

TABLED-SALMAT, AEGIS, CPM.
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FIELD SALES INDUSTRY CONSUMER LAW. Melbourne.

MINIMUM ACCEPTED STANDARDS

These minimum standards reflect industry best practice and have been developed for responsible and reputable organizations in the field sales industry. They represent the minimum standards expected of all organizations involved in field sales.

1. OBJECTIVES

- Establish and promote best practice in the field sales industry.
- provide guidance about compliance with applicable legislation including State and Territory legislation and the *Trade Practices Act 1974 (Cth)* and the new Australian Consumer Law; and
- reduce the incidence of consumer complaints in relation to field sales conduct.

2. BENEFITS

Consumer benefit:

- A better consumer experience with clear guidelines for best practice in conducting field sales;
- A clear understanding of the field sales industry's processes;
- An expectation of appropriate industry behaviour in relation to the conduct of field sales; and
- An efficient and fair method of having complaints handled by the field sales industry.

Industry benefit:

- greater public confidence in the commitment to high standards of professionalism and compliance by the industry;
- a reduction in complaints; and
- the maintenance of field sales as a legitimate marketing channel.

3. INCONSISTENCY

In the event of any inconsistency between these minimum standards and any applicable consumer protection laws, the applicable legislation shall prevail to the extent of any inconsistency.

4. APPLICATION

Unsolicited Consumer Agreements

These standards are intended to apply to all field sales organisations that negotiate unsolicited consumer agreements.

For the purposes of clause 69 of the Trade Practices Amendment (Australian Consumer Law) Bill (No.2) 2010 (**the Consumer Law**) an agreement is an unsolicited agreement if it meets the following requirements:

- (a) It is for the supply, in trade or commerce, of goods or services to a consumer;
- (b) It is made as a result of negotiations between a dealer and the consumer in each other's presence at a place other than the business or trade premises of the supplier of the goods or services;
- (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.

An agreement is also an unsolicited consumer agreement if it is an agreement of a kind that the regulations provide are unsolicited consumer agreements.

Consumer agreements negotiated at the business or trade premises of a supplier are **not** unsolicited consumer agreements.

Examples of activities covered by this standard include unsolicited agreements negotiated with consumers at:

- the consumer's home; and
 - a public place (other than the business or trade premises of the supplier),
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5. STANDARDS

5.1 Screening and Engagement of Field Sales Representatives

Organisations are responsible for implementing screening procedures to ensure that only suitable qualified individuals are engaged to provide field sales services. Screening measures should be implemented to ensure organisations can be satisfied that individuals are of good character. As a guideline screening measures should include:

- Telephone screening;
- Face to face interviews; and
- Police (criminal record) checks.

Organisations must retain records of all screening measures implemented in respect of each field sales representative. Employment or contracting with individual field sales representatives must be subject to satisfactory completion of the above screening and checks.

It is recommended that organisations nominate a representative to be responsible for the recruitment/engagement of field sales representatives. As a guide, engagement processes should be undertaken by an experienced Manager with a minimum 3 years field sales experience.

5.2 Training

Implementing adequate training arrangements assist in maintaining robust compliance frameworks. Field sales representatives who are aware of their compliance obligations and the seriousness of the consequences of non-compliance are more likely to assist an organization in acting in accordance with best practice.

All field sales representatives must have:

- completed training on applicable laws that govern field sales;
 - attended training sessions on their individual compliance responsibilities;
 - undertaken all appropriate product information training (including assessments to ensure field sales representatives understand the product/service being offered to consumers);
 - completed training on conducting professional sales skills (including an assessment); and
 - undertaken training on industry best practice in the field sales industry (including the requirements of these minimum accepted standards).
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As a minimum, field sales representative must complete at least 3 full days of training prior to commencing any field sales activity to ensure they are suitably experienced in the areas outlined above. It is recommended that this comprise of a minimum of 2 days in-house training and 1 day in-field training under appropriate supervision. In addition, accreditation exams should be completed by all field sales representatives prior to commencing any field sales services in order to ensure each individual is competent in the above requirements.

It is recommended that initial training be completed by an experienced and competent Sales/Training Manager with a minimum 3 years field sales experience and who has achieved a Certificate IV in Workplace Training and Assessing.

Training procedures must include processes for initial and ongoing training. Continuing training should address:

- any changes in applicable legislation, regulatory policies and standards;
- new products/services;
- changes in supplier offers, terms and conditions; and
- knowledge and skill development.

Compliance and product information refresher session training and assessments must be completed every six months for all field sales representatives. Such training must be conducted by an experienced Sales/Training Manager. It is recommended that such Sales/Training Manager have a minimum 3 years field sales experience and have achieved a minimum of Certificate IV in Workplace Training and Assessing.

Records of all training must be maintained. It is recommended that documented training registers are maintained which contain the following information:

- name of field sales representative;
 - nature of training;
 - overview of training content;
 - who delivered the training and how;
 - date training completed; and
 - competency.
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5.3 Compliance Management

All organisations must have documented compliance management procedures. It is recommended that an experienced Sales Manager with a minimum 5 years field sales experience be given responsibility for compliance management.

Compliance management frameworks should include:

- Telephone Verification of all sales. All verification records should be retained for a minimum of 18 months from the date of sale;
- In field quality checks completed and documented for all field sales representatives on a monthly basis; and
- Documented complaint handling procedures (see further information below).

As part of their compliance management process organisations should include:

1. Documented and agreed levels of compliance breaches; and
2. Agreed actions when a compliance breach occurs; for example refresher training and/or removal of field sales representatives.

It is recommended that organisations have in place processes for quarterly reporting on compliance breaches. Such reports should include:

1. Volume of compliance breaches, by type and level
2. Volume by date; and
3. Volume by State, team and agent

5.4 Identification

Dealers who call on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose, must, as soon as practicable and in any event before starting to negotiate provide to the consumer such information relating to the dealer's identity as is prescribed by the regulations.

Negotiation is defined in section 72 of the Consumer Law to include any discussion or dealing directed towards the making of the agreement or proposed agreement (whether or not the terms of the agreement or proposed agreement are open to any discussion or dealing).

Field sales representatives must wear an identification badge at all times whilst making field sales presentations, which badge must be clearly visible to prospective customers.

Identification badges must include:

- The sales representative's full name;
- The full address and contact telephone number of the organisation who has contracted them; and
- The name of the organisation on whose behalf the field sales representative is acting.

It is mandatory that photo identification also be included on the identification badge.

5.5 Presentation

When making sales presentations sales representatives must be appropriately dressed.

Sales representatives must adhere to acceptable standards of personal presentation at all times when visiting residential premises to make field sales.

5.6 Permitted visiting times

Sales representatives must not visit residential premises to make sales presentations outside the following times unless they have written consent from the resident to visit at a different time:

- Monday to Friday 9am-8pm (except in QLD which is 9am-6pm);
- Saturday (9am-5pm);

Field sales on Sunday and Public Holidays are prohibited.

5.7 Consent – Agreements to Visit

A field sales representative may visit a consumer outside the permitted visiting times with the consumer's prior consent.

If a field sales representative is making an unsolicited telephone call to obtain prior consent to visit outside the permitted hours, all telephone numbers must be screened against the Do Not Call Register. Further information on Do Not Call Register compliance can be found in the Australian

Communications and Media Authority "*Do Not Call Register Act 2006: Compliance Guide*" available at www.acma.gov.au.

Field sales representatives must keep documented records of requests and/or agreements with consumers to visit premises at another time. Such records must include:

- Prospective customer's full name;
- Address of premises;
- Customer's preferred visiting time; and
- Time and date that the field sales representative originally called on the prospective customer.

5.8 Verification Call

A verification process should be implemented at the completion of each sale to verify that the sale is voluntary, compliant and that the consumer consents to and understands the product or service that they have agreed to purchase.

A suggested verification process includes requiring the consumer to call the new Service Provider to speak with a representative who will ask the consumer a series of questions in order to confirm the consumer's understanding of the offer made and their consent to purchase. Questions should be tailored to the specific product or service. Examples of general questions that may be asked during the verification process include:

- Have you signed and dated the Agreement?
- Do you understand that by signing this agreement you are agreeing to(e.g. switch from your current energy retailer)?
- Has the field sales representative given you a 10 business day cancellation notice AND terms and conditions booklet?
- Has the cancellation notice been explained to you?
- Was the field sales representative polite, helpful and wearing an identification badge?

It is recommended that such calls are recorded. Customers who change their mind during this process shall be assisted in terminating their agreement within the termination period.

5.9 Referrals

It is acknowledged that from time to time consumers may provide contact details for a friend/relative who they consider would be interested in purchasing goods/services. Field representatives must not make telephone contact with such referred consumers without first:

- Obtaining consent from the supplier or their State Sales Manager (or equivalent); and
- Screening the telephone number provided against the national Do Not Call Register.

Unsolicited telephone calls of this nature are prohibited unless the telephone number is screened against the Do Not Call Register.

5.10 Sales Presentations

When approaching a residential consumer, field sales representatives must as soon as practicable and before starting to negotiate:

1. Clearly advise the person that the dealer's purpose is to seek the person's agreement to a supply of the goods or services concerned; and
2. As noted in section 4 of this Standard, provide information on the field sales representative's identity.

Field sales representatives are required to comply with all applicable laws in relation to sales presentations including, but not limited to:

- *The Trade Practices Act;*
 - *The Privacy Act;*
 - *The Do Not Call Register Act; and*
 - State/Territory Fair Trading and Field sales legislation.
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5.11 Misleading and Deceptive Conduct

Field sales representatives must not engage in misleading, deceptive or unconscionable conduct when making sales presentations. Engaging in misleading or deceptive conduct is against the law. Conduct is misleading or deceptive if it leads a consumer into error or causes a person to believe what is false.

All claims in relation to products or services must be true and accurate and be capable of being substantiated. Field sales representatives should:

- give all relevant information in a clear and unambiguous way;
- ensure that the information given to consumers is accurate and up to date;
- clearly disclose all conditions and other relevant information, including duration of an offer, any restrictions on supply, installation or other fees, eligibility requirements, time for delivery, and payment requirements;
- not under any circumstances exaggerate, be vague or ambiguous, omit relevant information or make false claims.

Compliance with consumer protection laws must be a condition of any contract for a field sales representative (whether they be an employee or independent contractor).

Sales representatives must explain the terms of the offer in clear language to ensure the consumer clearly understands the purpose of the call and the nature of the offer being presented. Field sales representatives should ensure that any information or documentation provided is in plain English. Sales must not be made to consumers who do not understand English and the terms of the offer being presented to them.

5.12 Unconscionable Conduct

Unconscionable conduct is conduct that unfairly exploits someone's weak or uninformed position or where a party makes unconscionable use of a superior position or bargaining power to the detriment of a party who suffers from special disability or disadvantage. Unconscionable conduct is strictly prohibited.

Field sales representatives must ensure that individual consumers do not rely on them for guidance or advice such that the field sales representative gains undue and inappropriate influence of the consumer's decision whether to purchase the product or service in question.

In the case of elderly consumers, field sales representatives should provide an opportunity for elderly consumers to have a family member or another person present during the sales presentation. Alternatively, field sales representatives should encourage such consumers to seek independent advice before signing a contract.

Under no circumstances should field sales representatives pressure an individual to enter into a contract.

5.13 Information that must be provided to Consumers

An unsolicited consumer agreement must not be made with a person unless before the agreement is made, the prospective customer is given information as to the following:

- (i) the person's right to terminate the agreement during the termination period;
- (ii) the way in which the person may exercise that right; and
- (iii) such other matters as are prescribed by the regulations.

This information must be provided to the consumer in writing **before** the agreement is made and must be provided in the form required by the regulations.

In making any sales presentation, field sales representatives must ensure that they provide consumers with the following information:

- Sufficient information regarding the product/service being offered;
 - Details of any cooling off period;
 - Details of any special conditions regarding the product/service being offered; and
 - Contact details of the organisation to whom the consumer can make a complaint regarding the conduct of the field representative.
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5.14 Requests to Leave Premises

Field sales representatives **must** immediately leave premises upon being requested to do so by consumers.

30 day rule

If a prospective consumer makes a request for the field sales representative to leave the premises the representative must not contact the prospective consumer for a similar purpose for 30 days.

The field sales representative can contact the prospective consumer within that 30 day period if they are representing a different supplier.

A **register** must be maintained and any requests to leave premises must be recorded in a central register.

5.15 Entering into agreements

When entering into an agreement with a consumer at residential premises the following requirements must be satisfied:

- A copy of the purchase agreement must be given to the consumer for review and approval.
 - The agreement must be in a format that complies with applicable fair trading and field sales legislation.
 - Consumers must be provided with a reasonable opportunity to read the terms of the purchase agreement.
 - Purchase agreements must as a minimum specify:
 - The nature of the goods or services being acquired;
 - The total consideration for those goods or services;
 - Any additional charges payable under the purchase agreement (including, but not limited to any postage or delivery charges); and
 - The full name and address of the supplier.
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- As noted in section 10 above the purchaser must be provided with written notification of their right to cancel the contract in writing within the cooling off period; and
- Written notice must be provided on how to exercise the right to terminate the contract within the cooling off period;

Note – cooling off periods must not be waived under any circumstances. Consumers have no discretion to waive this requirement.

5.16 Quality Assurance – Verification Processes

A verification process should be implemented at the completion of each sale to verify that the sale is voluntary, compliant and that the consumer consents to and understands the product or service that they have agreed to purchase.

A suggested verification process includes requiring the consumer to call the new Service Provider to speak with a representative who will ask the consumer a series of questions in order to confirm the consumer's understanding of the offer made and their consent to purchase. Questions should be tailored to the specific product or service. Examples of general questions that may be asked during the verification process include:

- Have you signed and dated the Agreement?
- Do you understand that by signing this agreement you are agreeing to ...(e.g. switch from your current energy retailer)?
- Has the field sales representative given you a 10 business day cancellation notice AND terms and conditions booklet?
- Has the cancellation notice been explained to you?
- Was the field sales representative polite, helpful and wearing an identification badge?

It is recommended that such calls are recorded. Customers who change their mind during this process shall be assisted in terminating their agreement within the termination period.

5.17 Provision of documentation to Consumers

The purchaser must be provided with a copy of the purchase agreement immediately upon signing.

5.18 Management of completed sales agreements

All completed sales agreements must be managed in accordance with the *Privacy Act 1988 (Cth)*. Sales representatives must ensure that, amongst other things, completed agreements are stored securely.

In the event a customer changes their mind and elects not to proceed, sales representatives are required to cross out completed agreements and discard them in a secure manner. It is recommended that secure destruction via a shredding machine be utilized.

5.19 Prohibition on requiring payment

Organisations must not accept any payment, or any other consideration, in connection with the agreement to purchase goods or services during the 10 days cooling off period.

5.20 Prohibition on supplying goods/services

Organisations must not supply the goods or services to a consumer during the 10 day termination period.

5.21 Complaints Handling

Organisations must have in place a complaint handling system (i.e. an internal procedure for dealing with complaints) which is fair, effective, confidential and easy to use by the consumer seeking to make a complaint.

Records must be kept of the following information regarding the complaint:

- The name and contact details of the consumer making the complaint (if provided);
- The nature of the complaint;
- Whether the complaint has been resolved to the satisfaction of the consumer making the complaint;
- The date the complaint was lodged; and
- Remedial action taken (where appropriate).

Complaints must be acknowledged within 48 hours of receipt.
