

Competition Policy Review Secretariat
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**SUBMISSION TO THE COMPETITION POLICY REVIEW FROM THE
DIRECT SELLING ASSOCIATION OF AUSTRALIA**

Introduction

Direct selling is part of the broader retail industry. However Australian retailing is too readily characterised as major shopping centres, chain stores, high street strip shopping, service stations increasingly functioning as outlets for major retailers, a dwindling number of corner shops and with the advent of new technology, online trading both local and overseas.

With its key characteristics of selling through personal interaction and predominantly away from fixed retail premises direct selling retains an historical derivation of retailing. Its business models today have traditional network marketing, party plan and decreasingly door-to-door sales methods but technology advances and changing consumer behaviour have and continue to encourage the integration of marketing and selling techniques from other retailing into direct sales models.

The congruence in technology platforms particularly social media and the channel's relationship and experiential selling strengths should encourage more innovation in its business models. But at transactional levels the evolution of its models and competitive prospects face unnecessary risk from a highly prescriptive and discriminatory regulatory environment.

Direct selling in Australia

The Direct Selling Association of Australia Inc (DSAA) is the national trade association and advocate of Australia's direct selling industry. It represents almost seventy members who market products through the direct sales channel. These organisations range across transnational corporations to small start-up and homegrown Australian businesses. Almost 60% of DSAA members are small businesses with annual turnovers of less than \$5 million, these businesses attracted to direct selling because of its lower entry and operating costs relative to a traditional retail presence.

The industry generally relies on independent contractors to market and sell its products with income of these salespeople generated from reselling margins or commissions on sales.

There is a mix of wholesale operations where a salesperson is the retailer of goods and an agency model where products are sold by the salesperson on behalf of a direct selling company. These independent salespeople are mostly individuals, small and micro-business people, about 90% of who are women and 62% are in the lowest half of socio-economic status. The direct selling channel offers a flexible source for supplementary income.

As already mentioned direct selling is traditionally characterised by three distinct methods of selling – network marketing, party plan and door-to-door sales, however in recent years omni-channel direct selling has been growing with elements of store and online sales being mixed with these traditional methods.

Direct selling exists in many product lines but is most prominent in cosmetics, skin care and personal care; nutritional and therapeutic products; and kitchenware and other household products. In the first two categories members are major wholesaling suppliers to the Australian market for those products through the sales activities of their contractors.

The contribution of direct selling in Australia

Deloitte Access Economics (DAE) recently completed a study of the social and economic contribution of DSAA members in Australian direct selling. Its report concludes that

- the direct selling industry makes an important economic contribution to Australia;
- the industry encourages workforce participation, competition, innovation and choice;
- direct selling is a flexible means for those who may otherwise be disengaged with employment to enter the workforce. In this way the direct selling industry increases workforce participation and boosts productivity;
- the direct selling industry also provides additional income to individuals earning low incomes.

The report estimates total sales at retail in 2012 by salespeople linked to DSAA members at almost \$1.5 billion. At 31 December 2012, there were 477,000 salespeople associated with DSAA member companies, of which 250,000 were active (having made a sale in the past 3 months).

For many of these people their only level of engagement is to acquire products at wholesale prices for personal consumption. However, DAE estimates that 32,000 of these salespeople spend at least 9 hours per week on direct selling activities and 7,700 are engaged in direct selling full time. The total economic contribution of the DSAA membership is estimated at \$1.165 billion with an equivalent employment contribution of 12,390 (FTE).

The report also notes that the impact on the Australian economy is broader than what is captured by the gross domestic product (GDP) and employment estimates. In particular, the direct selling industry encourages greater workforce flexibility, productivity improvements and increased labour supply, with additional benefits to the Australian economy.

Forty-three percent of independent salespeople are located in the three lowest socio-economic status groups (SES) in Australia and almost two thirds (62%) are located in the lower half of SES status, suggesting that most independent salespeople live in areas of relative disadvantage. By comparison around half of Australians aged over 15 years are within the higher SES status

groups. The direct selling industry is therefore said to encourage workforce participation in areas of economic disadvantage, and provides additional income to individuals earning low incomes.

Regulatory challenges

In its report, DAE says "The regulatory burden faced by the direct selling industry relative to other Australian retailers affects the capacity of the industry to compete on a level playing field." It also states "The Australian Consumer Law (ACL) requires that the direct selling industry comply with more onerous rules for trading than other Australian retailers. This is despite protections for consumers, which are inherent in general legislation applying to all retail businesses."

The Australian Consumer Law and direct selling

Like all consumer transactions, the ACL's general provisions apply to direct selling companies and the independent salespeople selling their products. These provisions relating to product safety, trading behaviour, consumer guarantees etc. are generally principles-based, apply equally to all retailers and provide an appropriate framework for consumer protection and competition between retailers.

However, a departure from this principles-based regulation exists in Part 3-2, Division 2 dealing with unsolicited consumer agreements. In its development and introduction the ACL purported to bring together legislation in the form of the former Part V of the *Trade Practices Act 1974* with some of the existing best practice in state-based sector specific regulation.

This didn't happen, with the definition of an unsolicited sale from previous Door-to-Door Sales and Fair Trading Acts essentially extended from in-home and at-business transactions to any sale outside a retail store. It was unfortunate that scant evidence was provided and no effective cost benefit analysis made available to support this change that continues to have significant ramifications for the business practices and competitiveness of direct selling businesses.

Of most concern are the anti-competitive elements contained in restrictions in section 86 on the payment and supply of products during cooling-off periods, excessive documentation requirements and the reverse onus of proof where it is for a company or salesperson to prove an offence against the legislation has not occurred.

The rationale for this regulation beyond general claims of consumer vulnerability in home based purchasing is unclear. The channel is often stereotyped by radical and uninformed comment as high pressure door-to-door selling of expensive products. While this may exist in a relatively small number of transactions DSAA members operate reputable businesses in distributing fast moving consumer goods with a genuine commitment to ethical standards. DSAA has long supported cooling off rights which are mirrored in its own membership standards.

A decreasing percentage of sales by or on behalf of DSAA members are actually negotiated in homes and only a very small number of these would be to potentially vulnerable people. Yet the ACL's unsolicited consumer agreements provisions can potentially apply to almost all direct sales negotiations, even those that are ostensibly the same in nature as other retail and online sales. This puts direct selling at an obvious competitive disadvantage with other retail models and a return to a simple definition that focuses on the actual problem is necessary.

With some exception the ACL's regulation of unsolicited selling reaches non-store selling. Its requirements are complex and uncertain in their application. This can be seen from the attached response from a regulator to an inquiry on how it would interpret and apply the law in given circumstances. This uncertainty surely questions the effectiveness of consumer information and advice. It certainly detracts from the competitiveness of our channel.

Inadvertent breaches of these complex unsolicited selling requirements could bring penalties of up to \$50,000 per incident for companies and \$10,000 per incident for individuals. Coupled with the onus of proving compliance being placed on a salesperson, this unsolicited consumer agreements section has significant anti-competitive impacts on the direct selling industry.

Section 86 requirements have imposed excessive compliance and logistic costs and restrictions on receiving payments have and continue to affect cash flows of independent distributors. Perversely, the restrictions on supply and payment also adversely affect consumers as it prevents them having an opportunity to assess goods and revisit a purchasing decision during cooling off periods – a reason for cooling off rights.

Payment restrictions also affect the availability of products in rural and remote locations. Direct selling has long been a source of supply for distant and remote areas and being unable to accept payment for sales in new and established relationships raises supply, credit, default and recovery issues for salespeople.

In regard to the documentation requirements for an unsolicited consumer agreement, the agreement must be signed and dated by both parties and must contain the following

- the full terms and conditions of the sale including the total to be paid or how it is calculated, including postage or delivery
- a prescribed statement regarding cooling off rights, on the front page and in the most prominent text after supplier's name and logo
- the supplier's details, including ABN/ACN, business address, email & fax number; and the dealer's details, if acting on behalf of a supplier.
- information about restrictions on payment and supply during the cooling off period
- a prescribed termination notice which may be used to terminate the agreement
- any other terms of sale, including additional guarantees and particular payment terms.

In comparison, a store sale would produce a single cash-register or computer generated receipt for the consumer and for an online sale a receipt would be sent with the goods.

The New Zealand Parliament recently passed similar legislation the ACL. With the benefit of Australia's experience its treatment of unsolicited selling delivers a certain and balanced regulatory framework.

It is strongly recommended that the unsolicited consumer agreements section of the ACL be amended so that

- the definition of an unsolicited consumer agreement reflect the actual problem that requires regulatory intervention – i.e. sales in a person's home if they are potentially vulnerable, as opposed to the current situation, which can include any sale not made in a store.
- the documentation requirements are simplified to make the contract and sales documentation similar in nature to other retail models.

- the restriction on taking payments and supplying goods during cooling off periods be removed as there is no evidence that this is required to achieve the desired policy outcomes without unduly restricting competition.

Other anti-competitive regulation

The application of the Australian Consumer Law is not the only area of regulation that impacts on the competitiveness of companies involved in direct selling.

DSAA members are responsible for sales estimated at 25% of the market for complementary healthcare products such as vitamins, supplements and weight management products, which are regulated by the Therapeutic Goods Administration (TGA) under the *Therapeutic Goods Act 1989*.

As a matter of good regulatory practice, the level of regulation and cost to sponsors of listing complementary healthcare products must be commensurate with the risk profile of the products. Given the profile of listed complementary health products is highlighted by low risk, the TGA must ensure that excessive regulatory intrusion is minimised to match this profile.

However, in practice the interpretation and administration of the Act by the TGA results in significant costs to businesses in the certification of manufacture, post market audit and compliance areas. For the past two years the TGA has promoted changes and proposals to the regulation of complementary healthcare products. Much of this has recently stalled with the change of government, however the proposals remain on the table.

The DSAA supports the effective regulation of these products to ensure public health and safety outcomes, but argues this must be done in a way that encourages product innovation and competition throughout the supply chain.

As an example, one of the currently proposed changes would see the introduction of a standard set of indications that companies must use in the listing of their products and removal of the ability to add 'free text' in the listing process. Removing the free text facility will deny consumers access to existing and new products by reducing product differentiation and competitiveness. However as a corollary to this change, no commensurate key performance indicators have been suggested by the TGA for its own determination of requests from product sponsors of additional indications.

As the TGA is funded from fees and charges it collects from product sponsors in the industry, there is not the same incentive to achieve efficiency savings as most other regulatory agencies and departments. There are examples of undue costs to businesses for example in auditing overseas manufacturing facilities. This impacts more on smaller sponsors of listed complementary healthcare products than larger ones as the costs involved can less readily be absorbed. The DSAA argues these audits could in some cases be undertaken by competent overseas authorities who already audit the facilities, which would save significant money and time for Australian companies.

Given the plethora of proposals currently being considered by the TGA and the upheaval that industry could be facing, it is recommended that the TGA's processes be reviewed and functions under the current legislation be scrutinised to ascertain areas where unnecessary burdens on industry could be eliminated.

A further instance of competitive disadvantage is in the transportation of dangerous goods. Currently in force, the ADG7 Code for the Transport of Dangerous Goods by Road & Rail 7th Edition, causes difficulty for many DSAA members that sell, for example, perfume or cleaning products.

ADG7 includes rules regarding the transport of dangerous goods under limited quantities retail distribution loads. These rules require labelling on all shipping cartons containing small quantities of (defined) dangerous goods; and a generic transport document declaring the presence of dangerous goods.

These rules in the Code unnecessarily impact on DSAA members and other distributors of cosmetics and similar products and cause significant costs regarding transportation of logistics and compliance. The rules apply to companies, who may send one small bottle of perfume to a customer, but not, for example, an individual who may have been shopping and is carrying a much larger and dangerous quantity of chemicals in a car.

The distribution of consumer products in small quantities is very low risk and has not and is unlikely to present public safety issues and the Code should be altered to account for this.

Recommendations

To address competition impediments in current legislation it is recommended that

1. The unsolicited consumer agreements of the ACL be amended so that
 - (a) The definition of an unsolicited consumer agreement reflect the actual problem that requires regulatory intervention i.e. sales in a person's home if they are potentially vulnerable, as opposed to the current situation which can include any sale not made in a store.
 - (b) The documentation requirements are simplified to make the contract and sales documentation similar in nature to other retail models.
 - (c) The restriction on taking payments and supplying goods during cooling off periods be removed as there is no evidence that this is required to achieved the desired policy outcomes without unduly restricting competition.
2. TGA processes be reviewed and its functions under current or proposed legislation or other instruments scrutinized to ascertain where unnecessary burdens on industry can be eliminated.
3. Proportionality to risk is restored to the regulation of transportation of small quantities of consumer products.



John Holloway
Executive Director
11 June 2014

ACL Enforcement Issues

- 1. Is booth activity (shopping centre or elsewhere) where a consumer approaches a trader and makes a \$100+ purchase unsolicited selling?**
- 2. Is a booth demonstration or other contact itself enough to trigger unsolicited selling?**
- 3. Would there be instances of online selling that is regarded as unsolicited selling?**
- 4. Do monetary thresholds include GST or postage / freight?**
- 5. Is a decision made by a consumer in sale documentation to invite and possibly accept product offerings considered to negate the application of the unsolicited selling provisions for future sales?**
- 6. Is hobbyist activity in “trade or commerce”**
- 7. What constitutes satisfactory documentation requirements?**
- 8. What are considered to be “trade or business” premises?**
- 9. How will the term “in each other’s presence” be interpreted for the purpose of online dealing?**
- 10. How will an invitation by a consumer “for the purposes of entering into negotiations relating to the supply” or products be interpreted?**
- 11. How is it proposed to interpret “negotiations”?**
- 12. How will the “discontinued negotiations” exemption be construed?**
- 13. What is construed by the term “goods of the same kind” for the purposes of the “renewable agreements” and “subsequent agreements” exemptions?**
- 14. Could it be seen that the provision of card details for processing a payment after the expiration of a cooling off period is not accepting or requiring a payment for the purposes of Section 86.**
- 15. What is the attitude to sales made at presentations of direct selling business opportunities?**

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24 May 2012

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Dear Mr Holloway

Unsolicited Consumer Agreements

I refer to your meeting with the Australian Competition and Consumer Commission (ACCC) on 15 December 2011 regarding the operation of the unsolicited consumer agreement provisions of the Australian Consumer Law (ACL) where you raised a number of questions regarding the interpretation and application of the unsolicited consumer agreement provisions.

The ACL regulators have prepared some guidance information in response to the issues raised in those questions (please refer to Attachment 1). This information outlines our general approach to the interpretation and application of the unsolicited consumer agreement provisions to the issues raised in your questions, particularly in relation to:

- what constitutes an unsolicited agreement
 - specific examples about what is a retail space
 - negotiations
 - supply in trade or commerce;
- documentation requirements;
- payment during cooling off period;
- online selling and unsolicited agreements; and
- exceptions to the unsolicited consumer agreement laws.

The information and examples provided in the guidance material do not reflect a definitive and comprehensive list of situations where the law applies. It is intended that this principles based guidance be applied to the specific questions and scenarios set out in your questions of 15 December 2011. The guidance material may also be applicable to other issues and circumstances regarding the operation of the unsolicited selling provisions that have not been captured in the DSAA's set of questions. However, whether particular conduct raises concerns under the ACL is ultimately dependent on the particular circumstances of each case.

As you may be aware, the ACCC cannot provide legal advice. We recommend that DSAA or its members obtain independent legal advice in relation to the application and interpretation of the unsolicited consumer agreement provisions of the ACL.

Should there be some broader issues that may benefit from ongoing discussions with the DSAA we would be pleased to meet with you to further discuss these matters. Please contact me on (03) 9290 1849 or Shyam Ediriweera on (03) 9290 6916 if you would like to arrange a meeting, or if you have any questions about the information provided.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Kim Parker'.

Kim Parker
General Manager
Compliance Strategies Branch

Attachment 1: ACL regulator response to questions raised by DSAA regarding the operation of the unsolicited consumer agreement provisions of the ACL

This information is not legal advice. This information is also not a definitive list of situations where the law applies. Whether particular conduct raises concerns under the ACL is ultimately dependent on the particular circumstances of each case.

What is an unsolicited consumer agreement?

An agreement is an unsolicited consumer agreement when:

- it is for the supply, in trade or commerce, of goods or services to a consumer; and
- it results from negotiations by telephone or at a location other than the business or trade premises of the supplier; and
- a supplier, or their salesperson, dealer, agent or employee, approaches or telephones a consumer without invitation from that consumer; and
- the total value is not established when the agreement is made—or, if the total value is established when the agreement is made, it is more than \$100 (this is the total price paid or payable and would include GST)¹.

Unsolicited consumer agreements may result from approaches to consumers that include:

- door-knocking households to sell goods or services, or to ask consumers to switch to a different service provider
- telephoning consumers to sell goods or services
- approaching consumers in the common area of a shopping centre to sell goods or services².

Specific examples about what is a retail space and circumstances leading to an unsolicited agreement

- In general, where a business makes a sale within their trade/retail premises, irrespective of whether their premises are within a shopping centre or not, the sale will not result in an unsolicited agreement being formed.

Shopping centre thoroughfares

- A shopping centre thoroughfare will not generally be considered a retail space, although any stores lining the thoroughfare or the kiosks placed within the thoroughfare could be considered to be a retail space.

Kiosks/stalls in public areas of shopping centres

- A sale made at a kiosk or stall in the public area of a shopping centre is unlikely to be an 'unsolicited consumer agreement' when:

¹ See *Competition and Consumer Act 2010*, Schedule 2, s. 69(1)

² See ACL Sales Practices Guide, A guide for businesses and legal practitioners, page 10.

- the kiosk or stall is the operator's business or trade premises, and
 - the salesperson remains within the kiosk or stall³.
- If the salesperson were to approach or intercept a consumer and negotiate a sale **outside** the kiosk or stall, this could result in an unsolicited consumer agreement⁴.
 - Ultimately, whether an unsolicited agreement has taken place will depend on the location and conduct of the trader – including where negotiations took place and whether contact was invited by the consumer. It is common practice for a salesperson to approach someone in the common area of a shopping centre and then lead them into the stall or kiosk. Depending on the circumstances, this could result in an unsolicited consumer agreement.
 - Traders should ensure that consumers understand that the kiosk or stall is a 'business premises'. This is likely to be clearer in circumstances where consumers are under no misapprehension that it is a business or trading premises. For example, a kiosk or stall that is partly or fully enclosed, and subject to an ongoing lease that marks out the area allocated to the kiosk or stall operator, is more likely to be seen as business or trade premises⁵.
 - Conversely, an un-enclosed trestle table or temporary stand is less likely to be seen as business or trade premises⁶.

Seminars/conventions

- Where a consumer agrees to attend a seminar or convention where it has been made explicit that sales will be taking place, or it could reasonably be anticipated that sales will take place, any subsequent sales are unlikely to be unsolicited. If booths in the foyer of seminars/conventions are specifically part of the event (where a consumer has anticipated sales) then these sales are unlikely to be unsolicited. Whether or not a consumer would reasonably anticipate that sales will take place would depend on the facts on a case by case basis.

Competitions

- If a consumer enters a competition sponsored by a supplier and it is a condition of entry that the consumer agrees to be contacted by the supplier with information about the product, if the supplier contacts the consumer about anything other than the competition or the product, and negotiates a sale, that sale agreement is likely to be considered unsolicited⁷.

Future sales invited by consumers

- Where consumers initiate contact with sellers inviting them to contact them in the future about specific products or services, any subsequent agreements relating to

³ See ACL Sales Practices Guide, A guide for businesses and legal practitioners, page 11.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ See ACL Sales Practices Guide, A guide for businesses and legal practitioners, page 11.

those specific products or services are unlikely to be captured by the unsolicited consumer agreement provisions.

Negotiations

- In order for an unsolicited agreement to exist, it must result from negotiations between a dealer and consumer. Negotiations include any discussion or dealing directed toward the making of an agreement⁸.
- A discontinued negotiation agreement will not be regarded as an unsolicited agreement. A discontinued negotiation agreement is an agreement made as a result of:
 - a consumer discontinuing negotiations with the supplier in regard to an unsolicited consumer agreement; and
 - the consumer subsequently initiating negotiations with the supplier for the unsolicited consumer agreement⁹.

Supply in trade or commerce

- An unsolicited consumer agreement must involve a supply in trade or commerce of goods or services to a consumer. Making a donation to charity, for example, does not involve the supply of goods or services to a consumer, and accordingly the unsolicited consumer agreement provisions will not apply¹⁰.
- Purchasing a product or service from a charity is likely, however, to involve a supply of goods and services in trade or commerce and in which case the provisions will apply¹¹.

One-off sales – garage sales/fetes

- Private one-off sales, such as a garage sale or a stall at a fete, are unlikely to be carried out in trade or commerce, but this will ultimately depend on the circumstances¹².

Documentation requirements

- The unsolicited consumer agreement provisions outline a number of requirements the supplier must comply with in relation to the provision of an agreement document. The agreement document must clearly state:
 - the consumer's cooling-off and termination rights
 - the full terms of the agreement
 - the total price payable, or how this will be calculated
 - any postal or delivery charges

⁸ See *Competition and Consumer Act 2010*, Schedule 2, s. 72.

⁹ See *Competition and Consumer Regulations 2010*, Regulation 81(2), definition of 'discontinued negotiations agreement'.

¹⁰ See ACL Sales Practices Guide, A guide for businesses and legal practitioners, page 11.

¹¹ Ibid.

¹² See ACL Consumer Guarantees, A guide for businesses and legal practitioners, page 8.

- the supplier's:
 - name
 - business address (not a post box number)
 - Australian Business Number (ABN) or Australian Company Number (ACN)
 - fax number and email address, if they have these¹³.
- The front page of the document must include the following text:
 - 'Important Notice to the Consumer'
 - 'You have a right to cancel this agreement within 10 business days from and including the day after you signed or received this agreement'
 - 'Details about your additional rights to cancel this agreement are set out in the information attached to this agreement'¹⁴.
- The front page must be signed by the consumer and include the date it was signed¹⁵.
- The document must also be accompanied by a notice that the consumer can use to terminate the contract¹⁶.

Payment during cooling off period

- Consumers who enter into an unsolicited consumer agreement have 10 business days to reconsider, during which they can cancel the agreement without penalty. This is called the 'cooling-off' period¹⁷.
- During the cooling off period, a supplier must not:
 - supply any goods priced over \$500 relating to the agreement
 - supply services relating to the agreement
 - accept or require any form of payment for the goods or services¹⁸.
- Goods priced up to \$500 may be supplied.

Providing credit card details

- It is possible that requiring a consumer to provide specific details in relation to their form of payment (such as credit card details) at the time the unsolicited agreement is made may constitute a "payment" under the new laws. Such conduct could significantly jeopardise a consumer's right to easily cancel the agreement and could give consumers a wrong impression that a payment commitment had been made with the provision of these details. If DSAA members accept credit card details, in these circumstances they should clearly advise the customers that the credit card payment will only be processed after the cooling off period has

¹³ See ACL Sales Practices Guide, A guide for businesses and legal practitioners, page 13.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ See ACL Sales Practices Guide, A guide for businesses and legal practitioners, page 14.

¹⁸ See ACL Sales Practices Guide, A guide for businesses and legal practitioners Addendum.

expired and not before, in order to avoid claims of misleading and deceptive conduct.

Online selling and unsolicited agreements

- The application of the unsolicited consumer agreement provisions to online approaches by traders will be considered on a case by case basis.

Exceptions to the unsolicited consumer agreement laws

Unsolicited consumer agreement laws do not apply in some instances, including¹⁹:

- business contracts, when goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption
- discontinued negotiations, if a consumer tells a dealer to go away but later contacts the same dealer
- party plan events, when the host makes it clear that a consumer is invited to the party to be sold something, and at least three people are invited to the event²⁰. However, where other traders may also be present to sell different items outside of what the consumer was invited to the party plan for – any subsequent agreements may amount to unsolicited agreements
- when the agreement is not with a consumer – for example, the agreement is with a person or business who is buying goods to on-sell or to use to manufacture something else
- renewal of an existing contract – when a supplier contacts a consumer and asks if they want to renew an existing contract with the business (for example, a home telephone contract). If, at the time of renewal, the supplier offers new and/or different product(s) or service(s) to the ones that they have been supplying to the consumer under the existing contract, then any subsequent agreements may amount to unsolicited agreements
- subsequent contracts with the same consumer for the same kind of goods or services - when a consumer enters into an unsolicited consumer agreement with a particular supplier or dealer, the supplier or dealer does not need to comply with the unsolicited consumer agreement provisions for any other sales of the same kind to that consumer during the next three months. However, these extra sales must not add up to more than \$500. Whether the goods or services will be deemed to be of the 'same kind' will depend on the circumstances but will usually be the same or very similar goods (for example a consumer purchases a number of different branded t-shirts and enters into a subsequent contract for the same branded t-shirts but in different sizes).

¹⁹ See ACL Sales Practices Guide, A guide for businesses and legal practitioners, pages 16-17.

²⁰ See *Competition and Consumer Regulations 2010*, Regulation 81(2), definition of 'party plan event'.

