

Serial 58
Consumer Affairs and Fair Trading Amendment Bill 2006
Dr Toyne

**A BILL
for
AN ACT**

to amend the *Consumer Affairs and Fair Trading Act*

NORTHERN TERRITORY OF AUSTRALIA
CONSUMER AFFIARS AND FAIR TRADING AMENDMENT ACT 2006

Act No. [] of 2006

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Act amended
4. New section 8A
 - 8A. Public warning statements
5. Amendment of section 96 (Power of Court to prohibit payment or transfer of money or other property)
6. Amendment of Part 7 heading
7. Amendment of section 97 (Interpretation of Part 7)
8. New section 97A
 - 97A. Dealer
9. Amendment of section 98 (Contracts to which Part 7 applies)
10. Amendment of section 100 (Certain Part 7 contracts to be prescribed contracts)
11. Amendment of section 101 (Requirements in relation to prescribed contracts)
12. New section 101A
 - 101A. Cooling-off period
13. Amendment of Part 7, Division 3 heading
14. Amendment of section 103 (Dealers not to call during certain hours)
15. Amendment of section 104 (Dealers to indicate their purpose for making calls)
16. New section 105A
 - 105A. Dealers to cease negotiations when requested
17. Amendment of section 107 (Right of consumer to rescind in certain circumstances)
18. Amendment of section 125 (Definitions for purposes of Part 10)
19. Amendment of section 169 (Exclusions from duty to repair)

20. Further amendments

SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2006

AN ACT

to amend the *Consumer Affairs and Fair Trading Act*

[Assented to [] 2006]

[Second reading [] 2006]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Consumer Affairs and Fair Trading Amendment Act 2006*.

2. Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3. Act amended

This Act amends the *Consumer Affairs and Fair Trading Act*.

4. New section 8A

After section 8

insert

8A. Public warning statements

(1) The Minister or Commissioner may issue a public statement giving information (including warnings) about any of the following:

- (a) goods the Minister or Commissioner reasonably considers are unsatisfactory or dangerous and people who supply the goods;
- (b) services the Minister or Commissioner reasonably considers are supplied in an unsatisfactory way and people who supply the services;
- (c) commercial practices the Minister or Commissioner reasonably considers are unfair and people who engage in the practices;
- (d) anything else the Minister or Commissioner reasonably considers adversely affects or may adversely affect the interests of people in the acquisition by them of goods or services from suppliers.

(2) The statement may identify particular goods, services, business practices, people or anything else to which the statement relates.

(3) The Minister or Commissioner may issue a statement under this section only if satisfied it is in the public interest to do so.

5. Amendment of section 96 (Power of Court to prohibit payment or transfer of money or other property)

Section 96(5)

omit, substitute

(5) A person must not contravene an order under this section.

Maximum penalty: 500 penalty units.

6. Amendment of Part 7 heading

Part 7, heading, after "TRADING"

insert

AND TELEMARKETING

7. Amendment of section 97 (Interpretation of Part 7)

(1) Section 97(1)

omit

Part, unless the contrary intention appears –

substitute

Part:

Consumer Affairs and Fair Trading Amendment Act 2006

- (2) Section 97(1), definitions of "cooling-off period" and "dealer"

omit

- (3) Section 97(1)

insert (in alphabetical order)

"cooling-off period", see section 101A;

"dealer", see section 97A;

"telemarketing" means the trading practice under which:

- (a) a person makes telephone calls seeking out persons who may be prepared to enter as consumers into contracts for the supply of goods or services; and
- (b) that person or some other person then or subsequently enters into negotiations with those prospective consumers, either in person or over the telephone, with a view to forming such contracts.

- (4) Section 97(1), definition of "door-to-door trading", paragraph (a)

omit, substitute

- (a) a person goes from place to place seeking out persons who may be prepared to enter as consumers into contracts for the supply of goods or services; and

8. New section 97A

After section 97

insert

97A. Dealer

(1) A dealer is a person who, in the course of door-to-door trading or telemarketing:

- (a) enters into negotiations with another person with a view to forming a contract for the supply of goods or services to the other person; or
- (b) calls on or telephones another person for the purpose of entering into such negotiations.

(2) A person may be a dealer whether or not that person is the supplier of the goods or services mentioned in subsection (1)(a).

9. Amendment of section 98 (Contracts to which Part 7 applies)

(1) Section 98(1)(a)

omit, substitute

(a) negotiations leading to the formation of the contract (whether or not they are the only negotiations that precede the formation of the contract) take place between the consumer and the dealer:

(i) in each other's presence in the Territory at a place other than the trade premises of the supplier of the goods or services;
or

(ii) over the telephone;

(2) Section 98(1)(b)

omit

attends at that place –

substitute

calls on or telephones the consumer:

(3) Section 98(1)(b)(i), after "trading"

insert

or telemarketing

(4) Section 98(4), after "(a)"

insert

(i)

10. Amendment of section 100 (Certain Part 7 contracts to be prescribed contracts)

(1) Section 100(1)(a)

omit

making

substitute

forming

- (2) Section 100(1)(b)

omit, substitute

- (b) is ascertainable at the time of forming the contract and exceeds the amount prescribed by regulation.

11. Amendment of section 101 (Requirements in relation to prescribed contracts)

- (1) Section 101(1), after "prescribed contract"

insert

formed in the presence of both the consumer and the dealer

- (2) Section 101(1)(a)(i)

omit

manner

insert

way

- (3) After section 101(1)

insert

(1A) The following requirements must be complied with for a prescribed contract formed over the telephone:

- (a) before the contract is formed, the consumer must be fully informed of all contractual terms including:
- (i) the total consideration to be paid or provided by the consumer or, if the total consideration is not known at the time the contract is formed, the way in which it is to be calculated; and
 - (ii) detailed particulars of work of a prescribed nature to be carried out under the contract (including particulars required by regulation); and
 - (iii) the consumer's right to rescind the contract during the cooling-off period and the way in which that right may be exercised;

- (b) within 5 days after the contract is formed, the consumer must be given the following documents:
 - (i) a written document containing the information in paragraph (a) and, if the dealer is not the supplier for the contract, the full name and address of the dealer;
 - (ii) a notice in the prescribed form explaining the right of the consumer to rescind the contract;
 - (iii) a notice in the prescribed form that may be used by the consumer to rescind the contract;
 - (c) the notices mentioned in paragraph (b)(ii) and (iii) must:
 - (i) be printed or typewritten (apart from any insertion, which may be handwritten); and
 - (ii) set out the full name and address of the supplier for the contract and identify that person as the supplier; and
 - (iii) be separate from any other document;
 - (d) the documents mentioned in paragraph (b) must be readily legible and conform with the requirements of the regulations;
 - (e) with the consent of the consumer, the documents mentioned in paragraph (b) may be sent to the consumer by email.
- (4) Section 101(2) and (3)

omit

subsection (1)

substitute

subsection (1) or (1A)

12. New section 101A

After section 101

insert

101A. Cooling-off period

(1) The cooling-off period, for a prescribed contract formed in the presence of both the consumer and the dealer, is the period of 10 days starting on the day the contract is formed.

(2) The cooling-off period, for a prescribed contract formed over the telephone, is the period of 10 days starting on the day the consumer receives the documents mentioned in section 101(1A)(b).

13. Amendment of Part 7, Division 3 heading

Part 7, Division 3 heading, after "*Trading*"

insert

and Telemarketing

14. Amendment of section 103 (Dealers not to call during certain hours)

Section 103, after "call on"

insert

or telephone

15. Amendment of section 104 (Dealers to indicate their purpose for making calls)

(1) Section 104, after "calls on"

insert

or telephones

(2) Section 104(b), before "produce"

insert

if the dealer and that person are in each other's presence,

16. New section 105A

After section 105

insert

105A. Dealers to cease negotiations when requested

A dealer who telephones a person for the purpose of negotiating a contract to which this Part applies or for an incidental or related purpose must:

- (a) cease those negotiations immediately on the request of the person;
and
- (b) not contact the person for such a purpose for 30 days afterwards.

Maximum penalty: 100 penalty units.

17. Amendment of section 107 (Right of consumer to rescind in certain circumstances)

Section 107(1)(b), after "105"

insert

, 105A

18. Amendment of section 125 (Definitions for purposes of Part 10)

(1) Section 125(1), definition of "motor vehicle", after "oil"

insert

, hydrocarbon

(2) Section 125(1), definition of "motor vehicle", paragraph (b)

omit, substitute

(b) a vehicle included in a class or description of vehicles declared by regulation not to be motor vehicles for this Part;

19. Amendment of section 169 (Exclusions from duty to repair)

(1) Section 169(3)(a) and (b)

omit, substitute

(a) a commercial vehicle (other than one that, at the time of its sale, is a commercial vehicle or is of a class or description of commercial vehicles to which section 168 applies because of the Regulations); and

(b) a vehicle that, at the time of its sale, is a vehicle or is of a class or description of vehicles to which section 168 does not apply because of the Regulations; and

(2) Section 169(3)(c), at the end

insert

and

20. Further amendments

The Schedule has effect.

SCHEDULE

Section 20

Provision	Amendment	
	omit	substitute
Sections 8(4), 23(1), 122(4), 328(1) and 335(1)	the whole penalty provision	Maximum penalty: 400 penalty units or imprisonment for 2 years.
Sections 23(2), 29(7), 36, 102, 103, 104, 105, 150(3), 153(1), 158(1), 161, 163(1), 164, 166(1), 167, 172, 178, 201, 211, 212(1), 275, 276, 277(1), 279, 280(1), 281(1), 282(1), 283, 289, 290, 292, 293, 294, 296(2), 297(1), 298, 299, 300, 301(1), 302, 311(4), 315 and 316	the whole penalty provision (all references)	Maximum penalty: 100 penalty units.
Sections 23(4), 58(1), (2) and (3), 109(7), 141(6), 159(3), 198(6), 218(1) and (4), 257, 278, 284, 312(3), 313(4), 317(4), 318(2) and 327(3)	the whole penalty provision	Maximum penalty: 100 penalty units or imprisonment for 6 months.
Sections 88(1), 128, 129(1), 130, 144(4), 176(1), 177(3), 188(1), 188A(1), 194(2), 195(6), 203(4), 205(3) and (5), 213, 214(1), 227(3), 240(2), 242(7), 247, 248 and 249(2)	the whole penalty provision	Maximum penalty: 500 penalty units.
Sections 99(2), 101(2), 106, 112, 116, 117, 118, 119, 121 and 157(1)	the whole penalty provision (all references)	Maximum penalty: 200 penalty units.

Consumer Affairs and Fair Trading Amendment Act 2006

Section 124A	the whole penalty provision (all references)	Maximum penalty: 500 penalty units or imprisonment for 2 years.
Sections 157(3), 174(1), 175, 209, 210, 267(4), 274, 280(3), 282(2), 285(2), 286(2) and 291(2)	the whole penalty provision	Maximum penalty: 20 penalty units.
Sections 160(1) and (7), 216(3) and 232(1) and (2)	the whole penalty provision	Maximum penalty: 500 penalty units or imprisonment for 6 months.
Section 190(4) and (6)	the whole penalty provision	Maximum penalty: 50 penalty units.
Section 326(2) and (3)	the whole penalty provision	Maximum penalty: 20 penalty units or imprisonment for 6 months.
