

AUSTRALIAN CONSUMER LAW: UNSOLICITED CONSUMER AGREEMENTS (DOOR TO DOOR TRADING)

What is an unsolicited consumer agreement?

An unsolicited agreement occurs when:

- a supplier, their salesperson or dealer approaches or telephones you without you having invited this contact; and
- negotiations take place over the phone, or in person at a location other than the supplier's premises; and
- the total value of the goods or services is more than \$100, or not established when the agreement was made.

Permitted hours for contacting you

Telemarketing calls cannot be made:

- at any time on a Sunday or a public holiday;
- before 9am or after 8pm on weekdays; or
- before 9am or after 5pm on Saturdays.

Uninvited approaches, in person by a supplier, their sales person or dealer cannot be made during the following times:

- at any time on a Sunday or a public holiday;
- before 9am or after 6pm on weekdays; or
- before 9am or after 5pm on Saturdays.

Supplier's obligations when calling on consumers

A salesperson who approaches you, other than by telephone, must:

- clearly explain up-front the purpose of the visit and produce identification (name and address);
- explain that they are obliged to leave immediately if you ask them to do so. Note: if you ask them to leave they must not contact you again for at least 30 days unless they return representing a different supplier; and
- inform you about your cooling-off rights if the goods or services cost over \$100.

Supplier's obligations when negotiating a sale

If you agree to buy something from a telemarketer or a salesperson who contacts you, the salesperson must:

- ensure you and the salesperson sign the agreement and any amendments;
- give you a written copy of the agreement immediately after signing if negotiated in person. If negotiated by telephone, the copy must be given to you in person, by post, or electronically, within five business days of the agreement (or longer if you agree);
- if you purchased goods that cost \$500 or less, the salesperson can supply these goods immediately to you during the cooling-off period however you still have the right to cancel the contract;
- the salesperson cannot take payment during the cooling-off period for any goods or services; and
- the salesperson cannot supply any services during the cooling-off period.

What must the sales contract contain?

The document must:

- be transparent – that is, expressed in plain, legible and clear language;
- be printed - although any changes to the agreement may be handwritten (and must be signed by both parties);
- be signed by you and the trader. The front page must have your signature and the date you signed;
- clearly state:
 - your cooling-off rights (right of termination)
 - full terms of the agreement
 - total price payable, or how this will be calculated
 - any postal or delivery charges
- contain the supplier's:
 - name
 - business address (not a post office box number)
 - Australian Business Number (ABN) or Australian Company Number (ACN)
 - fax number and email address (if available)
- contain a notice that you may use to cancel the agreement.

What are your cancellation rights?

If you enter into an unsolicited agreement you have 10 business days to cancel the agreement without penalty (cooling-off period). This period begins on the first business day after the agreement was made. If the agreement was made by telephone the 10-day period commences on the first business day after the consumer was given the documentation about the agreement.

You may also cancel an agreement up to three months after it was made if the supplier did not:

- visit within permitted selling hours;
- disclose the purpose of their visit;
- produce identification; or
- leave the premises upon request.

The cancellation period is extended to six months if the supplier:

- did not provide information about cooling-off rights;
- breached requirements for unsolicited consumer agreements (such as failing to provide a written copy or not including required information);
- supplied goods that cost more than \$500 during the cooling-off period; or
- accepted or requested payment during the cooling-off period.

You may cancel the agreement verbally or in writing. If you cancel the agreement verbally it is suggested that you note the time, date and the name and details of the person that you spoke to.

Refund entitlement

If you cancel an unsolicited agreement, the supplier must promptly return or refund to you any money paid under the contract.

What happens to the goods/services after you cancel the contract?

- You must, within a reasonable time, return any goods that have not been consumed or tell the supplier where to collect them.
- If you have not taken reasonable care of the goods, the supplier can seek compensation for depreciated value.
- You do not have to pay compensation for normal use of the goods or circumstances beyond your control.
- If the supplier does not collect the goods within 30 days of termination, then you can keep them.