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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

Inquiry into the Do Not Knock Register Bill 2012

We welcome the opportunity to comment on the Do Not Knock Register Bill 2012 (the **Bill**).

In summary, we submit that consumers should have the choice not to be contacted by door-to-door salesperson, and believe that a well-structured Do Not Knock register may operate as a simple and effective way for consumer to protect themselves from door-to-door marketing.

In this submission, we argue that:

- there is significant, widespread and proven consumer detriment arising from door-to-door selling practices;
- door-to-door sales not only produces individual consumer detriment but hinders good market outcomes across industry sectors;
- the commission-sales nature of much door-to-door sales incentives high pressure selling;
- there are a number of weaknesses with the Australian Consumer Law's regulation of unsolicited sales, which mean that consumers are vulnerable to door-to-door marketing.

We also provide some more detailed comments on specific provisions of the Bill.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly. We also operate MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians experiencing financial difficulty.

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Problems caused by door-to-door marketing

Door to door marketing is currently a matter of significant public concern. Consumer Action launched the Do Not Knock sticker in 2007, when we published a report on the marketing of energy in Victoria.¹ That report, titled *Coercion and Harassment at the Door*, detailed 28 case studies of consumer interactions with door-to-door salespeople marketing energy contracts, demonstrating a range of high pressure tactics and misconduct, including:

- misleading conduct, such as marketers misrepresenting the nature of the transaction;
- switching customers to new contracts without consent;
- taking advantage of consumers' lack of understanding, particularly elderly or non-English speaking consumers;
- marketing to non-account holders;
- harassing consumers to sign contracts.

Other research, such as that undertaken by the Footscray Community Legal Centre with the African community in the west of Melbourne, demonstrates similar serious problems with this type of marketing.²

Despite this research and better understanding about the harm caused by this type of marketing, complaints about these practices continue to be received by consumer, community legal, and financial counselling organisations. In 2011, Consumer Action re-launched the Do Not Knock sticker with support of organisations such as Financial Counselling Australia, Victoria Legal Aid and the Department of Families, Housing, Community Services and Indigenous Affairs. The sticker operates as self-help tool by which consumers can demonstrate their intention not to be bothered by a door-knocker (a copy of the sticker is included at Appendix A).

The Do Not Knock sticker has been immensely popular with consumers, with tens of thousands of stickers being distributed around Australia. Consumer Action has coordinated the sticker to be available at over 80 community locations around Australia, and free of charge via the website, www.donotknock.org.au. State Governments in Queensland, South Australia and Tasmania have also distributed their own Do Not Knock stickers.

Research conducted by Consumer Action in 2012 suggests that consumers are highly dissatisfied with door-to-door marketing. From a survey of 1,014 people nationally, key findings were:

- 77 per cent of those surveyed dislike door-to-door sales;
- only 3 per cent of participants had a generally positive opinion of door-to-door selling;
- the majority of those surveyed feel misled by in-home sales;
- 56 per cent of those surveyed feel the greatest pressure to purchase when visited at home (in comparison with online sales, purchasing in-store etc)

The research also found that 85 per cent of participants supported the concept of a Do Not Knock register. A summary of this research is included at Appendix B.

¹ Consumer Action and Financial & Consumer Rights Council, *Coercion and Harassment at the Door*, November 2007, available at: <http://www.consumeraction.org.au/downloads/EnergyMarketinginVictoria-Finalv.3.pdf>.

² Footscray Community Legal Centre, *The African Experience of the Contestable Energy Market*, March 2009, available at: <http://www.esc.vic.gov.au/getattachment/94c82335-8fc7-4d6d-ac11-5d213bca2dbd/African-experience-of-Melbourne-Energy-Market-Marc.pdf>.

The overwhelming majority of complaints about door-to-door marketing to Consumer Action relate to the marketing of retail energy contracts. However, our Centre also regular receives complaints in relation to other goods and services, such as Pay TV and newspaper subscriptions as well as home services.

We are aware of efforts of the energy industry to improve behaviour through a self-regulatory code (through an organisation known as Energy Assured Limited). We strongly support efforts by industries to improve their practices. However, to date, it is our experience that there are still many consumer complaints about door-to-door marketing in this industry. The following are a sample of complaints received by our service in recent months, some months after the introduction of the EAL Code.

Case study #1

Simon (not his real name) says that in early July he was contacted by a door-to-door marketer mid morning while he was caring for his 3 year old child. Two salespeople presented, but did not identify who they were representing but it appeared to be an energy retailer. One of the salespeople showed Simon a tablet computer, which indicated that all the other householders in Simon's street had provided their details to them and that he was the last person to do so. Simon explained that he was not interested in door-to-door sales pitches.

Despite demonstrating his wish that the salespeople should leave, one of the marketers offered Simon a \$50 debit card if he provided them with his details. Simon declined, but the marketers insisted that they must collect his details and would return until they were provided. Simon asked them to leave, but the salespeople refused. Simon states "at this stage I told them to leave before I physically removed them—they actually sized me up and decided it was best to leave". Simon believes these tactics are predatory.

Case study #2

Elizabeth (not her real name) was visited by a door-to-door marketer at around 5.30pm on an afternoon in late April. Elizabeth had a Do Not Knock sticker placed at her door. She asked the sales person whether they could read the sticker, which was displayed clearly. The salesperson replied that he could, but that it was not unlawful to knock on a person's door with this sign. Elizabeth asked for the representative's details so that she could make a complaint. The salesperson replied that he did not have to provide his information. At this stage, the salesperson left the premises.

Case study #3

Peta (not her real name) says that a marketer representing an energy retailer visited her in early May, at about 1pm on a weekday. Peta had a Do Not Knock sign clearly displayed. The marketer told Peta that the Do Not Knock sign did not apply as he was not selling anything, but merely 'fixing the incorrect rates currently being charged for electricity and gas'.

Peta was caring for her mother at the time, who had recently had an operation. Peta says that she usually wouldn't listen to a salesperson's spiel but felt weak due to her recent stress. Peta says the salesperson wouldn't take no for an answer, even when she told him she was not listed as the bill payer and thus did not have the authority to change to a new provider.

Peta signed the contract after the salesperson told her there was a cooling off period—she felt

too tired to reject him further and felt it was easier to sign and then cancel the contracts. After signing the documents, Peta was concerned that she was not left with electricity rates so she could not compare against her current charges. Peta says she later thought about the transaction and spoke to the bill payer, then subsequently contacted the company to cancel the agreement that she signed.

Case study #4

Noelene (not her real name) has two Do Not Knock stickers placed at her door. When a marketer knocked on her door in April, she asked why they did so when there was a clear sign not to. The salesperson told her that as these signs had the label of a rival energy company, and that they were giving her a bad deal and didn't want her to be able to consider better deals. Noelene replied that she was aware of that fact, as she had placed them on her door, and that she wasn't interested in speaking to door knockers. Noelene says that despite this the salesperson proceeded to try and sell me a new special deal with another energy retailer.

Case study #5

Amanda (not her real name) reports that two male representatives of an energy retailer attended her home on 26 April. Amanda has a Do Not Knock sticker clearly identifiable on an opaque glass panel directly next to her door bell.

Without saying which company they represented or introducing themselves properly, they asked to see a copy of Amanda's energy bill to establish whether she was receiving the best possible deal. Amanda said that she didn't want to give them a copy of her bill, and the marketers told her that she would be making a mistake if she didn't just let them check. Amanda reiterated that she did not want to change energy suppliers and asked that they leave the property immediately. She says they hesitated but then left.

Amanda says as a stay-at-home parent, she felt intimidated by two people come to her door. She is concerned about how an elderly person would respond to this proposition.

Individual as well as market wide detriment

It is clear from the above case studies that door-to-door sales can result in individual consumer detriment in the form of pressure, harassment and signing agreements that may be unwanted. However, we believe that door-to-door sales can also have a negative impact on market outcomes more broadly.

We understand that many energy retailers believe that direct marketing, especially through door-to-door sales, is necessary to interest or engage consumers in what is a homogenous product. Energy industry regulators appear also to believe that direct marketing is necessary for markets involving 'relatively low involvement products such as energy' and that such marketing is necessary for effective competition.³

³ AEMC, *Review of the effectiveness of competition in retail electricity and gas markets in Victoria – First Draft Report*, October 2007, p 66.

While we agree effective competition in markets can drive down costs and create benefits for consumers, and that it can be difficult for people to care much about which provider delivers utility services like energy, we do not agree that this sales channel facilitates effective competition. Markets, such as that for electricity, require consumers to make good purchasing decisions to drive price and quality outcomes of service providers. However, energy marketers generally only offer one deal at the door step and require a consumer to sign up on the spot—they rarely leave information for householders to consider. These practices inhibit consumers' ability to consider all the deals available in the market and make a decision that is in their own best interests. In this respect, door-to-door actually militates against good decision-making, thus hindering competitive outcomes.

"Rogue" sellers and commission-based sales

In our view, marketing misconduct is not limited or entirely attributable to rogue individual salespeople—so-called “bad apples”—as is often argued by industry. From consumer complaints reported to us, there appears to much commonality in conduct (for example, not identifying who the marketer is representing, demanding a copy of an electricity bill without explaining why, representing that everyone else in a street has switched) that indicates training or at least some instruction is provided to sell using particular techniques.

Moreover, it is our view that the commission-based structure of remuneration provided to many door-to-door marketers actually incentives high pressure sales. Many salespeople are employed as independent contractors, and are only remunerated when they make a sale. Where salespeople are employed by the provider of the good or service, or through an outsourced labour hire company, often a significant proportion of a seller's income is from commission.

Given this, it is unsurprising that salespeople are seeking to use under-handed tactics to gain a sale—they are actually incentivised to do so. Without addressing this issue, we are concerned that any regulatory approach (whether self-regulation or actual legislation) will have limited ability to reduce consumer detriment.

Effectiveness of current protections in the Australian Consumer Law

Consumer Action supports the strong framework for the regulation of unsolicited agreements in the Australian Consumer Law (**ACL**). The current framework includes regulated times for door-to-door sales, as well as requirement for sales agents to:

- inform consumers as to why they are visiting and show identification;
- leave if directed to;
- provide their contact details; and
- provide a written copy of the sales agreement as soon as it has been signed.⁴

A key protection for consumers is the 10 business day cooling off period within which a consumer can change their mind and cancel the agreement.⁵ Sales agents must inform

⁴ Australian Consumer Law, Division 2—Unsolicited agreements (Schedule 2 of the *Competition and Consumer Act 2010* (Cth)).

⁵ Section 82, Australian Consumer Law.

consumers of their cooling-off rights and how they may end the agreement, and must not attempt to get consumers to waive their cooling-off rights.⁶

In our experience, consumers can fail to exercise their cooling-off rights, despite regretting a purchasing decision. Recent research from the field of behavioural economics, a discipline that combines psychology and economics, provides some explanation about why this might be the case.⁷

A behavioural principle known as 'consistency' states that people desire to act in a way that is consistent with their words and deeds. This means that people will often be uncomfortable with the idea of retracting their agreement to a purchase during the cooling off period. According to a report by Consumer Action and Deakin University, this is because "it requires cognitive effort for the consumer to initiate the withdrawal, resulting in a rejection of previous choices, and high ego costs".⁸

Each step towards a purchase, even minor commitments from a consumer, can make it increasingly likely that a consumer will "sign up". While such commitments initially include agreeing to a visit to the home, or simply agreeing with the salesperson's statements, more significant commitments such as accepting delivery of goods or making payment for goods, can act to "seal the deal" in a consumer's mind and reduce the likelihood of "cooling off".

This is illustrated by figures provided by the Direct Sellers Association of Australia in relation to just one of its members (Thermomix). In cases where purchasers apply for credit to purchase the item, 10 per cent take advantage of the cooling off period, whereas of those who pay cash, less than 0.2% took advantage of the cooling off period.⁹ While there may be other factors also at play, making payment for goods is likely to have an impact on a consumer's willingness to access rights to cooling-off.

A recent research paper from a US academic confirms these findings. Drawing on behavioural analysis, the work of Jeff Sovern argues that low levels of consumers exercising cooling off periods "raises doubts about whether cooling-off periods benefit consumers or whether they provide only illusory consumer protection".¹⁰

Alternative regulatory approaches

We believe that consumers should have a simple and effective way of protecting themselves from door-to-door salespeople. This might be achieved a number of ways.

The Do Not Knock sticker, if respected, can operate to protect consumers by simply and clearly demonstrating a consumer's desire not to be contacted by a door-to-door salesperson. However,

⁶ Section 72, Australian Consumer Law.

⁷ See, eg, New Economics Foundation, *Behavioural Economics: Seven Principles for Policy-makers*, page 9, available at: <http://neweconomics.org/publications/behavioural-economics>.

⁸ Deakin University and Consumer Action Law Centre (2010) *Shutting the Gates: an analysis of the psychology of in-home selling*, page 128.

⁹ Submission by the Direct Selling Association of Australia, *Inquiry into the Consumer Credit and Corporations Legislation Amendments (Enhancement) Bill 2011*, October 2011, available at:

http://www.aph.gov.au/senate/committee/corporations_ctte/Consumer_Credit_Corporations_2011/submissions.htm.

¹⁰ Jeff Sovern (2012), 'Cooling-off periods', Legal Studies Research Paper Series, St John's School of Law, July 2012, available at: <http://ssrn.com/abstract=2103807>.

as the case studies above indicate, there appears an increasing tendency by some salespeople to ignore Do Not Knock stickers. This is despite industry codes that require sales agent to respect such notices.

A Do Not Knock register may operate to provide consumers with a simple and easy way of protecting themselves from door-to-door salespeople. The benefit of this approach, as with the successful Do Not Call register, would be the significant penalties for sales companies that contact consumers listed on the register. This approach would also be practical, by providing sales companies an ability to "wash" address lists against the register so that sales agents are clearly directed not to contact particular addresses that are listed on the register. We provide more detailed comments on the Bill that provides for such a register below.

Another option may be a process whereby a consumer could "opt in" to an unsolicited agreement, subsequent to the initial contact by the trader. This would have the same purpose as the cooling-off protection—to give the consumer an opportunity to reconsider their purchasing decision. A consumer could opt-in after a designated period (without further contact or inducements from the trader) to consider their purchase, which could be as short as 24 hours. This would benefit traders in comparison with the current arrangement, as they could provide the goods and services and receive payment within a much shorter period of time (currently traders cannot receive payment during the cooling-off period) .

Each of these options accords with principles of consumer sovereignty, most particularly the right to choose—one of the four basic consumer rights.¹¹ The right to free choice is a basic right that means that consumers should be able to freely choose among product offerings, and not be coerced or pressured into making any particular choice.

Detailed comments on the Bill

Consent to making a marketing call

Subsection 8(1) of the Bill prohibits persons from making a marketing call to an address entered on the Do Not Knock register. Subsection 8(2) states that subsection (1) does not apply if the occupier or a nominee of the occupier consented to the making of the call. While consent is defined in Schedule 2 of the Bill, an approach that is similar to the *Do Not Call Register Act 2006* (Cth), we are concerned that it may be circumvented by door-to-door marketers.

Consent is defined to include express consent, which might include where a person ticks a box on a form, agreeing to receive future marketing visits from a particular business. While this form of consent is taken to have been withdrawn at the end of 3 months, it is our concern that businesses may obtain express consent through a general marketing offer or even a competition. This could be done to circumvent the intent of the register. It would be preferable if a consumer could only indicate their consent to receiving a marketing visit by informing the Registrar of the Do Not Knock register.

¹¹ The four basic consumer rights, first enunciated by President John F Kennedy in 1962, are the right to safety, the right to be informed, the right to choose, and the right to be heard. These have been expanded to eight rights through the United Nations Guidelines for Consumer Protection

Mistake

Subsection 8(4) of the Bill states that the general prohibition in subsection 8(1) does not apply if the person made the visit by mistake. It is our view that mistake needs to be further defined, either by industry information or guidelines developed by the Registrar, or in regulations. While the term is commonly understood, it is our concern that sales agents in the field could routinely knock on doors that were on the register 'by mistake', as they are not commonly supervised closely by management (which is not the case with telephone marketing). At the very least, as with any agreement signed by a consumer whose address is on the register, any consumer contracts signed as a result of a 'mistaken' visit to an address on the register should be void.

Period of inclusion

Section 13 of the Bill states that an address is to remain on the Do Not Knock Register for 3 years or such longer period prescribed by the regulations. This provision, or the regulations, should contemplate a means by which the Registrar should notify consumers of impending expiration towards the end of the three year period. A particular problem faced by the Do Not Call Register was that there was no simple way to contact consumers whose registration was set to expire, and there has subsequently been a need to extend the registration period.

Registration fees

The Bill is silent on the question of funding the register. It is our view that it should not cost a consumer to register their address on the Do Not Knock register, but rather the cost of the register should be borne by industry.

Community education and research

We strongly support the inclusion of section 30 of the Bill which provides that the Registrar to conduct and/or coordinate community education programs, and conduct and/or commission research into issues relating to marketing calls. For the Register to be considered successful, there must very high levels of consumer awareness and use, and for the process to register to be very simple.

We are particularly concerned about marginalised groups such as those from non-English speaking backgrounds, indigenous consumers, the elderly and those living with a disability. The experience of consumer and welfare agencies is that these groups are particularly vulnerable to door-to-door marketing. Community education should be well funded and focus on these groups, including outreach to facilitate addresses to be registered, so that online registration is not the sole way in which an address can be registered.

Complaint process

Schedule 4 of the Bill provides for a complaints process for use in relation to contraventions of the register's requirements. We strongly support a clear, simple and accessible complaints process. We note that subsection 2(2) of the Schedule states that complaints must be in writing. Requiring a complaint to be in writing is a barrier for many people, particularly those with limited literacy skills. Our view is that complaints must be able to be made verbally—the staff responsible for the complaints process should be able to transcribe complaints without requiring a consumer to put their complaint in writing.

We look forward to discussing these issues with members of the committee further at the public hearing. Please contact us on 03 9670 5088 if you would like to discuss these matters further/have any questions.

Yours sincerely

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