



29 November 2011

The Hon David Bradbury MP
Member
COAG Legislative and Governance Forum on Consumer Affairs
PO Box 712
Penrith NSW 2750

Dear Parliamentary Secretary

**Proposal to amend Australian Consumer Law
Negotiating unsolicited consumer agreements**

We write to propose an amendment to the Australian Consumer Law that will better protect consumers who do not wish to be contacted by unsolicited door-to-door salespeople.

As you are no doubt aware, door-to-door marketers operate across a number of industries, including energy, education and telecommunications. For most consumers, being interrupted at home by salespeople is an unwelcome intrusion into their privacy. For the elderly and those living alone, door-to-door marketers can be intimidating and, in some cases, unconscionable. Our centre sees many cases where door-to-door salespeople use unfair tactics including lies and unfair pressure in order to obtain a sale.

In 2007, to assist consumers protect themselves, Consumer Action launched its "Do Not Knock" sticker (see attached). The sticker has been extremely popular with consumers. It has been supported by many other consumer agencies, including Consumer Affairs Victoria and the South Australian Office of Consumer and Business Services. In 2011, the Federal Department of Families, Housing, Community Services and Indigenous Affairs provided funding to Consumer Action and Financial Counselling Australia to distribute the sticker more widely across Australia.

Consumers can place this sticker at the front of their house to warn sales representatives that they are in breach of the law if they knock on a door to which the sticker is affixed. Ignoring a notice not to enter premises may amount to unlawful trespass, which would be a breach of the law.

Unfortunately, the Australian Consumer Law (**ACL**) is unclear as to whether ignoring a "Do Not Knock" sticker is a breach of that law. Section 75 of the ACL provides:

- (1) A dealer who calls on a person at any premises for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose, must leave the premises immediately on the request of:
- (a) the occupier of the premises, or any person acting with the actual or apparent authority of the occupier; or
 - (b) the person (the prospective consumer) with whom the negotiations are being conducted.

While it has not been judicially considered, this section implies that the request must be provided verbally and it would be insufficient for a "Do Not Knock" sticker or sign to amount to a "request".

We believe that a simple amendment could be made to the ACL which would provide that a salesperson who ignores a "Do Not Knock" sticker may be in breach of section 75. This could be achieved by deeming the existence of a clearly affixed "Do Not Knock" sticker or sign a "request to leave" for the purposes of section 75.

We note that such an amendment would make the ACL consistent with the new National Energy Retail Rules, which regulates the behaviour of salespeople of energy to residential households. These Rules are due to come into effect from 1 July 2012. Rule 66 provides:

In carrying out energy marketing activities a retail marketer must comply with any signs at a person's premises indicating—

- (a) canvassing is not permitted at the premises; or
- (b) no advertising or similar material is to be left at the premises or in a letterbox or other receptacle at or associated with the premises.

This amendment would allow for better enforcement of consumer protections relating to unsolicited selling by consumer regulators. For example, failing to comply with requirements for unsolicited consumer agreements, including the requirement not to leave premises immediately upon request, can lead to maximum civil and criminal penalties of \$50,000 for a body corporate and \$10,000 for an individual. The threat of such a penalty, in turn, would make it more likely that salespeople will comply with a consumer's wish not to be disturbed at their home. It would also mean that a salesperson would not be wasting their own effort in making a sales pitch where a consumer does not want to receive one.

We would welcome discussing this proposal further with you.

Yours sincerely

A solid black rectangular box used to redact the signature of Catriona Lowe.

Catriona Lowe
Co-CEO
CONSUMER ACTION LAW CENTRE

- cc. Chair, Policy and Research Advisory Committee (PRAC) of the Standing Committee of Officials of Consumer Affairs (SCOCA)
c/- Consumer Policy Framework Unit
Department of Treasury
Langton Crescent
PARKES ACT 2600

Mr Simon Corbell MP

Hon Anthony Roberts MP

Hon Michael O'Brien MP

Hon Paul Lucas MP

Hon Simon O'Brien MLC

Hon Gail Gago MLC

Hon Simon Power MP

Hon Nick McKim MP

Hon Delia Lawrie MLA

ATTACHMENT

Do not knock



Sales people please note
unsolicited door knocking here
is **UNLAWFUL.**

© consumer action law centre
www.donotknock.org.au