

Fair Trading Act

Unsolicited goods and services

This section of the Act commenced on 17 June 2014



This fact sheet provides an overview of the new unsolicited goods and services provisions under the Fair Trading Act. It is intended to help consumers and businesses understand their rights and obligations when goods or services are supplied when they haven't been asked for.

Unsolicited goods or services are goods or services supplied to someone who has not asked for them. New rules under the Fair Trading Act make it illegal for a business to demand payment for goods or services that haven't been requested by the recipient. The Act also imposes other obligations on businesses to ensure that anyone who receives unsolicited goods or services understands their rights and obligations.

What are the rules around unsolicited goods?

If a business supplies unsolicited goods, the recipient has specific rights and obligations which the supplier must explain when delivering the goods. These include that:

- the recipient is under no obligation to pay for the goods, unless they deliberately damage or lose them
- the recipient must make the goods available for collection by the supplier for a 10 working day period after they receive them
- if the 10 day collection period expires, the recipient can keep the goods as an unconditional gift and the supplier cannot take any action to recover the goods, or payment, from the recipient.

The recipient can also keep the goods as an unconditional gift if the supplier fails to tell them about their rights and obligations at the time they delivered the goods.

However, the recipient can't keep the goods if:

- they knew the goods weren't intended for them (for example if they were addressed to another person)

or

- they didn't provide the supplier a reasonable opportunity to collect the goods within the 10 day collection period.

EXAMPLE

Unsolicited goods

Grant receives a book in the mail which he has not ordered. The envelope is addressed to Grant and states that he can either pay for the book or return it by post.

Grant does not have to pay for the book or return it. However he does have to give the sender a reasonable opportunity to collect the book within 10 working days from when it was received. Grant telephones the supplier and tells them that he does not want to buy the book and as he works full time he will make the book available for collection by the supplier by leaving it in his letterbox. If the sender does not collect the book from Grant's letterbox within 10 working days, then Grant can keep it as an unconditional gift.

The Act does not define “reasonable opportunity”. We expect that this will be considered on a case by case basis and will depend on the nature of the goods supplied and the circumstances of the recipient. There is no requirement to make contact with the supplier and it may be sufficient to leave goods on your front doorstep or in another obvious visible place for collection.

What are the rules around unsolicited services?

As with unsolicited goods, anyone who receives unsolicited services is under no obligation to pay for them, or for any loss or damage resulting from the supply of those services. Reticulated gas and electricity are excluded from the Fair Trading Act’s definition of unsolicited services.

Can a business demand payment for unsolicited goods or services?

It is illegal for a business to demand payment for unsolicited goods or services. If a business delivers an invoice (or similar document) seeking payment for unsolicited goods or services the invoice must clearly inform the recipient that they are under no obligation to pay.

The Commission recommends that any invoices of this kind state in a clear and prominent place:

“This is not a bill. You are not required to pay any money.”

Quick tips for consumers

If you receive unsolicited goods or services (excluding gas or electricity services):

- you are not required to pay for the goods or services
- you are not liable for any loss or damage resulting from the supply of the unsolicited goods or services (unless it is deliberate)
- you must make the goods available for collection by the supplier within 10 working days of receiving them
- if the supplier does not collect the unsolicited goods within 10 working days you can keep the goods with no obligation to pay
- you cannot keep the goods if you know they are not intended for you or if you do not provide the sender with a reasonable opportunity to collect the goods during the 10 working day period.

EXAMPLES

Unsolicited services

Joss moves into new rental accommodation. Electricity is being supplied to the property which Joss uses without contacting the supplier. Joss is liable to pay for the power he has used since he moved in as electricity services are exempt from the unsolicited services provisions.

Invoice for unsolicited services

Aaron’s Automotive Parts Ltd receives an invoice in the mail for a business listing in an online directory. Aaron’s Automotive had not requested the listing. The invoice does not clearly state that Aaron’s Automotive is under no obligation to pay the invoice. Aaron’s Automotive does not have to pay the invoice as the sender has not complied with their obligations under the Fair Trading Act.

Anyone who receives unsolicited goods or services is under no obligation to pay for them.



Quick tips for businesses

- If you supply unsolicited goods or services, you must inform the recipient **at the time of supply** that they are not liable to pay for the goods or services, or for any loss or damage (unless it is deliberate).
- You must collect goods from the recipient within 10 working days from when they receive them. If you do not collect the goods within this time frame (and have been given reasonable opportunity to do so) then the recipient can keep the goods with no obligation to pay.
- It is illegal to request payment for unsolicited goods or services.
- If you issue an invoice requiring payment for unsolicited goods or services, it must clearly state that the recipient is under no obligation to make payment, for example – *“This is not a bill. You are not required to pay any money”*.

Penalties for breaching the Fair Trading Act

Courts can fine businesses found guilty of breaching the unsolicited goods and services provisions of the Fair Trading Act up to \$600,000 and individuals up to \$200,000.

It is illegal for a business to demand payment for unsolicited goods or services. Any invoice for unsolicited goods or services must clearly inform the recipient that they are under no obligation to pay.



This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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