

Unsolicited Consumer Agreements

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CASE STUDY

Mary received a phone call from a vacuum cleaner salesperson, who asked if he could come to her house for a demonstration. Mary agreed and after the demonstration, while the salesperson was still at her house, Mary told him she would purchase a vacuum cleaner for \$600. She signed something on the salesperson's iPad but was not given any documentation. A week later, Mary realised that she could not afford the vacuum cleaner, so she called the salesperson to try and cancel the agreement. When the salesperson wouldn't let her, Mary called CCLS for advice. CCLS advises Mary that a 'cooling off' period applies to these types of agreements, and she can cancel the agreement at any time before this period expires.



What is an unsolicited consumer agreement?

An unsolicited consumer agreement for the supply of goods and services occurs where:

- a supplier or salesperson approaches you to negotiate an agreement without you requesting or inviting them to.
- the negotiation occurred over the telephone or at a place other than the supplier's premises; and
- the price of the goods or services was more than \$100 or not fixed at the time the agreement was made.

Examples of unsolicited consumer agreements

Common examples of unsolicited consumer agreements include:

- telephoning consumers with an offer to sell them goods or services.
- approaching consumers in shopping centres with an offer to sell them goods or services; and
- offering to sell consumers goods or services by doorknocking.

Obligations of salespeople

The Australian Consumer Law requires salespeople to do certain things in regard to unsolicited consumer agreements. For example, they must:

- only contact or visit consumers during the permitted hours (for example, between 9 am and 6 pm on weekdays) to negotiate unsolicited consumer agreements.
- disclose to the consumer that their purpose is to seek agreement for the supply of goods or services.
- advise the consumer that they must leave the consumers' premises immediately on request of the occupier or consumer; and
- give the consumer information as to how to terminate the agreement and what the termination period is.

Additionally, the sales contract given to the consumer must:

- be written in clear language;
- be signed by both parties;
- include the supplier's business and contact details;
- state the full terms of the sale, total price payable and any delivery charges;
- state the consumer's cooling off rights; and
- Have attached a notice that can be used to terminate the agreement.

For agreements negotiated over the telephone, the supplier must send the consumer a copy of the sales contract within 5 days of entering into the agreement.

Cooling off period

Consumers have the right to terminate any unsolicited consumer agreement within 10 business days of entering the agreement or receiving a copy of the sales contract, even if it is not explicitly stated on the contract. The agreement can be terminated verbally or in writing. After the agreement has been terminated the supplier must refund any payments the consumer has made to them. If the consumer has already received the goods, the supplier has 30 days from the date of termination to collect them, otherwise they become the consumer's property.

In some circumstances, such as where salespeople fail to perform the obligations detailed above, the cooling off period may be extended to 3 or 6 months.

For further information contact
Consumer Credit Legal Service Website: www.cclswa.org.au Advice line: (08) 9221 7066
Consumer Protection WA Website: www.commerce.wa.gov.au/consumer-protection/unsolicited-agreements Phone: 1300 30 40 54
Australian Competition & Consumer Commission (ACCC) Website: www.accc.gov.au/consumers/sales-delivery/telemarketing-door-to-door-sales/unsolicited-consumer-agreements Phone: 1300 302 502