



16 April 2010

The Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By Email: economics.sen@aph.gov.au

Dear Secretary,

Submission – Inquiry into *Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010 (Cth)*

INTRODUCTION

1. Salmat, AEGIS Direct and CPM welcome the opportunity to make a submission to the Senate Economics Legislation Committee on the *Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010 (Cth)* (**the Bill**).
2. We strongly support the overall principle of a national consumer law with consistent national standards to regulate unsolicited selling practices. However, we do not support the introduction of another layer of consumer law without the effective rationalisation of existing State and Territory legislation. Our view is that State and Territory Governments should move quickly to repeal legislation that conflicts with, or replicates, the Australian Consumer Law. All reasonable steps should be made to reduce the regulatory compliance burden on business.
3. Any additional regulatory burdens imposed on business, beyond what are currently required under State and Territory legislation, must be carefully balanced with the expected benefit to the consumer.

4. Our specific concerns relate to Chapter 3, Part 3-2, Division 2 of the Bill that deals with **unsolicited consumer agreements**. We believe that some of the provisions in this Division have not achieved the balance outlined in paragraph 3 and have the potential to threaten the viability of the field sales industry in Australia.

FIELD SALES IN AUSTRALIA

5. The Australian economy derives enormous benefit from field sales. Every year, this industry engages thousands of Australians who positively interact with consumers to conduct millions of sales, pumping billions of dollars into the economy. It is a legitimate sales channel that a large number of Australia's leading household names and iconic brands rely heavily upon.
6. Field sales has been a long standing feature on the competitive sales landscape in Australia. It has proven itself as a successful, effective and flexible sales representation channel – and one that provides a significant consumer benefit, both in terms of increased choice and competition.
7. This sales channel is all about competition. It provides consumers with the tools to save money by easily switching between suppliers. Importantly, field sales also allows for a more comprehensive discussion around customer needs, different packages and pricing. Consumers only make a purchase in this environment if the offer meets their value expectations. Our view, is that this kind of competition, which allows consumers to vote with their wallets, should be encouraged and not overly regulated to the point that it is unworkable.
8. Collectively Salmat, AEGIS Direct and CPM generate **over 1.1 million sales each year** through new market offers where the consumer directly benefits. This **generates in excess of \$1.3 billion** in annual sales turnover for the clients we represent.
9. The industry comprises a number of providers ranging from single customer, single market providers through to significant national operations providers. Salmat, Aegis Direct and CPM are long standing market leaders in field sales industry. Together, we engage over 1,700 sales representatives in the field each

day, who take our customers products and services to more than 24,000 Australia homes each week. As Tier One organisations, we represent and provide a national sales function to leading brands in key industry sectors: Telstra – AGL, Origin, TRU, Energy Australia – Foxtel – Fairfax, Herald Sun – World Vision.

10. Our focus is on ensuring that our clients and their customers have the best possible sales experience. We work hard to maintain our reputation as the most professional and responsible operators in the industry. Our intensive recruitment and training processes are complemented with a suite of rigorous standards that in many cases go further than what is required under current State and Territory consumer legislation and what is proposed in the *Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010 (Cth)*.
11. Unfortunately, many of the negative comments about “pressure selling” and “inappropriate behaviour” stem from organisations who do not invest in recruitment, training and compliance practices.
12. Up until now, the industry has not had a coordinated and organised voice representing the credentials of this very important sales channel, including the contribution it makes to the Australian economy as both a significant employer and a provider of consumer choice in competitive markets.
13. Salmat, AEGIS Direct and CPM along with the below named organisations stand united in their support of a healthy and viable field sales industry.



TRADE PRACTICES AMENDMENT (AUSTRALIAN CONSUMER LAW) BILL (NO. 2) 2010 (CTH)

14. Salmat, AEGIS Direct and CPM have some strong concerns with a number of the provisions in Chapter 3, Part 3-2, Division 2 of the Bill which relate to unsolicited consumer agreements.

SECTION 73 - PERMITTED HOURS FOR NEGOTIATING AN UNSOLICITED CONSUMER AGREEMENT

15. Section 73 of the Bill provides that a dealer must not call on a person for the purpose of negotiating an unsolicited consumer agreement after 6.00pm on a weekday. We are concerned that the Bill contains significantly reduced permitted hours notwithstanding that the majority of existing Australian consumer protection and door to door trading legislation currently permits calling on a person for the purposes of negotiating an unsolicited consumer agreement until 8.00pm on a weekday.
16. Given a large number of working people do not return home until after 6pm on weeknights, it is reasonable to conclude that this aspect of the new consumer law will result in a significantly reduced period in which sales agents can communicate with consumers disadvantaging the field sales industry that has been operating until 8.00pm for a substantial period of time. We submit that the permitted hours in section 73 (1)(c) of the Bill should be changed to 8pm for weekdays to reflect the current national standard (with the exception of Queensland).
17. In our opinion, section 73, as currently drafted, will unnecessarily restrict consumer choice and will have a detrimental impact on the field sales industry for little benefit to the consumer

Salmat, AEGIS Direct and CPM submit that section 73(1)(c) be amended to ***“after 8pm on any other day (or after 5 pm if the other day is a Saturday)”***..

SECTION 73 (2) - CONSENT TO CALL ON A CONSUMER OUTSIDE OF THE PERMITTED CALLING HOURS

18. The Bill provides that a sales agent may call on a person for the purposes of negotiating an unsolicited consumer agreement outside the permitted calling hours with the prior consent of the consumer. The concept of being able to visit outside the permitted calling hours by prior appointment is consistent with the majority of existing consumer protection legislation. However, the requirement in section 73(2)(b) of the Bill that consent must not be given *‘in the presence of the dealer or a person acting on the dealer’s behalf’* is particularly concerning given this is not consistent with the majority of existing consumer protection legislation in Australia and is counterintuitive.
19. Whilst we support the principle that prior consent should be obtained, the practical impact of section 73(2)(b) of the Bill is that a consumer will no longer have the right to ask a sales agent, in person, to come back at a time that is more convenient because consent can not be obtained in person. A consumer may be otherwise engaged at the time a sales agent calls at the premises and may be genuinely interested in the goods or services being offered and would like to hear further information about those goods or services at a more convenient time. A consumer should be able to say to the sales agent “look I’m interested, but it does not suit me at the moment, so could you come back in an hour?”
20. The Bill removes a consumer’s right to agree with a sales agent to call again at a later, more convenient time. Instead the Bill suggests that in the case of this example, the sales agent will need to call the consumer after leaving the premises, repeat the conversation and obtain the agreement to visit at a later time over the telephone. This process is only likely to result in unnecessary inconvenience to consumers and is another unnecessary step in the process which will increase compliance costs for industry. Provided clear voluntary consent is obtained it should not matter whether that consent was given in person or over the telephone.

21. To address these concerns we recommend section 73(2)(b) be deleted and replaced with the following:

b) was given by the consumer during the permitted hours referred to in subsection (1).

Salmat, AEGIS Direct and CPM submit that section 73(2)(b) be deleted and replaced with a provision that permits consumers to give consent face to face during the permitted calling hours.

SECTION 74 - DISCLOSURE OBLIGATIONS

22. We support the requirement for sales agents to be clear and transparent regarding the purpose of their visit and to ensure they clearly identify themselves to consumers. However the requirement in section 74(b) to '*clearly advise the person that the dealer is obliged to leave the premises immediately on request*' before starting to negotiate a consumer agreement is very concerning and in our view, unnecessary.
23. This provision would require the sales agent to say something like "Hi, my name's Joe and I represent ABC Electricity. Before I go any further, I am obliged to tell you that I must leave your premises immediately upon request". It casts the whole interaction in a negative light before a conversation has started and would make it very difficult to build any kind of rapport, as the implication is that the sales agent shouldn't really be there in the first place.
24. The Bill already contains sufficient deterrents for sales agents to ensure they leave premises when requested including, amongst other things:
- a) making it an offence under section 75(1) not to leave premises when requested by the consumer;
 - b) rendering the consumer agreement unenforceable in the event the sales agent fails to leave the premises when requested under section 93; and

- c) exposing individuals to penalties of up to \$10,000 and penalties of up to \$50,000 for a body corporate under section 72 of the Bill.
25. With the exception of Victoria, there is no similar disclosure requirement in all other states or territories that regulate unsolicited sales.
26. For these reasons we recommend section 74(b) of the Bill be deleted.
27. Alternatively, we recommend the drafting of section 74 be amended such that the requirement to disclose the obligation to leave the premises immediately on request applies '**as soon as practicable**' and not necessarily 'before starting to negotiate' given the Bill contains a very broad definition of negotiation which includes "*...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)*".
28. From our experience, imposing this requirement will have a significant impact on the tone of any consumer conversation and will result in a reduction in legitimate mutually beneficial sales. Given the other protections in the Bill, we believe that this provision is unnecessary and should be removed or amended as suggested above.

Salmat, AEGIS Direct and CPM submit that section 74(b) of the Bill be deleted or alternatively should be amended to indicate that a sales agent must clearly advise **as soon as practicable** that the sales agent is obliged to leave the premises immediately on request.

SECTION 86 - ABILITY TO SUPPLY GOODS/SERVICES DURING TERMINATION PERIOD

29. Under section 86 of the Bill a supplier must not supply goods or services to the consumer during the 10 day termination period. We take this opportunity to note that whilst this requirement may be appropriate for some goods and services, we believe this requirement may actually inconvenience some consumers in certain circumstances. For example, if a consumer purchases an entertainment discount voucher book, arguably they should have the right to elect to receive that book immediately upon making their decision to purchase rather than waiting 10 business days to receive a book in their letterbox. It is also reasonable to infer that a consumer who decides to purchase a daily newspaper subscription may not want to wait two weeks before receiving the benefit and convenience of their new newspaper subscription.
30. Provided consumers retain the right to cancel their consumer agreement during the termination period, we recommend that a provision should be included in the Bill that allows consumers the discretion to consent to the supply of goods or services during the termination period.

Salmat, AEGIS Direct and CPM submit that section 86 of the Bill be amended to enable consumers to consent to receiving goods or services within the 10 business day 'cooling off' period whilst maintaining the consumer protection envisaged by this section.

CONCLUSION

31. Salmat, AEGIS Direct and CPM strongly support establishing a nationally consistent Australian Consumer Law. All Australian Governments should work closely and carefully together to ensure this process does not create an additional regulatory burden on business.
32. The field sales industry is an important part of the Australian economy engaging thousands of people and generating considerable revenues for some of Australia's most iconic and reputable brands. It is a sales channel that so many companies depend heavily upon for their continued viability.
33. Salmat, AEGIS Direct and CPM believe that some sections of the *Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010* represent regulatory overreach and will unnecessarily harm the field sales industry for little additional benefit or protection for the consumer. In fact, the unsolicited consumer agreements section of the Bill has the potential to reduce the ability of consumers to make informed choices about changing providers for so many essential day to day services.
34. In our opinion, the amendments to the Bill suggested in this submission strike the right balance between protecting the consumer from unscrupulous operators and the continued support of a legitimate and important sales channel.