

Sales Assured response to Australian Consumer Law Review Interim Report

Sales Assured again acknowledges the overall effectiveness of the Australian Consumer Law (ACL) and welcomes the opportunity to address certain items raised in the Interim Report.

In our original submission, we proposed an amendment to the permitted hours of door knocking so that sales could continue until 7pm Monday to Friday (from the current 6pm) with no change proposed to permitted hours on weekends. We continue to hold the view that this minor amendment will help promote competition and provide consumers who are not home before 6pm the opportunity for easier access to products and services. Such a change would further promote competition, without limiting consumer protections. An extension of weekday hours can also provide greater opportunity for part-time employment.

Sales Assured contends that consumers today are aware of their rights when it comes to face to face selling. They continue to have significant protections and simple means at their disposal to determine and exercise their preference whether to engage with a direct selling agent or not. So, increasing contact hours to 7pm on weekdays will enhance competition without creating any detriment to consumers.

We would also like to address items raised in questions 48-50 of the Interim Report.

Firstly, we believe that the current unsolicited selling provisions should be maintained. As outlined in our original submission, the number of complaints in the energy sector has declined significantly in recent years and the telco industry has seen a similar decline. We believe this can be attributable to a greater focus by companies and their marketers on compliance, the introduction of the ACL and penalties that have ensued from enforcement action.

While Sales Assured¹ does not represent all parties undertaking face to face sales, our members undertake a significant proportion of the overall activity. We recognise the need to provide customer protections while being able to provide choice for customers.

There are wide ranging protections for consumers that include:

¹ See About Sales Assured at the end of this submission

- Provisions of the ACL covering unfair contract terms, misleading and deceptive behaviour, unconscionable conduct, etc
- Restrictions on the times that consumers can be contacted
- Cooling-off requirements
- Readily available Do Not Knock stickers
- Access to ombudsman schemes, fair trading and other regulators

In addition, Sales Assured members undertake the following extra steps to protect consumers including any vulnerable consumers:

- A verification call must be conducted for every sale between the consumer and an independent call operator at the time of the sale. This helps to ensure the customer is providing explicit informed consent and has the capacity to understand the key terms of the contract
- Most members undertake sample quality assurance checks within a few days of the sale
- All sales agent details are checked against the Sales Assured registry of more than 23,000 sales agents prior to engagement
- All sales agents are recruited, trained and assessed to high standards before they can undertake sales activity including completing a criminal history check

We recognise these additional steps undertaken by Sales Assured members may not be practical for all face to face marketing, however our experience has shown that the verification call is very effective at catching issues at the time of the sale. The ability of the call operator to terminate the sale at that point certainly reduces issues. We would recommend that businesses which are able to undertake such a step in their practices would likely see a decrease in post-sale complaints.

While we acknowledge that there can be some rogue sales agents who do not behave appropriately, it is important to recognise that many thousands of sales agents have worked over the last few years and conscientiously met their compliance requirements. Sales agents who breach the standards can be deregistered from Sales Assured for five years which acts as a strong deterrent against poor behaviour.

A survey of members in 2013 showed a ratio of complaints to doors knocked of 0.0004% or 4 complaints for every 10,000 doors knocked. A recent survey of some members showed a similar rate².

While there are some incidences of poor behaviour, it is important to remember this in context of the many thousands of sales that occur each week.

The face to face channel provides significant benefits as outlined in our original submission:

- Improves competition which drives benefits for consumers
- Offers choice and the opportunity for a consumer to engage in a conversation about their needs

² Around 20% of members were included in the Dec 2016 survey

- Provides employment for thousands of students, first job seekers and people returning to the workforce. In addition, as noted by the Direct Selling Association of Australia, it provides income for many people running microbusinesses

It is the aim of the Competition and Consumer Act 2010 to “*enhance consumer welfare through promotion of competition, fair trading and consumer protection*”. Competition thrives when consumers have choice. Ease of access and the ability to exercise that choice is critical for competition, and competition can itself be a driver of consumer protection.

Any move to ban this legitimate sales channel would risk a lessening of competition as smaller and new entrant players rely on this channel to grow their business / market share in a more cost effective manner. The availability of this channel removes potential barriers to entry that exist with higher cost channels, such as above the line advertising. Any ban on this channel would restrict consumers’ access to offers that may save them money, provide better flexibility/service than a current provider or restrict their access to innovative products and services. Face to face marketing encourages consumer engagement and not only improves the understanding of the consumer’s circumstances, it assists the consumer in obtaining information which can lead to better informed choices.

In addition, the complexity of products sold door to door is increasing and requires detailed explanation that is often not possible over the phone. For example, in the energy sector the choice of energy retailer, with or without solar panels, batteries, grid sell back options etc. Door to door sales enable consumers access to information that may be more readily explained through personal selling.

It would remove income from those involved in the direct sales workforce (for example, just through Sales Assured, more than 1200 sales agents were actively engaged on the day of 6 December) and thousands more are engaged throughout every year. It would also impact microbusiness owners and the management and staff at marketing companies where face to face marketing is a key service they provide.

Consumers who do not wish to engage in face to face marketing can easily exercise this choice by displaying a readily available Do Not Knock sticker or No Canvassing notice on their premises. The stickers have been actively promoted and made available by consumer and advocacy groups, ACCC and incumbent energy retailers over the last few years.

In terms of a proposed opt-in mechanism, we believe this would add a level of complexity and create an unnecessary barrier to sales. We believe that the need for an opt-in mechanism is not supported by evidence that it would provide significant consumer protection benefit beyond the protections that already exist.

Consumers can very easily exercise their cooling off rights and protections exist for consumers as outlined above. Consumers are informed and have their right to terminate the contract explained at the time the sale is conducted. They are also provided with the means to exercise that right at the time of the sale³.

³ To ensure that the cooling off period achieves its objectives, any sales agent that attempts to “sell” on the basis of the cooling-off period risks deregistration from Sales Assured for 5 years.

Where a consumer wishes to terminate an agreement after the cooling off period, we have found amongst our members that for residential customers, the early termination fee is generally no more than the costs incurred to cancel the contract, which is usually not more than \$30 for residential customers and, in many cases, there is no early termination fee⁴.

Introducing such a step would impact competition as it would have increase the administrative burden of the sales process, reduce the effectiveness of the sales channel, add unnecessary cost burdens to companies and their marketers using the channel and reduce employment/income opportunities.

In conclusion, we do not believe there is evidence to show that changing the status quo in terms of unsolicited selling or implementing an opt in mechanism could be justified and both would likely lead to a substantial lessening of competition and consumer detriment.



Anne Whitehouse
Chief Executive Officer

About Sales Assured

Sales Assured is a not for profit organisation that strives for best practice in face to face marketing for consumers.

With a commitment to improving the customer experience, Sales Assured has established standards in recruitment, training, accreditation and ongoing monitoring of sales agents. In this way, consumers can be confident when buying face to face at their door, at a kiosk or for their business.

We seek to improve compliance to promote consumer confidence and reduce complaints with:

- A national scheme to ensure sales agents are recruited, trained and assessed in a consistent manner*
- A central register of sales agents that includes the accreditation history for more than 22,000 sales agents*
- Monitoring sales agent behaviour such that a breach of the standards may result in disciplinary measures and deregistration of the sales agent for five years.*

Those companies which choose to be Members are demonstrating their commitment to improving the standards of face to face marketing across many industry sectors. The robust standards can apply for energy, telcos, Pay TV, energy efficiency, registered training organisations, charities and more.

Whilst recognising that there are laws, such as the Australian Consumer Law, that govern face to face marketing, Sales Assured aims to lift the bar further and ensure the strictest compliance and most ethical practices by sales agents when dealing with consumers face to face.

⁴ Based on survey of members Dec 2016