2009

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

DOOR-TO-DOOR TRADING REGULATION 2009

SL2009 - 49

EXPLANATORY STATEMENT

Circulated by authority of
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Attorney General

Door-to-Door Trading Regulation 2009

Overview of Regulation

Under section 21 of the *Door-to-Door Trading Act 1991*, the Executive may make regulations for the Act. Section 4 and section 6 further specify that regulations may exempt contracts from certain provisions of the Act.

The Door-to-Door Trading Regulation 2009 exempts certain contracts from provisions of the Door-to-Door Trading Act that would otherwise apply. The *Door-to-Door Trading Act 1991* gives the power for regulations to specify that discrete provisions of the Act do not apply, and to declare certain contracts as not prescribed for the purposes of the Act. A prescribed contract under the *Door-to-Door Trading Act 1991* is subject to additional requirements over other kinds of contracts, such as a 10 day cooling-off period, where no money may be paid to a trader by a consumer.

This regulation will exempt only a few specific kinds of contracts, in limited circumstances, from some requirements of the Act. The contracts listed in Schedule 1 and 2 of the Act are included to provide a balance between consumer convenience and protection under the Act.

Clause Notes

Clause 1 – Name of Regulation – states the title of the regulation as the Door-to-Door Trading Regulation 2009.

Clause 2 – Commencement – states that the regulation commences the day after its notification.

Clause 3 – Notes – provides that notes in the regulation are explanatory only, and not a part of the regulation.

Clause 4 – Exempted contracts—Act, s 4(4)(b) – identifies the regulation making power in the *Door-to-Door Trading Act 1991* for the items listed in schedule 1, column 2 of the regulation. Section 4(4)(b) of the Act provides that a regulation may specify that parts of the Act do not apply, with or without conditions, to the contracts identified in the regulation.

Clause 5 – Contracts declared not to be prescribed contracts—Act, s 6(3)(d) – identifies the regulation making power to declare that certain kinds of contracts are not prescribed in the *Door-to-Door Trading Act 1991*. Section 6(3)(d) of the Act provides that a regulation may declare that a contract is not prescribed for the purposes of the Act. This has the effect of exempting the contract from all of the requirements otherwise applicable to prescribed contracts.

Schedule 1 – Exempted contracts

This schedule lists two kinds of contracts that will be exempt from section 8 of the *Door-to-Door Trading Act 1991*. Section 8 prohibits a trader from receiving any consideration before the end of the 10 day cooling-off period after a contract is made. For the two kinds of contracts listed in schedule 1, there will be an exemption only from the rule on accepting consideration. All other relevant protections in the *Door-to-Door Trading Act 1991* will still apply to these kinds of contracts.

Schedule 2 – Contracts declared not to be prescribed contracts

This schedule lists three kinds of contracts that will be declared not to be prescribed contracts. As a consequence, none of the special requirements applicable to prescribed contracts under the *Door-to-Door Trading Act 1991* will apply to the kinds of contracts described in items 1 through 3 of this schedule. The remaining requirements of the *Door-to-Door Trading Act 1991* will continue to apply to these kinds of contracts. For example, there will be no cooling-off period applicable to these contracts because they are not prescribed. However, traders will still have to adhere to the requirement that they identify themselves to consumers during marketing calls, because that requirement applies to all contracts under the Act, not just prescribed contracts.

The contracts listed in this schedule are for a one-off purchase of classified advertising, and for contracts where there is an existing relationship between a particular trader and a consumer. The exemption for a purchase of classified advertising is intended to allow for advertisements to run immediately, to improve consumer convenience. It will not exempt contracts that provide for a series of repeated advertisements. The exemptions for contracts where there is an existing relationship allow for consumers to obtain supplementary services or to make minor modifications to an existing contract without the delays and formal requirements that would otherwise be imposed by the *Door-to-Door Trading Act 1991*.

With regard to the contracts identified in item 3 of schedule 2, the amount paid by a consumer under the existing contract is intended to include rates for services as well as total amounts. Item 3 is intended to exempt the listed contracts from certain provisions of the Act because there is an existing relationship between the consumer and the trader.

In calculating the amount paid by a consumer under an existing contract for the purposes of item 3, if a formula or rate structure is provided under an existing contract, that formula represents the amount paid by the consumer and may be used as the basis for assessing an exempted associated contract. If an associated contract contains the same rate structure or formula, it will not be interpreted to require a greater amount of payment than the existing contract.