

House Standing Committee on Social Policy and Legal Affairs

ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the Do Not Knock Register Bill 2012

Notice given: 21 August 2012

Questions on notice to ACCC

1. Does the existing legislation provide the ACCC with sufficient enforcement powers to investigate unscrupulous door-to-door selling practices?
2. Are you aware of poor conduct on the part of door-to-door sales people which is currently not addressed by existing consumer protection laws?
3. How aware are consumers of their rights regarding door-to-door salespeople?

ANSWER

1. The Australian Competition and Consumer Commission (ACCC) has wide ranging powers to investigate and address unscrupulous door-to-door selling practices. These powers include the ability to:
 - issue substantiation notices that require a person to give information and/or produce documents that can substantiate or support the claim that was made
 - compel businesses and individuals to provide information and documents where it relates to a potential contravention of the Australian Consumer Law (ACL)
 - obtain a search warrant to search and seize documents and things relating to a potential contravention of the ACL
 - issue public warning notices, infringement notices, accept court enforceable undertakings or launch legal proceedings for breaches of the law (where the ACCC can obtain injunctions and pecuniary penalties) or refer a matter for consideration of criminal prosecution by the Commonwealth Director of Public Prosecutions.

The ACCC carefully monitors the complaints and inquiries it receives. The ACCC has started a number of investigations into door-to-door selling on the basis of information received through a complaint or inquiry.

In addition to the complaints and inquiries it receives directly, the ACCC recently entered into tripartite memoranda of understanding with state and territory energy ombudsman schemes and the Australian Energy Regulator (AER) to enhance information-sharing in relation to complaints and systemic issues in the energy market.

Complaint statistics including complaints received by state and territory agencies and ombudsmen and analysis of these can be found in the recent *Research into the door to door sales industry in Australia* report by Frost and Sullivan for the ACCC which is available from

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the ACCC website at <http://www.accc.gov.au/content/index.phtml/itemId/1070526>. The report notes that for the period 1 January 2011 to March 2012, the ACCC received a total of 63 109 consumer complaints related to provisions in the ACL, of which 187 (0.3%) related to the door-to-door sales provisions. Around half of the 187 complaints concerned the electricity sector.

2. From 1 January 2011, the ACL has provided a national standard for the regulation of unsolicited consumer agreements, and in doing so, reshaped the rules for door-to-door sales. The ACL is enforced by the ACCC and consumer protection regulators in every Australian state and territory.

Broadly, the ACL provides three tiers of protections for consumers in relation to unsolicited sales:

- (a) provisions regulating attempts by sellers to make an unsolicited agreement with a consumer
- (b) general prohibitions on false, misleading or unconscionable conduct
- (c) statutory warranties requiring goods and services to be, for example, of acceptable quality and fit for purpose.

The ACL's unsolicited consumer agreement provisions regulate:

- how and when sellers can come knocking (it restricts the hours for contact)
- the information sellers must provide before any negotiation (their identity, the purpose of their call, that the seller is required to leave the property immediately on request of the consumer)
- the consumer's right to change their mind before any agreement is made (10 business day cooling off period)
- the content of any agreement reached (must be signed, contain full terms and conditions, suppliers details).

In addition to the above, the ACCC works closely with the AER in its role enforcing the National Energy Retail Law in those jurisdictions in which it has commenced¹. The AER is

¹ The Retail Law commenced in the Australian Capital Territory and Tasmania (for electricity customers) on 1 July 2012. New South Wales, Victoria and South Australia will commence the Retail Law as soon as is practicable (start dates for these jurisdictions are not confirmed). Queensland is yet to consider its position on application of the Retail Law.

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Australia's national energy market regulator and an independent statutory authority. The AER is funded by the Commonwealth, with staff, resources and facilities, provided from the ACCC.

The Retail Law provides additional protections for consumers in relation to energy marketing, including door-to-door sales. These require that energy retailers and anyone marketing on their behalf must also:

- provide customers with an Energy Price Fact Sheet for the offer being promoted - the Energy Price Fact Sheet is a one page summary of the terms and conditions of the contract including the price, contact details for the retailer and any discounts or changes that apply, presented in a standardised format
- observe no canvassing signs (such as 'Do not knock' or 'no advertising material')
- maintain a 'no contact list', allowing consumers to advise an energy retailer that they do not wish to be contacted for marketing purposes by that retailer. Consumers will remain on that retailer's list for two years. As each firm maintains their own list and the 'no contact' information is not shared between retailers, consumers have to contact individual retailers to prevent future visits from salespeople representing those retailers.

The Retail Law also provides a range of remedies and penalties including pecuniary penalties, court-enforceable undertakings and infringement notices.

The ACCC has taken enforcement action in relation to door-to-door selling under the general prohibitions on false, misleading or unconscionable conduct as well as under the new unsolicited consumer agreement provisions.

- The ACCC took action in 2009 against unconscionable and misleading conduct in door-to-door sales by Craftmatic Pty Ltd, a seller of adjustable beds, obtaining injunctions to prevent repetition of the conduct.
- The ACCC issued infringement notices and accepted court enforceable undertakings from Advanced Lifestyle International Retail Pty Ltd in 2011 in relation to false or misleading representations to consumers during in-home sales presentations for vibrating massage therapy products.
- In March 2012 the ACCC initiated proceedings against three traders (and their relevant marketing companies) alleging contraventions of the ACL in relation to door-to-door sales marketing. Against two of the traders, the ACCC is alleging that salespeople did not comply with some of the requirements under the unsolicited consumer agreement

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provisions despite being requested to leave by the placement of a 'do not knock' sign near their door.

- In May 2012 the ACCC initiated proceedings against Lux Distributors Pty Ltd, alleging unconscionable conduct in relation to the sale of vacuum cleaners to five elderly consumers. It is alleged that a Lux sales representative called upon each consumer under the premise of a free vacuum cleaner maintenance check. The consumers, some of whom were aged over 90, were then allegedly subjected to unfair and pressuring sales tactics to induce them into purchasing a vacuum cleaner for a price of up to \$2280.

The scope and precise application of the ACL in relation to door-to-door selling is likely to be tested by the ACCC's current proceedings. This litigation addresses many, but not all of the undesirable practices in door-to-door marketing that have been identified through complaints to the ACCC, fair trading agencies and ombudsman services. It is too early to say whether or not the ACL unsolicited selling provisions will be interpreted by the Courts in a manner which will ensure the law provides adequate protection for consumers in this area.

3. The ACCC has a statutory function of providing guidance to consumers in relation to their rights and obligations. The ACCC has been active in raising consumer awareness of their rights and obligations under the ACL and has actively engaged with industry to ensure greater compliance with the law.

On 17 August 2012 the ACCC launched the *Knock! Knock! Who's There?* awareness raising campaign to help consumers be confident and exercise their rights when buying at their door. The campaign was launched in conjunction with the ACCC's release of the *Research into the door-to-door sales industry in Australia* report (available from the ACCC website at <http://www.accc.gov.au/content/index.phtml/itemId/1070526>).

The report provides important insights into:

- the scale and scope of the door-to-door sales industry in Australia – in 2011 over 1.3 million sales were conducted through this sales channel and of these, approximately 1 million sales related to energy services. On average every home in Australia is door knocked eight times a year.
- industry structure – companies usually engage third party sales agents to deliver door-to-door sales services, with remuneration typically based on commission. This model may encourage agents to adopt tactics that are not fully compliant in order to secure more sales.

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- non-compliance – some research participants reported preying on vulnerable ‘easy targets’, using false pretexts to hook consumers in such as pretending to have lost their dog, or failing to provide consumers with certain information as required by under the ACL.

As part of the campaign, the ACCC released several practical tools to help consumer understand their rights in relation to unsolicited sales approaches, including:

- *Knock! Knock! Who's There? Door to door sales – a guide for consumers*
- *Knock! Knock! Who's There? Door to door sales - a consumer's guide* (brochure)
- *ACCC 'Do Not Knock' sticker*
- *Knock! Knock! Who's There?* Door hanger and magnet.

The ACCC received over 7 000 requests for ‘Do Not Knock’ stickers and consumer guides following the launch.

The *Knock! Knock! Who's There?* brochure will shortly be available in 14 languages to assist potentially disadvantaged and vulnerable consumers from non-English speaking backgrounds understand their rights.