Law Council
OF AUSTRALIA

Office of the President

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Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

By email: unsolicitedsellingreview@accc.gov.au

Dear ACCC Review Team

REVIEW INTO UNSOLICITED SELLING AND LEAD GENERATION

1. The Law Council of Australia is grateful for the opportunity to provide a submission to the Australian Competition and Consumer Commission (the **ACCC**) about its review of *Unsolicited selling and lead generation*. We note that this review is in response to the Designated Complaint by the Consumer Action Law Centre.[1]

2. The Law Council has received divergent views from some of its stakeholders in response to this consultation. The Law Council provides each of these views separately for consideration by the ACCC. The views should be attributed to the relevant Constituent Body and/or Committee rather than the Law Council as a whole.

3. Part 1 of this submission sets out the combined views of the Law Institute of Victoria (**LIV**) and the Australian Consumer Law Committee of the Law Council's Legal Practice Section (**ACL Committee**). The LIV and ACL Committee generally support strengthened regulation to better protect consumers and ensure fair trading.

4. Part 2 of this submission provides the alternative view proposed by the Competition and Consumer Committee (**C&C Committee**) of the Law Council's Business Section. The C&C Committee considers that unsolicited selling and lead generation practices are adequately captured under the existing legal framework, and that any specific concerns would be more appropriately addressed through an increase in compliance and enforcement mechanisms.

Part 1—Views of the LIV and ACL Committee

Overview

5. Unsolicited selling and lead generation practices in Australia have evolved significantly with the rise of digital marketing and data-driven consumer engagement. The LIV and ACL Committee suggest that there is opportunity to strengthen the *Australian Consumer Law* (**ACL**) framework to further regulate unsolicited consumer agreements and address harmful practices that fall outside the regulatory framework. New technologies are eroding consumer protections and reducing the time needed to execute a transaction, bringing a new dimension into existing problematic practices.

[1] On 20 March 2025 the Consumer Action Law Centre submitted a designated complaint to the ACCC about unsolicited selling and associated practices. That complain was instrumental in the ACCC calling for the current inquiry. See https://www.accc.gov.au/public-registers/designated-complaints-register/unsolicited-selling

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Such practices include online lead generation without informed consent, high-pressure sales tactics driven by commission-based models and misleading representations of government programs. Vulnerable consumers, such as those experiencing financial hardship or language barriers, are especially at risk from these practices.

6. The Designated Complaint is the most recent in a long line of publications documenting the consumer harm caused by the ongoing practices of unsolicited sales and lead generation, including door-to-door selling and cold calling. These sales practices are particularly harmful to consumers experiencing vulnerability or disadvantage. Of note are the findings based on the consumer experience of the unsolicited and door-to-door sales of solar products financed by 'buy now, pay later' (**BNPL**) products. Members of the legal profession have observed this practice causing great consumer harm to their clients.

7. This review is timely. While the legislature has recently passed stronger consumer protections in relation to BNPL finance,[2] the issues relating to sales structures and practices and lead generation remain. The problematic role of incentives such as commission-based remuneration are well-known. In the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Banking Royal Commission**), Commissioner Hayne found that incentive, bonus and commission schemes, which measured sales and profit but not compliance with the law and proper standards, were a primary cause of consumer harm in the financial services industry.[3] The prohibition on the hawking of financial products as recommended by the Royal Commission was introduced shortly after the publication of its findings.[4]

8. The role of lead generation, including the role of advertising on social media channels, in unsolicited sales is less well-known. Lead generation is largely an opaque practice; there is little to no public knowledge of why and how consumers are targeted for the unsolicited selling of particular products and services. The LIV and ACL Committee welcome the ACCC's commitment to investigate and understand these practices and processes for consideration of the effectiveness of the existing consumer protection laws, particularly digital platforms presenting novel marketing spaces (such as game platforms and online communication platforms).

9. The LIV and ACL Committee suggest that the current framework could be strengthened to better protect consumers and ensure fair trading. This could be achieved by:

    - expanding the definition of unsolicited consumer agreements to include digital and indirect methods;
    - introducing clearer obligations for lead generators; and
    - strengthening protections for vulnerable individuals.

10. These changes would help close regulatory gaps and align consumer protections with contemporary marketing practices.

[2] *National Consumer Credit Protection Act 2009* (Cth); National Credit Code, s13D; *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024* (Cth).
[3] https://www.royalcommission.gov.au/system/files/2020-09/fsrc-volume-1-final-report.pdf
[4] https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-257mr-asic-publishes-guidance-on-hawking-reforms/

Terminology

11. Unsolicited selling impacts all consumers due to the pressure tactics it can enable a business to employ. However, in this submission, the LIV and ACL Committee have distinguished two sets of consumers:

    - 'vulnerable consumers' being those consumers experiencing vulnerability or disadvantage and

    - 'everyday consumers' being those consumers who typically possess the capacity to make independent purchasing decisions and are not characterised by limited literacy or other vulnerabilities.

12. This approach recognises that unsolicited selling often has a disproportionate impact on vulnerable consumers. In addition, the terms 'harm' and 'detriment' are used distinctively. The term 'harm' is used to describe physical or psychological damage or injury, and the term 'detriment' is used to describe implied loss, disadvantage or adverse effect, sometimes encompassing financial or reputational damage.

Q1: Have you experienced unsolicited selling as a consumer? If so, what was the product, the channel it was marketed through, and your experience overall?

13. Industries, such as telecommunications, energy retail and consumer finance, have historically been more associated with unsolicited selling. However, other industries have adopted unsolicited approaches due to the large uptake of digital marketing channels and data-driven sales strategies. This has enabled unsolicited approaches to reach consumers across virtually all sectors, from online retail and subscription services to insurance and health products.

14. Regarding the overall experience, the LIV and ACL Committee understand that certain consumers commonly experience aggressive door-to door sales tactics, including businesses visiting homes during irregular hours and pressuring residents into purchasing products or switching providers. This approach is often adopted when selling to a person with limited English proficiency or digital literacy. The LIV and ACL Committee are concerned that these interactions are intrusive and could be misused to exploit vulnerable consumers.

Q2: What benefits does unsolicited selling offer to consumers?

15. The LIV and ACL Committee make no comment on Q2.

Q3: What harms and detriments can unsolicited selling cause to consumers? Are these harms economy-wide or specific to certain industries or certain goods and services?

Harms

16. Member of the legal profession report that unsolicited selling can harm both everyday and vulnerable consumers. Harms typically include financial loss, confusion or misrepresentation regarding product terms, erosion of consumer autonomy through pressure tactics and the inconvenience or intrusion of unsolicited contact. These issues can arise regardless of a consumer level of awareness or sophistication, particularly when unsolicited selling is persistent, misleading or manipulative.

17. Psychological harm is one of the most impactful consequences of unsolicited selling. Consumers have reported experiencing stress and anxiety after being pressured into purchases they neither want nor afford. Another psychological impact is the loss of

consumer autonomy and trust. When consumers feel manipulated or deceived, their confidence in their decision-making abilities can be severely undermined.

18. Emotional distress and social isolation are also common outcomes of unsolicited selling. Victims can feel embarrassed or humiliated after realising they were misled or scammed. These feelings can lead to social withdrawal, as individuals may avoid discussing their experiences out of fear of judgment or ridicule. For instance, a vulnerable consumer who discovers they have purchased a fraudulent insurance policy may feel ashamed and choose not to share the incident with friends or family. This emotional isolation can contribute to depression and a diminished sense of social support.

19. Members of the legal profession report that their clients experience psychological stress and physical symptoms of discomfort as a result of aggressive selling tactics.

Detriments

20. Members of the legal profession have consistently observed that the most prevalent detriment arising from unsolicited selling is financial. Unsolicited selling can pressure consumers into purchasing products or services that they do not need, cannot afford, nor fully understand. This issue is particularly pronounced in sectors such as energy, telecommunications, and financial services, where complex pricing structures and opaque contract terms are common. The Designated Complaint has documented numerous instances in which individuals were misled into signing agreements containing hidden fees, restrictive conditions, or long-term obligations that were not clearly disclosed at the point of sale. This is especially true in vulnerable groups—notably older persons at risk.

21. Beyond financial harm, the LIV and ACL Committee raise concerns regarding potential breaches of privacy and consent. Many unsolicited selling practices rely on the misuse of personal data or the circumvention of consumer protections, such as the Do Not Call Register. The ACCC has identified the concerning role of lead generation, especially through social media platforms, in facilitating these breaches.[5] Consumers may unknowingly provide consent through pre-ticked boxes or unclear disclosures, only to find themselves subject to persistent marketing or bound by contracts that limit their ability to cancel or dispute charges.

22. Members of the legal profession have also observed that many clients are reluctant to seek help until the harm has escalated. This is often because they are embarrassed, unsure of their rights, or unaware that legal remedies are available. This delay can compound the detriment and make resolution more difficult.

23. With this context in mind, the LIV and ACL Committee maintain that the harms and detriments associated with unsolicited selling should be viewed through an economy-wide lens. Addressing these issues requires a holistic regulatory framework that transcends sector-specific interventions and promotes consistent consumer protections, transparency and accountability across all industries.

[5] ACCC, Unsolicited selling and lead generation: Consultation Paper (June 2025), 15-16.

Q4: Are consumers experiencing disadvantage or vulnerability more likely to purchase goods or services through unsolicited sales, and do they face unique harms? If so, how?

24. The LIV and ACL Committee understand that consumers are generally prone to purchasing goods and services through an unsolicited approach. Consumers can be more vulnerable in particular settings, as O'Bryan J noted in *Director of Consumer Affairs Victoria v Vic Solar Technologies Pty Ltd (No 4),* remarking that:

> *… consumers are more vulnerable to predatory and unfair tactics when sales representatives visit them at their homes. This is because consumers may not have given any consideration to the product being offered and may not have undertaken any investigation of available market prices or alternative products. Some consumers may also experience heightened sales pressure when a sales representative visits their home.*[6]

25. O'Bryan J also highlighted that the conduct evident in this case 'involved trickery and sharp practice, illegality and taking advantage of consumers in their homes when they are more vulnerable to such practices'.[7] However, vulnerable consumers may be more prone to respond to an unsolicited approach than everyday consumers, particularly in certain contexts, and warrant a particular care in public policy.

26. Vulnerable consumers, especially those with limited financial literacy or mental health challenges, may find it difficult to resist persistent contact designed to create a sense of urgency, resulting in chronic stress and anxiety that affects their overall well-being. This is particularly harmful for individuals experiencing cognitive decline. For example, a person in the early stages of dementia may be persuaded to sign a long-term contract for an expensive product they do not need. Older Australians, individuals with limited English proficiency, those with low digital or financial literacy and residents in regional and remote communities are particularly vulnerable to being locked into unfavourable contracts without a full understanding of the terms or the implications of their consent.

27. Vulnerable consumers, such as older persons at risk or those with chronic illnesses, are at risk of health deterioration through unsafe or unregulated products. For example, unsolicited sellers may promote alternative health products with misleading claims. This could persuade consumers to abandon prescribed treatments and lead to worsening medical conditions, delayed treatment, or even life-threatening emergencies.

28. Physical injury can also occur when products are sold without proper assessment of the consumer's needs or safety requirements. Items such as mobility aids, home modifications, or exercise equipment may be unsuitable or poorly installed, increasing the risk of falls, strains, or other injuries. This is particularly dangerous for older adults or individuals with disabilities, who rely on safe and appropriate equipment to maintain their independence and mobility.

29. These issues are compounded by the fact that current provisions under the ACL may not adequately address the evolving risks posed by digital lead generation and data-driven marketing. In many cases, these mechanisms are used to bypass consent requirements entirely, undermining the intent of existing consumer protections and exposing individuals to further harm.

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[6] [2021] FCA 449 [174(a)].
[7] Ibid [176].

Q5: Are unsolicited sales cooling-off periods used by consumers? If so, what proportion of consumers exercise a cooling-off right?

30. The LIV and ACL Committee do not possess any data to conclude whether unsolicited sales cooling off periods have been used by consumers. However, LIV and ACL Committee provide the following information which suggests that cooling off periods are underused, and their effectiveness is limited by behavioural and psychological factors.

31. Under the ACL, consumers have a 10-business-day cooling-off period for unsolicited sales,[8] such as those made through door-to-door sales or telemarketing. During this time, consumers can cancel the agreement without incurring any penalties. However, early empirical evidence suggests that only a small proportion of consumers actually exercise this right.[9] A notable study in 2016, conducted by Dr Paul Harrison, found that only around 30 per cent of consumers responded when contacted by the seller to confirm their decision, and even fewer actively initiated cancellation during the cooling-off period.[10] Although this is now somewhat dated, it suggests that, while the right exists, most consumers do not take advantage of it, even when they later recognise that the purchase may not have been in their best interest.

32. To this end, it is understood that although cooling-off periods are a valuable legal safeguard, only a minority of consumers actively use them. This tends to suggest that cooling-off periods alone are insufficient as a consumer protection mechanism and should be complemented by stronger pre-sale regulations, clearer disclosures, and proactive consumer education. The LIV and ACL Committee are of the view that a person's ability to use a cooling off period ultimately depends on their knowledge of the existence of it and the timing of that knowledge in relation to the need.

Q8: Have you seen an increase/decrease in the use of unsolicited selling practices? If so, what do you consider are the causes?

33. Anecdotally, members of the legal profession advise that there has been an increase in online and digital unsolicited selling practices in recent years. This trend aligns with the global shift toward digital engagement since the COVID-19 pandemic. The COVID-19 pandemic forced businesses across sectors to rapidly digitise their operations in response to lockdowns and social distancing mandates. This digital acceleration has become a structural transformation that is now the new norm. Consequently, businesses have intensified their use of online channels to reach consumers, often through unsolicited methods such as cold emails, direct messaging and automated outreach.

[8] *Competition and Consumer Act 2010* (Cth) sch 2 ('*Australian Consumer Law*'), subdiv D, s 82(3).
[9] Consumer Affairs Victoria, Cooling-off periods in Victoria their use, nature, cost and implications (Research Paper, 15 January 2009). See also Beverley Sparks et al, 'Cooling off and backing out: Understanding consumer decisions to rescind a product purchase' (2014) 67(1) *Journal of Business Research* 2903; Jeff Sovern, 'Written Notice of Cooling Periods: A Forty-Year Experiment in Illusory Consumer Protection and the Relative Effectiveness of Oral and Written Disclosures' (2014) 78 *University of Pittsburgh Law Review* 333; Christian Michael, 'Model Based Evaluation of Cooling Off Policies' (2021) 129 *Games and Economic Behaviour* 270.
[10] Paul Harrison, Cooling off periods for customers don't work: study, *The Conversation* (online), 28 November 2016.

Q9: Is demographic information used to target specific cohorts of consumers for unsolicited selling? If so, how?

Vulnerable consumers

34. As outlined in the above response to Question 4, there is growing concern that businesses can direct unsolicited marketing efforts toward vulnerable consumer groups by tailoring their messaging and delivery methods to exploit demographic characteristics such as age, income level and digital literacy.

35. For instance, older Australians, particularly those with limited digital literacy, are often targeted through unsolicited phone calls, emails and online advertisements. These individuals may lack the tools or knowledge to verify the legitimacy of such communications, making them more susceptible to misleading or high-pressure sales tactics. In some cases, they are presented with offers that appear urgent or beneficial, but which are in fact predatory or deceptive in nature. This practice not only undermines consumer confidence but also raises serious ethical and legal concerns about the use of personal data to facilitate exploitative marketing.

Digital Age and Social Media

36. The expansion of digital infrastructure and remote work has increased the volume and accessibility of personal data online. This has enabled marketers to deploy sophisticated targeting techniques often without explicit consumer consent. For example, legal professionals report that businesses are more often using data scraping tools, customer relationship management systems, and artificial intelligence-driven lead generation to raise the scale of unsolicited outreach. The LIV and ACL Committee acknowledge that these technologies offer efficiency gains but is cognisant that they may come with a serious cost to privacy, consent and consumer autonomy.

37. In addition, there are strong and growing concerns that unsolicited selling has infiltrated digital platforms through social media 'influencers'. In recent years, digital platforms such as Instagram, TikTok, YouTube and Facebook have become central to consumer engagement.[11] Businesses have capitalised on these platforms by partnering with influencers to promote products and services in ways that blur the line between genuine and commercial intent. Influencer marketing typically operates under the guise of personal recommendation or lifestyle content, contrary to conventional unsolicited selling which is easily identifiable (e.g., spam emails or cold calls).[12] This can make it difficult for consumers to distinguish between authentic endorsements and paid promotions. Indeed, many of these platforms appear to be entertainment platforms but are effectively intended to facilitate consumer purchase.

38. This form of marketing is particularly concerning when directed at vulnerable demographics, in particular younger consumers. Younger consumers are generally highly active on social media, often influenced by peer trends, and typically do not possess adult levels of discernment in decision making. Influencer selling may expose young consumers to promotional content without them realising its commercial nature. Similarly, individuals with limited media literacy may not understand that influencers are being compensated to promote certain products, leading to uninformed purchasing decisions.

[11] Nicole Mishnick, Dana M Wise, 'Social Media Engagement: An Analysis of the Impact of Social Media Campaigns on Facebook, Instagram and LinkedIn' (2024) 7(3) *International Journal of Technology in Education* 535-549.
[12] Ibid.

39. The use of influencers in unsolicited selling also raises questions about transparency and accountability. Whilst advertising standards in Australia and other jurisdictions require clear disclosure of paid partnerships, enforcement is inconsistent, and many promotional posts fall into regulatory grey areas. This may create loopholes through which businesses can engage in indirect unsolicited selling while avoiding the scrutiny typically applied to more traditional forms of marketing.

40. Social media influencers may be compensated through fixed fees, product exchanges, or revenue-sharing agreements. These arrangements can occur without clear disclosure to their audiences.[13] This marketing can blur the line between personal content and commercial promotion making it difficult for consumers to identify when they are being targeted by marketers. Disclosure requirements are not consistently enforced across platforms which can exacerbate this issue and raises questions about transparency and consumer protection.

Q11: Does commission-based remuneration affect outcomes for consumers?

41. Feedback provided to the LIV and ACL Committee suggests that commission-based remuneration in unsolicited selling can have a detrimental impact on consumer outcomes. Remuneration that rewards salespeople based on the volume or value of sales generated can inherently incentivise aggressive sales tactics. This can lead to misleading or high-pressure interactions, particularly when consumers are approached without prior consent.

42. In contexts as contemplated by the Consultation Paper, salespeople operating under commission-only or high-incentive structures may prioritise closing sales over ensuring that consumers fully understand the product or service being offered. For example, door-to-door sales of solar panels and telemarketing of training programs have been linked to cases of consumer exploitation, with individuals pressured into signing contracts they neither wanted nor could afford.

43. Commission-based remuneration in digital channels, such as affiliate marketing and influencer-driven promotions, introduces further complexity. These models often lack transparency, and consumers may be unaware that the content they are engaging with is commercially motivated. This undermines informed decision-making and can erode trust in digital platforms.

44. The ACCC may wish to consider the role of commission-based remuneration in unsolicited selling contexts, particularly where it contributes to consumer harm. LIV and ACL Committee recommend that regulators consider introducing clearer guidelines around acceptable incentive structures, enhanced disclosure obligations, and stronger protections for consumers approached through unsolicited means. These measures would help ensure that commercial practices align with ethical standards and consumer rights under the ACL.

Q12: What are the current training requirements for salespeople, including in respect of the ACL?

45. There are no mandatory training requirements under the ACL for salespeople.[14] The ACCC, which oversees compliance with the ACL, does not prescribe specific training programs or enforce a uniform standard across industries. Instead, the ACCC encourages businesses to voluntarily educate their staff on key consumer law

[13] Devadas Menon, 'Factors influencing Instagram Reels usage behaviours: An examination of motives contextual age and narcissism' (March 2022) 5 *Telematics and Informatics Report* 10007.
[14] Subject to a court order. See *Competition and Consumer Act 2010* (Cth) s 246.

obligations, such as consumer guarantees, misleading conduct and unfair practices. While the ACCC provides helpful resources, including a Small Business Education Program and detailed guides on sales practices, these are not compulsory, and there is no formal mechanism to monitor or audit whether businesses have implemented training.

46. The LIV and ACL Committee suggest that the lack of enforceable training requirements could be a gap in the regulatory framework. Without a consistent standard, businesses vary widely in how they prepare their staff to comply with the ACL. This can lead to uneven consumer experiences and increased risk of non-compliance. Importantly, when breaches occur, the ACCC may require businesses to implement or improve training as part of a court-enforceable undertaking. However, this is a reactive measure, applied only after consumer harm has occurred.

47. LIV and ACL Committee suggest that the ACCC consider introducing a mandatory training requirement for businesses engaged in unsolicited consumer sales. This could include minimum training standards, certification or self-assessment processes, and audit-ready documentation. Such a framework would promote proactive compliance, enhance consumer protection, and ensure that businesses are equipped to meet their legal obligations consistently and confidently. We recognise that this approach could be costly and that a proportionate response is needed, including to any additional requirements placed upon small businesses.

Q13: What role does BNPL finance have in unsolicited selling?

48. In its Designated Complaint, the Consumer Action Law Centre highlighted how BNPL is being used to push unaffordable purchases through unsolicited channels, raising concerns about breaches of the ACL including misleading and deceptive conduct, unconscionable conduct, and the formation of unsolicited consumer agreements.

49. Feedback provided to the LIV and ACL Committee raises concerns that BNPL can play a problematic role in unsolicited selling practices. Businesses can use BNPL arrangements in an unsolicited sale context to facilitate high-pressure sales tactics. This include door-to-door sales, cold calls and digital lead generation, where BNPL is presented as a convenient payment method rather than a credit product. This can adversely affect financially vulnerable consumers by obscuring the financial risks and obligations associated with BNPL.

50. Against this background, the LIV and ACL Committee consider that additional safeguards may be required to prevent BNPL from acting as a tool and catalyst for unsolicited selling. Its role in unsolicited selling warrants consideration to ensure that consumer protections are not eroded by the evolving nature of digital finance and marketing.

Q14: What is the relationship, if any, between the availability of government subsidies and incentives, and the use of unsolicited sales practices?

51. As mentioned in the LIV and ACL Committee's above response to Question 6, government subsidies and incentives can drive unsolicited sales practices, particularly in the energy, home improvement and vocational education sectors. Businesses can use financial incentives, such as solar panel rebates, energy efficiency grants and training subsidies, as marketing tools to make an unsolicited approach to consumers. This may be exploited through door-to-door sales, cold calls, and digital lead generation, where the promise of 'free government money' or 'limited-time rebates' can be used to pressure consumers into signing contracts on the spot.

52. It has been reported to us that a common and concerning practice involves sales agents misrepresenting the availability or eligibility of government subsidies to create urgency and legitimacy. For example, the Consumer Action Law Centre has identified a case study featuring a regional Victorian resident, whereby a Facebook ad promoting solar rebates led to an unsolicited visit from a salesperson who sold her solar panels that the resident neither wanted nor could afford.[15] The salesperson used the existence of government rebates to justify the sale, and the consumer signed a BNPL arrangement without a clear understanding of the financial commitment. This may be emblematic of a broader trend where government incentives are used not to empower consumers, but to manipulate them into unaffordable purchases.

Q15: How frequently is lead generation used for telemarketing to consumers?

53. The LIV and ACL Committee make no comment on Q15.

Q16: How frequently is lead generation used for door-to-door or other in- person sales to consumers?

54. The LIV and ACL Committee make no comment on Q16.

Q17: Can you provide any examples of 'good practice' connected with consumer lead generation?

55. The LIV and ACL Committee acknowledge that lead generation is a key part of how businesses reach consumers, especially in industries like energy, finance and home improvement. However, while it can be used responsibly, it is also linked to unsolicited selling and consumer harm. Accordingly, the LIV and ACL Committee recommend principles and practices that include the following. In some cases, a failure to comply may raise questions of compliance with the *Privacy Act 1988* (Cth):

    (a) Clear and informed consent: Businesses should clearly explain what personal information they are collecting, why they are collecting it and who will use it. Consumers should not be surprised to receive a call or visit after filling out an online form. Consent should also be active which allows consumers to take a clear action to agree to be contacted. The LIV and ACL Committee suggest that practices such as pre-ticked boxes or vague statements should not be utilised.

    (b) Opt-in contact only: Responsible businesses should only contact consumers who have actively agreed to be contacted. This means no cold calls or door-to-door visits based on data collected without proper consent. Opt-in systems help reduce unwanted contact and show respect for consumer choice.

    (c) Transparent data use: Consumers should also be told how their data will be used, stored and shared. Privacy policies should be easy to understand, not buried in fine print.

[15] Consumer Action Law Centre, ' Opinion: Why unsolicited selling should be banned' (Web Page, 14 April 2025).

(d) No pressure or misleading claims: Good lead generation avoids using government rebates or 'limited time offers' to pressure consumers. Instead, businesses should provide accurate information and allow consumers to make decisions in their own time. Sales teams should be trained to avoid high-pressure tactics and respect people's right to say no.

(e) Independent verification: Consumers should be able to check whether an offer is real before committing. Businesses can support this by linking to government websites or providing independent reviews. This helps prevent misleading claims and gives consumers confidence in their decisions.

Q18: Can you provide any examples of concerning consumer lead generation practices?

56. By way of example, the LIV and ACL Committee suggest that a consumer might click on an ad offering a government rebate or a free quote for solar panels, home upgrades or financial services. They fill out a form thinking they are only getting information. But that form is used to collect their details, which are then passed on to sales companies. These companies use the information to call or visit the person, often pushing them to sign up for unnecessary products or services.

Q19: Can you provide any lead generation examples where it may be unclear whether a consumer has provided consent for their details to be used for lead generation or other sales or marketing purposes?

57. Please refer to the response provided under Question 18.

Q20: Can you provide any lead generation examples where it may be unclear to the consumer that their details might be sold or otherwise shared as leads with other businesses or organisations?

58. Please refer to the response provided under Question 18.

Q21: Do you consider unsolicited selling and lead generation to be adequately covered by the ACL? Please provide details.

59. The LIV and ACL Committee note that the ACL provides some coverage of unsolicited selling and lead generation. However, recent reviews and complaints suggest that current protections may not be adequate, especially given how these practices have evolved in digital and data-driven markets.

60. The ACL includes provisions that regulate unsolicited consumer agreements. This includes requirements for clear disclosure of terms, cooling-off periods, rules around the timing and manner of contact, prohibitions on misleading and deceptive conduct and protections against unconscionable conduct. These rules apply to traditional forms of unsolicited selling, such as door-to-door sales and telemarketing, and are intended to give consumers time and information to make informed decisions.

61. However, as noted in the Consultation Paper and the Designated Complaint, modern lead generation practices often fall outside the scope of these protections. For example, consumers may unknowingly consent to contact by filling out online forms or engaging with ads that appear to be government affiliated. Some of the consumer's personal data collected through digital lead generation is also often used to initiate contact that feels unsolicited but technically may not meet the legal definition. BNPL finance, government rebates, and high-pressure tactics in these contexts may also lead to consumer harm, especially among vulnerable consumers.

62. To this end, the ACL framework could be strengthened to cover the full scope of modern lead generation practices, especially those driven by digital platforms and data collection. Strengthening the law to reflect current market realities will further protect consumers from misleading, high-pressure, and harmful sales tactics.

Q22: Are there any harmful practices specific to unsolicited selling and/or lead generation that are not sufficiently addressed by the ACL, including the current unsolicited consumer agreement provisions? If so, please provide details, including any changes you would recommend to the current framework.

63. As noted in the LIV and ACL Committee's response to Question 21, the ACL Framework could be strengthened to better protect consumers from unsolicited selling and lead-generation. The LIV and ACL Committee provide the following suggestions and thematic areas to strengthen the ACL Framework:

    (a) Digital lead generation and data harvesting: The definition of unsolicited selling should be expanded to include digital lead generation and require explicit, informed consent before consumer data is used or transferred for marketing purposes (as per the response to Question 18).

    (b) Commission-based and incentivised sales models: The LIV and ACL Committee recommend the introduction of the regulatory standards for sales conduct under commission-based models, including mandatory training, conduct guidelines, and accountability mechanisms (as per the responses to Questions 10 and 11).

    (c) Misrepresentation of Government Programs: The LIV and ACL Committee consider that there should be specific prohibitions and penalties for the misleading use of government branding or programs in unsolicited sales and requirements for clear disclosures about eligibility and terms (as per the response to Question 14).

    (d) Inadequate protection for vulnerable consumers: The current ACL framework does not sufficiently safeguard consumers experiencing financial hardship, language barriers, cognitive impairments, or other vulnerabilities. These individuals are more susceptible to manipulation and may not fully understand their rights under unsolicited consumer agreement provisions. The introduction of enhanced protections for vulnerable consumers, including extended cooling-off periods, simplified disclosures, and mandatory screening protocols for sales agents, may alleviate this gap.

    (e) Ambiguities in the definition and scope of 'unsolicited': Certain transactions that are effectively unsolicited, such as those initiated through indirect contact or occurring in semi-public settings, may not be covered by the ACL due to narrow definitions. This creates loopholes that businesses can exploit to avoid compliance. Clarifying and broadening the definition of unsolicited consumer agreements will ensure coverage of all relevant scenarios, including indirect and hybrid sales approaches.

Part 2—Views of the Competition & Consumer Committee

64. The C&C Committee considers that unsolicited selling and lead generation practices are comprehensively regulated by a broad legal framework in Australia. This framework extends beyond sections 82 to 88 of the ACL and includes:

    (a) the Privacy Act which governs the collection, use and disclosure of personal information and includes specific provisions in relation to direct marketing in Australian Privacy Principle (**APP**) 7;

    (b) the *Spam Act 2003* (Cth) which prohibits the sending of unsolicited commercial electronic messages and regulates the supply, acquisition and use of 'harvested-address lists;

    (c) the *Do Not Call Register Act 2006* (Cth) which regulates unsolicited telemarketing calls; and

    (d) a range of industry-specific laws and regulations, such as Telecommunications (Telemarketing and Research Calls) Industry Standard 2001 and the prohibition on hawking of financial products under section 992A of the *Corporations Act 2001* (Cth).

65. It is also likely that the range of general prohibitions under the ACL would apply where unsolicited selling and lead generation practices resulted in consumer harm, such as the prohibitions on making false or misleading representation and unfair contract terms.

66. The C&C Committee also observes that the Attorney-General's Department is considering further amendments to the Privacy Act that address direct marketing and targeted advertising. Moreover, the unsolicited selling and lead generation practices are also likely to be caught by the proposed reforms to ban on unfair trading practices.

67. Therefore, the C&C Committee considers that any concerns regarding the regulation of unsolicited selling and lead generation practices would be most effectively addressed through increased monitoring and enforcement activities, including greater cooperation between the ACCC, Office of the Australian Information Commissioner, Australian Communications and Media Authority and/or Australian Securities and Investments Commission where appropriate.

Contact

68. To discuss this submission further, in the first instance please contact Dr Brendon Murphy, Senior Policy Lawyer, [redacted]

Yours sincerely



Juliana Warner
President