

## Fact sheet: Complying with the unsolicited selling provisions in the Australian Consumer Law

### Overview

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This fact sheet will assist community organisations to understand when and how the new unsolicited consumer agreement provisions in the Australian Consumer Law (ACL) will affect them.

It is likely that your organisation will need to comply with the unsolicited consumer agreement provisions in the ACL if your community organisation goes door-knocking, makes unsolicited telephone calls or approaches people in public spaces to:

- ▶ sell goods or services;
- ▶ seek donations in exchange for items such as chocolates, auction items or raffle tickets.

Accordingly, it is important that your staff and volunteers are educated about these provisions to promote compliance of your practices and sales agreements with the ACL.

**Note:** The information in this document is a guide only, and is not legal advice. If you have a legal problem you should talk to a lawyer before making a decision about what to do. The information is written for people and organisations affected by the laws in Victoria, Australia, and is current at 1 April 2011.

### How is unsolicited selling regulated in Victoria?

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Unsolicited selling was previously regulated by state and territory legislation, which differed between jurisdictions. From 1 January 2011, unsolicited selling has been regulated uniformly across Australia by the ACL.

The unsolicited consumer provisions of the ACL are contained in Part 3-2, Division 2 of Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (**CCA**). The CCA was previously known as the *Trade Practices Act 1974* (Cth).

## In what circumstances do the new laws apply?

The new provisions apply to sales practices relating to (and the making of) unsolicited consumer agreements. The definition of “unsolicited consumer agreements” is discussed below. If an agreement falls outside this definition, the sales practices and agreement are not affected by the new provisions.

The draft regulations for the ACL contemplated that charities might be exempt from the new provisions - however this was **not** accepted. The final *Competition and Consumer Regulations 2010* (Cth) apply to both for-profit and not-for-profit organisations.

Community organisations should monitor any future amendments to the legislation for any changes that may affect them.

**Tip:** Whether the unsolicited consumer agreement provisions apply to your community organisation depends on the sales and fundraising practices of your organisation, rather than the type of organisation.

## What are “unsolicited consumer agreements”?

Section 69 of the ACL states that an agreement is an “unsolicited consumer agreement” if the following conditions are met:

- ▶ it is for the supply, in trade or commerce, of goods or services to a consumer;
- ▶ it is made as a result of negotiations between a dealer and the consumer, either:
  - ▶ in each other’s presence at a place that is not the business or trade premises of the supplier of the goods or services (for example door knocking at consumers’ houses, or setting up a temporary stall or an unenclosed trestle table at a public place) (**face to face approach**); or
  - ▶ by telephone;regardless of whether these are the only negotiations before the agreement is made;
- ▶ the consumer did not invite the dealer to come to that place, or to make a telephone call, to enter into negotiations about the supply of those goods or services; and
- ▶ the total price under the agreement:
  - ▶ is unascertainable (not able to be determined) at the time the agreement is made; or
  - ▶ if it is ascertainable at that time -- is more than \$100 (or an amount set out in the regulations).

A "dealer" is the person who enters into negotiations with consumers in order to make unsolicited consumer agreements. For community organisations, a dealer would generally be a representative of the community organisation, whether a volunteer, employee or contractor.

It is important to note that an approach is unsolicited even if the consumer provides their contact details for another purpose (such as a competition), returns a missed call, or asks for a quote.

The unsolicited consumer provisions do not apply to other forms of direct marketing, such as over the internet, by email or post.

## Supply of goods and services

The unsolicited consumer provisions may apply to your community organisation if it sells goods or services to consumers in exchange for \$100 or more or the total price is unascertainable at the time the agreement is made, as described above. It does not matter that you sell these things for fundraising purposes, for a public good or for a reduced fee – the provisions may still apply.

If your community organisation supplies goods or services for free, or for a fixed price less than \$100, then these provisions do **not** apply to your organisation

Many organisations make unsolicited approaches for donations (either by telephone, door-knocking or in public places). If the donor does not receive anything in return, the unsolicited consumer provisions do **not** apply.

If, however, the donor makes a donation of \$100 or more as a result of an unsolicited approach, and receives something in return for their donation, such as chocolates, lollies, auction items, or raffle or lottery tickets<sup>1</sup> (either from your organisation or someone else), then the unsolicited consumer provisions **may** apply.

## What does your organisation have to do to comply?

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If the unsolicited consumer provisions apply, your organisation and representatives must comply with the requirements set out in the ACL. These relate to limited hours for contact with consumers, disclosure requirements when making an agreement, criteria to be included in the sales agreement, and restrictions on supply and requesting payment during the cooling-off period.

A consumer cannot waive (give away) any rights under the unsolicited consumer provisions, and it is unlawful for a supplier to persuade, or attempt to persuade, a consumer to do so.

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<sup>1</sup> In the case of lotteries, raffles and fundraising events, you may also need to consider requirements under the *Gambling Regulation Act 2003* (Vic) and/or *Fundraising Act 1998* (Vic). For more information on fundraising laws, see the "Raising money" section of PilchConnect's legal information webportal at [www.pilchconnect.org.au](http://www.pilchconnect.org.au).

## When can you make contact?

### Face-to-face approaches

Dealers can only make a face-to-face approach to consumers from 9am to 6pm Monday to Friday, and 9am to 5pm on Saturday. No contact can be made on a public holiday. Dealers can visit at any time if an appointment was made, either by telephone or in writing beforehand. An appointment cannot be made in person.

### Telephone calls

Contact times for telephone sales are regulated by the *Do Not Call Register Act 2006* (Cth) and associated telemarketing standards. If your community organisation is a charity, it is allowed to call people even if they are registered on the do not call register, otherwise it is only allowed to call people who are **not** on the do not call register.

Unsolicited calls can be made from 9am to 8pm on weekdays and 9am to 5pm on Saturdays but no calls can be made on a Sunday or a public holiday. Calls can be made outside of these times if consent is given beforehand.

## What information do you need to provide?

For face-to-face approaches, dealers must advise upfront the purpose of their visit, their identity and their obligation to leave immediately upon request. They must leave immediately upon request and not contact the consumer for at least 30 days after a request to leave.

Similarly, telemarketing standards require callers to advise upfront the purpose of their call, their identity and contact details. They must ensure that calling line identification is enabled and terminate the call immediately upon request.

Before making an unsolicited consumer agreement, consumers must be given information about their right to terminate during the termination period (see 'The right to terminate' below) and how that right may be exercised.

Unsolicited consumer agreements must contain certain information set out in the legislation, such as a notice on the front page that informs the consumer of their right to terminate and provides contact details of the supplier, and a notice which the consumer may use to terminate the agreement.

Dealers must provide consumers with the agreement in writing, either immediately (for face-to-face approaches) or within five business days (for telephone calls) after the agreement was made. Any amendments must be signed by both parties.

## The cooling off period

A 10-day cooling off period applies to unsolicited consumer agreements. During this time, a supplier must not require or accept payment, nor supply the goods or services to the consumer. If they do

so, the consumer does not have to pay for the goods or services.

The cooling off period starts on the first business day after the agreement was made (for face-to-face approaches) or after the consumer was given the agreement (for telephone calls).

### **The right to terminate**

A consumer may terminate the agreement within set time periods. In general, this period is 10 business days. However, longer termination periods will apply if certain provisions of the new laws are contravened or the agreement specifies a longer period.

A consumer can terminate an agreement even if the goods or services have been wholly or partly consumed or used - although a supplier would only be in this position if there was a longer termination period, as they should not have supplied any goods or services within the 10 day cooling-off period (as discussed above).

When an agreement is terminated within the termination period, the supplier must refund any money paid by the consumer, and the consumer must return (or make available for collection) any goods not already consumed. If a consumer terminates the agreement after the termination period, the consumer must compensate the supplier for any damage or depreciation in the goods or pay for services provided.

### **What happens if an organisation breaches the unsolicited selling provisions?**

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Representatives and your organisation can face criminal penalties and fines of up to \$50,000 (for corporations/organisations) and \$10,000 (for an individual). Also, if your organisation contravenes the new laws (no matter how seemingly trivial the contravention) the agreements will be unenforceable.

### **What should you do?**

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If your community organisation engages in unsolicited fundraising or sales practices, you should review your sales agreements and practices to ensure compliance with the new laws.

All representatives of your organisation who engage in negotiations with consumers must be educated about the new regime, and your organisation should have procedures in place to make sure they comply with the requirements.

## Related Resources

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### Related PilchConnect resource

[Fact sheet: Community organisations and the Australian Consumer Law](#)

### Related legislation

[Competition and Consumer Act 2010 \(Cth\)](#)

[Do Not Call Register Act 2006 \(Cth\)](#)

[Telecommunications \(Do Not Call Register\) \(Telemarketing and Research Calls\) Industry Standard 2007 \(Cth\)](#)

[Fair Trading Act 1999 \(Vic\)](#)

### Related links

Australian Consumer Law [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)

Consumer Affairs Victoria [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)

Consumer Action Law Centre [www.consumeraction.org.au](http://www.consumeraction.org.au)

Australian Communications and Media Authority [www.acma.gov.au](http://www.acma.gov.au)

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