

**Reprint
as at 17 June 2014**



**Unsolicited Goods and Services Act
1975**

Public Act 1975 No 46
Date of assent 19 September 1975
Commencement 19 September 1975

Unsolicited Goods and Services Act 1975: repealed, on 17 June 2014, by section 41(1)(b) of the Fair Trading Amendment Act 2013 (2013 No 143).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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

1 Short Title

This Act may be cited as the Unsolicited Goods and Services Act 1975.

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) to be a prescribed service for the purposes of this Act

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 shall be regarded as asserting a right to the payment unless it contains a conspicuous statement that no claim is made to the payment.

Compare: Unsolicited Goods and Services Act 1971 s 6 (UK)

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—

(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
- (b) not less than 30 days before the expiration of the period of 3 months mentioned in paragraph (a) the recipient gives notice to the sender in accordance with subsections (2) and (3) 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,—
- 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.
- (2) Every notice under paragraph (b) of subsection (1) 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
- (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
- (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.
- (4) If any such notice is posted in accordance with paragraph (c) of subsection (3), 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 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 or under the sender or any such person.

Compare: Unsolicited Goods and Services Act 1971 s 1 (UK)

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 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.

Compare: Unsolicited Goods and Services Act 1971 s 2(1) (UK)

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 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.

(2) Every person who commits an offence against this section is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding \$750; or
- (b) in the case of a body corporate, to a fine not exceeding \$1,500.

Compare: Unsolicited Goods and Services Act 1971 s 2(2) (UK)

Section 5(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

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
- (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.

Compare: Unordered Goods and Services Act 1972 s 6 (SA)

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

Compare: Unordered Goods and Services Act 1972 s 11 (SA)

Section 7(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

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 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.
- (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—
 - (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

- (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 services if the defendant proves that the invoice or other document was sent to its recipient by mistake.
- (4) *[Repealed]*
Section 8(4): repealed, on 1 March 1987, by section 49(2) of the Fair Trading Act 1986 (1986 No 121).

9 Unsolicited services

- (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 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 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 agreement to the charge complying with this section, be recoverable from him in accordance with subsection (1) 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 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).
- (4) For the purposes of subsection (1), 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 1 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 im-

mediately above the place for signature and shall set out or give reasonable particulars of the service to be rendered.

- (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.
- (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.

Compare: Unsolicited Goods and Services Act 1971 s 3 (UK)

10 Unsolicited goods sent overseas

- (1) The Governor-General may from time to time, by Order in Council, direct 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
 - (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 or a provision in the law of that country, being a provision that corresponds to that subsection, has been complied with.

11 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 conviction—

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

Section 11: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

12 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.

Compare: Unsolicited Goods and Services Act 1971 s 5 (UK)

13 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—
 - (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.
- (2) Any writing admitted in evidence pursuant to subsection (1) shall be prima facie evidence that any statement, representation, assertion, or implication contained 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 as sending or publishing the writing.

Compare: Unordered Goods and Services Act 1972 s 14 (SA)

Reprints notes

1 *General*

This is a reprint of the Unsolicited Goods and Services Act 1975 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Fair Trading Amendment Act 2013 (2013 No 143): section 41(1)(b)

Criminal Procedure Act 2011 (2011 No 81): section 413

Fair Trading Act 1986 (1986 No 121): section 49(2)
