



Unsolicited selling

(formerly known as door-to-door sales)

Australian Consumer Law factsheet for suppliers and salespeople

What defines an unsolicited sales agreement?

- The supplier, their salesperson or dealer approaches a consumer uninvited. This includes approaching or intercepting a consumer in a shopping centre and negotiating a sale outside of a business or trade premises (which may be a kiosk or stall).
- The agreement results from negotiations away from the supplier's premises.
- The total value of the goods or services is more than \$100, or not established when the agreement was made.

When can I call on a consumer?

You **must not** call on a consumer:

- on Sunday or a public holiday;
- before 9 am or after 8 pm on a weekday; or
- before 9 am or after 5 pm on a Saturday.

You can visit at any time only if you make an appointment over the phone or in writing (not in person) beforehand.

What do I need to do when calling on a consumer?

You must:

- explain up-front the purpose of your visit;
- produce identification setting out the dealer's full name and address or, if the dealer is not the supplier, the supplier's full name and address;
- let the consumer know that they can ask you to leave; and
- leave the premises immediately if the consumer asks you to. You must not make contact again for the purpose of negotiating an agreement, or any incidental or related purpose on behalf of the same supplier, for at least 30 days.

Note: From 1 July 2011 provisions relating to identification will change and you will need to comply with the Trade Practices (Australian Consumer Law) Amendment Regulations 2010 (No. 1) – see Regulation 82.

What must I do when negotiating a sale?

You must:

- inform your customer in writing of their right to cancel the agreement before making the sales agreement. The form of this notice must comply with the *Door to Door Trading Act 1987 (WA)* until 1 July 2011, after which it will need to be in the format set out in the Trade Practices (Australian Consumer Law) Amendment Regulations 2010 (No. 1);
- ensure you and the customer sign the agreement and any amendments; and
- give the customer a written copy of the agreement immediately after signing.

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);
- clearly state:
 - the customer's cancellation and cooling-off rights;
 - full terms of the agreement;
 - total price payable, or how this will be calculated; and
 - any postal or delivery charges.

- contain your (the supplier):
 - name;
 - business address (not a post office box number);
 - Australian Business Number (ABN) or Australian Company Number (ACN); and
 - fax number and email address, if available.
- contain a notice the customer may use to cancel the agreement, in a format set out in the *Door to Door Trading Act 1987*.

Note: From 1 July 2011 the form used to cancel an agreement will need to be in the format set out in the Trade Practices (Australian Consumer Law) Amendment Regulations 2010 (No. 1) - see Regulation 84.

What are the customer's cancellation rights?

The customer has 10 business days to cancel the agreement without penalty. 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.

Important: You must not accept any payment for any goods or services or provide any services during the cooling-off period – unless supplying electricity or gas to premises not already connected to such services. From 1 January 2012 the supply of goods during the cooling-off period will also be prohibited.

The customer may also cancel an agreement up to three months after it was made if you did not:

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

The cancellation period is extended to six months if you:

- 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 during the cooling-off period; or
- accepted or requested payment during the cooling-off period.

The customer may cancel the agreement verbally or in writing. The cancellation date is when the customer gives or sends the notice.

What happens when the customer cancels the agreement?

An agreement cancelled by a customer is void; that is, treated as if it never existed.

You must promptly return or refund any money paid under an agreement or related contract.

The customer must, within a reasonable time, return any goods that have not been consumed, or tell you where to collect them.

For more information on your obligations under the Australian Consumer Law (ACL), refer to:

- *ACL: Sales practices – A guide for businesses and legal practitioners.*
- Trade Practices (Australian Consumer Law) Amendment Regulations 2010 (No. 1).

Note: Door-to-door sales agreements and telephone sales agreements are referred to in the ACL guide as 'unsolicited consumer agreements'.

For further information and guidance, please contact the Consumer Protection Division of the Department of Commerce.

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