor B. Coote
Mr D.F. Dugdale
Professor E.P. Ellinger
Mr J.R. Fox
Mr J.S. Henry
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Mr J.H. Wallace
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UNITED KINGDOM

THE UNSOLICITED GOODS &
SERVICES ACT 1971

1. Rights of recipient of unsolicited goods

(1) In the circumstances specified in the following subsection, a person who after the commencement of this Act receives unsolicited goods, 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.

(2) The circumstances referred to in the preceding subsection are that the goods were sent to the recipient with a view to his acquiring them, that the recipient has no reasonable cause to believe that they were sent with a view to their being acquired for the purposes of a trade or business and has neither agreed to acquire nor agreed to return them, and either -

(a) that during the period of six months beginning with the day on which the recipient received the goods the sender did not take possession of them and the recipient did not

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unreasonably refuse to permit the sender to do so; or

- (b) that not less than thirty days before the expiration of the period aforesaid the recipient gave notice to the sender in accordance with the following subsection, and that during the period of thirty days beginning with the day on which the notice was given the sender did not take possession of the goods and the recipient did not unreasonably refuse to permit the sender to do so.

- (3) A notice in pursuance of the preceding subsection shall be in writing and shall -

(a) 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;

(b) contain a statement, however expressed, that the goods are unsolicited -

and may be sent by post.

(4) 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 or under the sender or any such person.

2. Demands and threats regarding payment

(1) A person who, not having reasonable cause to believe there is a right to payment, in the course of any trade or business makes a demand for payment, or asserts a present or prospective right to payment, for what he knows are unsolicited goods sent (after the commencement of this Act) to another person with a view to his acquiring them, shall be guilty of an offence and on summary conviction shall be liable to a fine not exceeding £200.

(2) A person 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 any payment for what he knows are unsolicited goods sent as aforesaid -

- (a) 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 procedure or threatens to do so,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £400.

3. Directory entries

(1) A person shall not be liable to make any payment, and shall be entitled to recover any payment made by him, by way of charge for including or arranging for the inclusion in a directory of an entry relating to that person or his trade or business, 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 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) A person shall be guilty of an offence punishable on summary conviction with a fine not exceeding £400 if, in a case where a payment in respect of a charge would, in the absence of an order or note of agreement to the charge complying with this section, be recoverable from him in accordance with the terms of subsection (1) above, he demands payment, or asserts a present or prospective right to payment, of the charge or any part of it, without knowing or having reasonable cause to believe that the entry to which the charge relates was ordered in accordance with this section or a proper note of agreement has been duly signed.

(3) For the purposes of subsection (1) above, an order for an entry in a directory must be made by means of an order form or other stationery belonging to the person to whom, or to whose trade or business, the entry is to relate 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 must state the amount of the charge immediately above the place for signature, and -

- (a) must identify the directory or proposed directory, and give the following particulars of it -

5.

- (i) the proposed date of publication of the directory or of the issue in which the entry is to be included and the name and address of the person producing it;
 - (ii) if the directory or that issue is to be put on sale, the price at which it is to be offered for sale and the minimum number of copies which are to be available for sale;
 - (iii) if the directory or that issue is to be distributed free of charge (whether or not it is also to be put on sale), the minimum number of copies which are to be so distributed; and
- (b) must set out or give reasonable particulars of the entry in respect of which the charge would be payable.

(4) Nothing in this section shall apply to a payment due under a contract entered into before the commencement of this Act, or entered into by the acceptance of an offer made before that commencement.

4. Unsolicited publications

(1) A person shall be guilty of an offence if he sends or causes to be sent to another person any book, magazine or leaflet (or advertising material for any such publication) which he knows or ought reasonably to know is unsolicited and which describes or illustrates human sexual techniques.

6.

(2) A person found guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £100 for a first offence and to a fine not exceeding £400 for any subsequent offence.

(3) A prosecution for an offence under this section shall not in England and Wales be instituted except by, or with the consent of, the Director of Public Prosecutions.

5. 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.

(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.

6. Interpretation

(1) In this Act, unless the context or subject matter otherwise requires, -

"acquire" includes hire;

"send" includes deliver, and "sender" shall be construed accordingly;

"unsolicited" means, in relation to goods sent to any person, that they are sent without any prior request made by him or on his behalf.

(2) For the purposes of this Act any invoice or similar document stating the amount of any payment, and not stating as prominently (or more prominently) that no claim is made to the payment, shall be regarded as asserting a right to the payment.

7. Citation, commencement and extent

(1) This Act may be cited as the Unsolicited Goods and Services Act 1971.

(2) This Act shall come into force at the expiration of three months beginning with the day on which it is passed.

(3) This Act does not extend to Northern Ireland.

SOUTH AUSTRALIA

Unordered Goods and Services Act 1972

1. This Act may be cited as the "Unordered Goods and Services Act 1972".
2. This Act shall come into operation on a day to be fixed by proclamation.
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:

2.

"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.

3.

(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.

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

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(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.

5.

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.

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 authorised 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.

(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

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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.

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 proposed 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.

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

(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 -

(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;

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(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.

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.

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.

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 -

- (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.

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

(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.