



24 August 2012

By email: spla.reps@aph.gov.au

Committee Secretary
House of Representatives Standing Committee on
Social Policy and Legal Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary

Australian Consumer Law—loophole relating to door to door visiting hours under unsolicited consumer agreement provisions

Thank you for the recent opportunity to give evidence to the Inquiry into the Do Not Knock Register Bill.

We write to inform the committee of an issue related to door-to-door marketing, particularly the provisions limiting the hours that an unsolicited consumer agreement can be negotiated pursuant to the Australian Consumer Law (**ACL**). It is our view that the provisions have been exploited by some traders, meaning that door-to-door marketing can occur outside the permitted hours. We ask that the committee recommend that the Government review these provisions, and the effectiveness of the unsolicited agreement provisions of the ACL.

Section 73 of the ACL sets out the permitted hours for negotiating an unsolicited consumer agreement:

- (1) A dealer must not call on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose:
 - (a) at any time on a Sunday or a public holiday; or
 - (b) before 9 am on any other day; or
 - (c) after 6 pm on any other day (or after 5 pm if the other day is a Saturday)

The term 'unsolicited consumer agreement' is defined in section 69 of the ACL:

- (1) An agreement is an unsolicited consumer agreement if:
 - (a) it is for the supply, in trade or commerce, of goods or services to a consumer; and
 - (b) it is made as a result of negotiations between a dealer and the consumer:

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- (i) in each other's presence at a place other than the business or trade premises of the supplier of the goods or services; or
 - (ii) by telephone;
- whether or not they are the only negotiations that precede the making of the agreement; and
- (c) the consumer did not invite the dealer to come to that place, or to make a telephone call, for the purposes of entering into negotiations relating to the supply of those goods or services (whether or not the consumer made such an invitation in relation to a different supply); and
 - (d) the total price paid or payable by the consumer under the agreement:
 - (i) is not ascertainable at the time the agreement is made; or
 - (ii) if it is ascertainable at that time—is more than \$100 or such other amount prescribed by the regulations

These provisions mean that the permitted hours for negotiation are limited to when a trader is seeking to negotiate an 'unsolicited consumer agreement'. Therefore, where a trader is seeking to negotiate a consumer contract where the total price of is less than \$100, it will not be bound by the permitted hours of negotiation.

We recently wrote to a large national trader with significant market share in its industry after receiving a number of complaints from consumers who had been door knocked outside the permitted hours of negotiation. In responding to our concerns about this practice, the trader stated that its salespeople offered a \$99.00 product and that it took the view that it was not promoting an 'unsolicited consumer agreement' within the meaning of the ACL, meaning the permitted hours for negotiation did not apply.

We have been advised that it has now ceased to offer the \$99.00 product through door-to-door sales, and will not visit premises outside the permitted hours without the consent of the customer.

Despite this assurance, it is our view that the ACL should be amended so that the marketing of any unsolicited consumer agreement is limited to the permitted hours of negotiation in section 73 of the ACL, independent of the total price payable under the agreement. While we recognise that it may be appropriate for some of the other protections in Division 2 of Part 3-2 of the ACL (the division on unsolicited consumer agreements) to be limited to agreements where the total price payable is above \$100 (for example, cooling-off rights), we do not think that it is appropriate (or intended) that the restrictions on the hours for negotiation are limited to particular types of contracts.

The trader above appears to have sought to evade the intention of section 73 by promoting a product where the price payable was less than \$100. We suspect that this contract automatically renewed after a short period of time, and so in effect, the consumer was entering into an agreement which was likely to result in them paying more than \$100.

We have also received a number of complaints from consumers who have been door-knocked by promoters of certain energy efficiency products outside the permitted hours for negotiation in section 73. We understand that installation of these products provide the promoter with rights pursuant to Victoria's Energy Efficiency Target (**VEET**) scheme. The consumer may not make

any payment towards these products, however they are effectively providing 'energy efficiency entitlements' to the promoters, who then on-sell them to energy retailers.¹ These entitlements may or may not be worth more than \$100 to the promoter.

It is our view that the permitted hours for negotiation should apply to all marketers who canvass door-to-door. It should not matter that the price payable under the agreement is under \$100 or even if there is no upfront cost to the consumer.

We note that the definition of 'marketing call' in the Do Not Knock Register Bill is not limited in the way that 'unsolicited consumer agreement' is limited in the ACL. That is, if enacted, it appears that traders promoting a consumer agreement where the price payable is less than \$100 would still be required to comply with the register.

Should the committee not support the enactment of the Bill (noting that we think it should support its enactment), we ask the committee to consider recommending to Government that it undertake a review of the unsolicited consumer agreement provisions of the ACL. This review should consider:

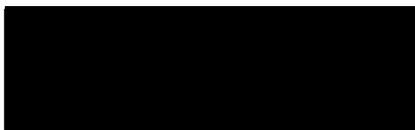
- the operation of provisions relating to permitted hours for sale, particularly to ensure that the apply to all marketing calls; and
- how the ACL might be improved so that a consumer's choice not to be door knocked can be respected and enforced.

Such a review could also consider how the ACL might better enforce a Do Not Knock sticker or sign. To that end, we attach a letter sent to Ministers represented on the Legislative and Governance Forum on Consumer Affairs late last year relating to this matter.

We would welcome discussing this proposal further with you.

Yours sincerely

CONSUMER ACTION LAW CENTRE



Carolyn Bond
Co-CEO

¹ For more information about this scheme, see <https://www.veet.vic.gov.au/Public/Public.aspx?id=Home>.