

1990

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

DOOR TO DOOR TRADING BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Attorney-General
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Door to Door Trading Bill 1990

GENERAL OUTLINE

The purpose of the Bill is to protect consumers in their dealings with door to door traders and to regulate certain activities of door to door traders. The Bill achieves this by adopting the provisions of model uniform legislation agreed upon by the Standing Committee of Consumer Affairs Ministers.

The basic thrust of these provisions is to require contracts made between door to door traders and consumers to clearly state the terms of the contract, enable consumers to avoid contracts during a 10 day cooling-off period (giving the consumer time to reflect on the bargain and to compare the merchandise and the terms of the contract with what may be available elsewhere) and regulate the hours when traders may call door to door without invitation.

FINANCIAL IMPACT

The Bill involves no new cost to the Government.

NOTES ON CLAUSES

Clauses 1 and 2 provide for the short title of Door to Door Trading Act 1990 and for commencement of the substantive provisions on a day or days fixed by notification.

Clause 3 defines a range of terms used in the Bill. The key definitions are:

"dealer" is a person who trades door to door with a view to the sale of goods or services;

"door to door trading" is intended to cover traders who telephone or call on consumers personally with a view to selling goods or services, and also covers traders who make an initial contact and then send an agent to call on consumers;

"cooling-off period" means 10 days from and including the day on which a prescribed contract is made;

"rescission" means the revocation and avoidance of a contract as from its beginning.

Clause 4 applies the Bill to door to door trading contracts except when

- . the consumer invites the trader to call;
- . the consumer is buying something in the course of the consumer's business.

Clause 5 prohibits and voids contractual terms designed to prevent the Bill applying.

Clause 6 defines "prescribed contract". The substantive provisions of the Bill apply only to these contracts. This provision excludes

- . small contracts below \$50;
- . Scout "bob-a-job" and the selling of badges and the like for charity;
- . credit-only and insurance contracts.

Clause 7 sets out requirements for prescribed contracts:

- . it must set out in full all the terms including the consideration or its method of calculation and particulars of any work to be carried out;
- . it must be printed or typewritten;
- . it is completed by the consumer signing a copy already signed by or on behalf of the other party;
- . a duplicate must be given to the consumer immediately it is completed;
- . it must set out the full name and address of the dealer;
- . it must contain in 10 point type immediately above the place for the consumer's signature "THIS CONTRACT IS SUBJECT TO A COOLING-OFF PERIOD OF 10 DAYS";
- . the consumer must be given at or immediately before the making of the contract a notice explaining the right to rescind the contract and a form which the consumer may use to rescind the contract; and
- . the dealer must read aloud the notice explaining the consumer's right to rescind.

Clause 8 makes it an offence to accept payment or to supply services under a prescribed contract during the cooling-off period without reasonable excuse.

Clause 9 prohibits a dealer from calling on a consumer without invitation on public holidays, before 9 am and after 5pm on weekends, and on other days before 9am and after 8 pm daylight saving time or after 5pm EST.

Clause 10 makes it an offence for a dealer to not comply with a request to leave premises without reasonable excuse. When calling at a consumer's premises a dealer must as soon as practicable identify the nature of the call and produce a card giving his or her name and address.

Clause 11 makes harassment or coercion in relation to a door to door contract an offence. It is intended that "harassment" include conduct which occurs only once and conduct which is calculated in the circumstances to pressure unfairly, intimidate or embarrass a consumer or a member of the consumer's family.

Clause 12 enables a consumer to rescind a contract before the expiry of the cooling-off period and extends to 6 months the period in which a consumer retains a right to rescind a contract when the contract does not comply with the requirements of clause 5 or the supplier or dealer breaches clauses 9, 10 or 11.

Clause 13 sets out consumers' rights to rescind by giving a written notice to the supplier personally or by posting it and a posted rescission notice has effect at time of posting.

Clause 14 sets out how the parties to a rescinded contract are to re-adjust their rights by refunding money paid, returning goods and compensating for services received. A court may make an order for the purpose of adjusting parties' rights and non-compliance with such an order is an offence.

Clause 15 voids related contracts (eg credit contracts) when a contract is rescinded but ensures that relevant provisions of the Credit Act 1985 continue to apply.

Clause 16 prevents consumers from waiving rights conferred under the Bill.

Clause 17 makes it an offence to pressure a consumer to pay under a rescinded contract or a contract capable of being rescinded, except where the trader could not reasonably have been expected to know this. The provision does not stop a trader bringing legitimate court proceedings.

Clause 18 prevents principals from turning a blind eye to the conduct of their servants or agents. The clause

creates liability in principals and companies for acts of directors of companies, agents and/or employees which are in breach of the Bill unless they show that they took reasonable precautions. Persons who expect to derive a financial benefit from contracts coming under the Bill may also be liable on the same basis for the conduct of their suppliers and/or dealers.

Clause 19 facilitates proceedings by not requiring a plaintiff to adduce evidence that a defendant was acting as a door to door trader unless the defendant adduces evidence to the contrary.

Clause 20 enables regulations to be made for the purposes of the Bill.

Clause 21 repeals the Door to Door Sales Act 1969 but preserves its application to contracts made before the commencement of the Bill.