

Review of Australian Consumer Law Submission

27 May 2016

Sales Assured proposes an amendment to the permitted contact hours for unsolicited selling, in particular with regard to face to face selling.

In addition, we would like to acknowledge the overall effectiveness of the Australian Consumer Law (ACL) and address a few items raised in the ACL Review Issues Paper.

Proposed amendment

Prior to the commencement of the ACL, most state-based regulations allowed for face to face marketing up to 8pm on weekdays.

Currently the permitted contact hours under section 73 are:

Monday to Friday – 9am to 6pm

Saturday – 9am to 5pm

Sunday - nil

Sales Assured seeks to propose an amendment that would see the permitted hours for face to face marketing of unsolicited consumer agreements modified to cease at 7pm Monday to Friday with no change to permitted contact hours on weekends.

Rationale

The purpose of the Competition and Consumer Act 2010 (of which the ACL forms Schedule 2) is:

to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.

We will endeavour to outline how our proposal addresses this purpose in the following two categories of this submission.

1. Promoting Competition

One of the ways in which competition flourishes for consumers is through their ability to exercise choice. Having easy access and the ability to exercise that choice is essential. Several industries that use face to face marketing (such as energy, charities and media subscriptions) are low customer engagement categories where consumers may derive greater benefit through face to face contact than they otherwise may through other marketing channels. Competition is often a driver of consumer protection and face to face marketing is an enabler of this in certain sectors.

As an example, in the energy sector three major retailers responded to customer sentiment by agreeing to stop face to face marketing to residential consumers post March 2013. This has contributed to a decline in switching rates, that is consumers exercising their choice, in the energy industry. Figure 1 shows the average monthly transfers each year in the National Electricity Market (NEM). As the graph shows, average transfers declined by around 20,000 per month nationally after this occurred.

Average monthly transfers each year NEM

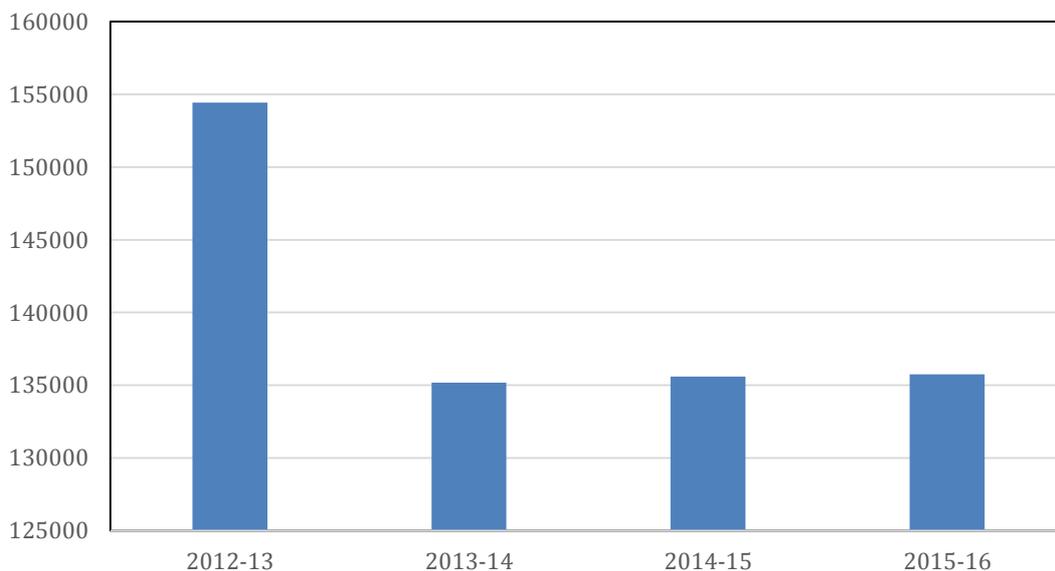


Figure 1. Source compiled from AEMO monthly transfers

By limiting permitted contact hours to 6pm on weekdays, many working people are potentially denied access to face to face marketing channels, as the 6pm cut-off means that many may not yet have arrived home from work.

Face to face marketing encourages conversation between the buyer and the seller, enabling a greater level of engagement and understanding of an individual’s circumstances, which can lead to more informed decision making as questions and requests for information can be addressed immediately.

Every year, the face to face marketing sector engages thousands of workers who positively interact with consumers to conduct sales both for organisations with well-known household brands and new entrant providers. While we recognise that from time to time there may be some rogue agents who behave inappropriately, on the whole, this legitimate sales channel provides a significant consumer benefit, both in terms of increased choice and competition.

Consumers who do not wish to engage in face to face marketing can easily indicate this preference by displaying a readily available Do Not Knock sticker on their property.

Face to face marketing offers an important channel for new entrants and smaller sellers (particularly in those low engagement categories) providing an ability to build a customer base and bring efficient and innovative products and services to market that may not otherwise be available. The ability for smaller players to bring their unique product offerings to market, in direct competition with some of the larger players, drives competitive tension between suppliers the outcome of which is better choices for consumers. It is the growth in market participants, and the increase in the volume and the attractiveness of offers, that drives competition - and ultimately delivers better prices and choice for consumers.

A reduction in the competitiveness of a market creates a risk that consumers will have less access to offers.

Face to face marketing also provides consumers the opportunity to access products at the competitive frontier, such as sharper pricing or new and innovative products and services and can allow for a comparison against their current situation.

We argue that extending contact hours to 7pm on weekdays will enhance the levels of competition and increase consumers' ability to choose products and services without limiting their consumer protections.

Further, several of our members have indicated that extending the permitted contact hours may create additional part-time employment opportunities.

2. Fair trading and provision for consumer protection

Over the last few years there has been a significant decline in issues as a result of face to face marketing in the energy sector. According to Frost Sullivan¹, 77% of face to face marketing occurs in the energy sector, so while there is other face to face marketing, we believe the evidence in the energy sector is a valid consideration. The Communications Alliance² has indicated that overall consumer complaints to the Telecommunications Industry Ombudsman (TIO) have fallen dramatically in recent years, to a new nine-year low. Although the data compiled by the TIO does not specifically break-out the number of complaints relating to face-to-face marketing issues, it is reasonable to construe that the steep decline in complaints relating to customer service point to strong improvements, also, in face-to-face marketing performance.

If we consider the number of marketing complaints reported by the various Energy Ombudsman Schemes since 2009, it is clear that that there has been considerable decline. A decline which can be attributed to the efforts made by marketing companies and their corporate partners to ensure the organisations and their sales agents meet their compliance obligations.

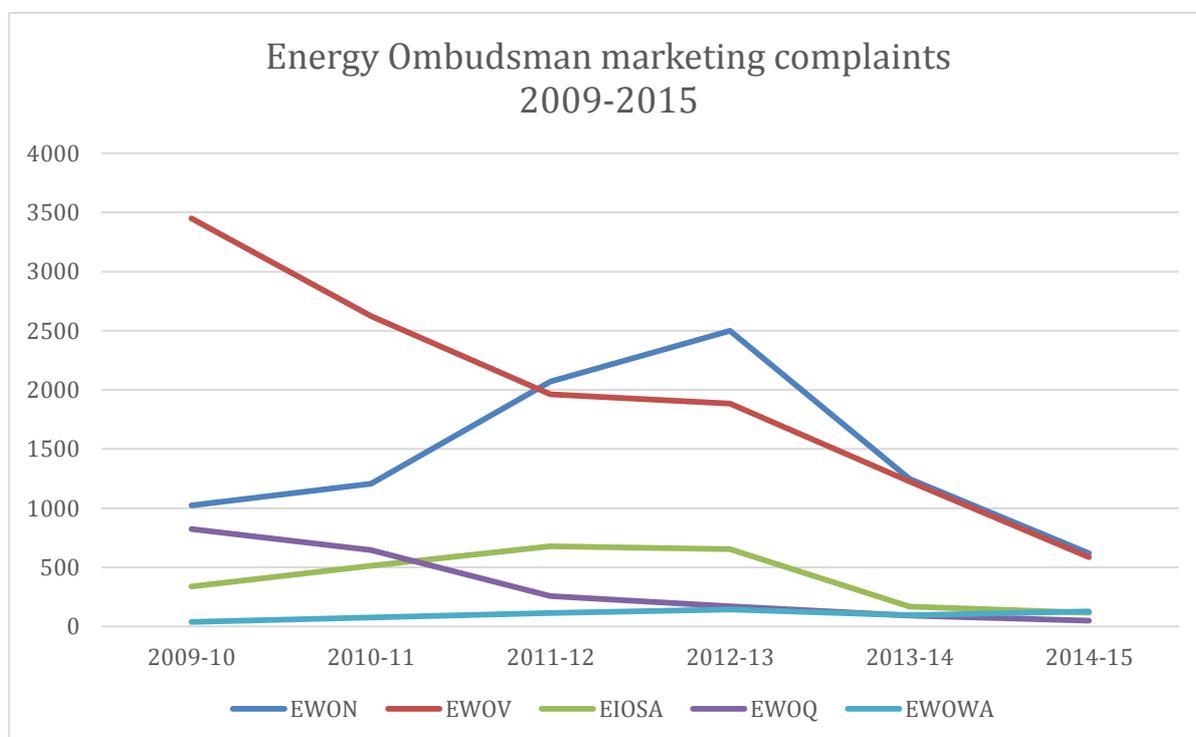


Figure 2 - extracted 2009-2015 from Annual reports energy and water ombudsman offices NSW, VIC, SA, QLD & WA

¹ Frost & Sullivan, Research into door-to-door sales industry in Australia, August 2012

² Communications Alliance Ltd is the primary telecommunications industry body in Australia.

While there was a decline in the overall amount of face to face marketing from March 2013 when some large energy retailers ceased residential face to face marketing, there has been a continued decline in complaints long after this occurred. Referring back to figure 1, we see that the average monthly transfers from the NEM have remained stable for the past three years, however Figure 2 demonstrates the overall decline in marketing complaints continued well after the 2012-13 drop off in face to face activity. In addition, taking an example snapshot of one quarter each year for 4 years from Energy & Water Ombudsman Victoria (figure 3), we can clearly see this decline amongst the remaining companies who have continued using this channel since 2013 in that state:

Complaint numbers -EWOV	
Oct – Dec 2012	447 marketing complaints
Oct – Dec 2013	321 marketing complaints
Oct – Dec 2014	146 marketing complaints
Oct – Dec 2015	97 marketing complaints

Figure 3 Source ewov.com.au

It is also important to note that the marketing companies which represent the energy industry, also in many cases represent other sectors. For example, Salmat, who formerly represented Origin and Simply Energy, have also represented a pay TV provider and charities. The SMART Group, who represented Integral Energy and Simply Energy also represent a large telco along with a company that offers energy efficiency products while Chameleon Customer Contact, who have represented energy companies, have also represented several charities and a telco.

Marketing companies, along with their corporate partners have worked hard over the years to improve overall compliance in face to face marketing and many have also demonstrated this through their membership of Sales Assured. This commitment to compliance will continue to be fostered. We do not believe increasing the permitted contact hours to 7pm on weekdays will change their approach to compliance. These marketing companies are committed to ensuring the reputation of the face to face marketing industry is continually improving and will make every effort to ensure they continue to meet their ongoing compliance obligations.

In the last two years there have been reports of some poor behaviour in the marketing of VET-Fee help products. Legislative changes which commenced recently should address the problems that appear to have occurred and will help prevent any further unconscionable conduct in this sector. Combined with the existing enforcement powers available to ACCC and Fair Trading offices, we believe that sector will improve through increased compliance requirements and through court enforced actions. Future membership of an organisation such as Sales Assured could assist those companies which continue to market these products.

Finally, consumers who do not wish to speak to a face to face sales agent have the ability to avoid face to face marketing by simply putting a Do Not Knock sticker on their premises, or in the case of businesses some choose to use a No Canvassing sign.

This option has been promoted for a considerable number of years and consumers are aware this. Some years ago, three large energy companies sent Do Not Knock stickers to their customers (it is estimated up to 10 million stickers were distributed). Stickers are also available through ACCC, consumer and advocacy groups and online. If the face to face marketing hours are extended to 7pm on weekdays, consumers will still be able to choose not to be contacted by displaying a Do Not Knock sticker. Sales Assured would be prepared to put information on its website about how stickers may be obtained from ACCC.

It is expected that consumers are well aware of their rights through high profile cases enforced by ACCC and the significant media coverage those enforcements created, through media efforts of ACCC, consumer and advocacy groups, Dept of Fair Trading offices, etc.

Even before the ACL was well established, consumer awareness was high. Based on the first survey conducted shortly after the introduction of the ACL³, 90% of consumer respondents and 98% of business respondents indicated their awareness of consumer protection laws. It is understood a similar survey was conducted in late 2015 (consumers) and Jan 2016 (businesses) and results are due for publication this year.

Issues paper comments

Section 2.35 Opt in

It was suggested consumers should be required to “opt in” within a certain time frame and without further contact from a supplier to confirm their decision.

We believe that the current provisions requiring a cooling off period, informing the consumer of that right and providing the means of exercising that right as part of the sales process clearly provides consumers with the option to cancel an agreement.

Consumers already have the right to opt out of even being approached by placing a Do Not Knock sticker on their premises.

Adding additional requirements would not provide any further benefits than those available through the existing cooling off provisions and the ability for consumers to avoid face to face marketing altogether.

As noted above, face to face marketing is a key driver of competition to both foster entry of new market participants and to generate attractive offers for consumers.

Limiting the effectiveness of this channel, such as through this suggested change, would have the effect of substantially lessening competition.

Section 4.1 Selling away from business premises

We believe the ACL already addresses the issues raised as they relate to face to face marketing. We would be pleased to be involved in any further discussion.

Section 4.2.3 Comparator (comparison shopping) websites

Sales Assured actively participated in a working group to prepare a Comparator Code of Conduct for the energy industry. This voluntary code was launched in October 2015. Along with the ACCC’s comparator guide issued in August 2015, we believe that standards have been clearly established that address the items raised in the Issues Paper. We would be pleased to be involved in any further discussion.

Continuous improvement

Sales Assured (previously Energy Assured) and its members have worked hard to introduce further protections for consumers since 2012. Measures include requiring members to complete a post-sale verification call with the customer for every sale, ensuring all sales agents have completed a criminal history check within the past 12 months before engaging that agent, ensuring all sales agents are recruited, trained and assessed consistently and informing consumers of their rights to cancel the sale while enabling consumers to enforce their rights in a timely and easy manner. In addition, many members have introduced quality assurance calls for a percentage of sales and most use iPad technology resulting in tighter compliance controls.

³ The Australian Consumer Survey Report June 2011

Since 2012, over 300 sales agents have been deregistered for breaching the standards. The ability to deregister an agent is a significant deterrent against poor behaviours. This complements the enforcement options available to regulators against the companies engaging in face to face marketing where they, or their sales agents, breach the provisions of the ACL. Members can check the Sales Assured register of agents prior to hiring staff to establish their accreditation history.

Sales Assured would be pleased to see this level of additional compliance across all sectors undertaking face to face marketing.

Success of the ACL

The ACL has had a positive effect in clearly defining national rules. The enforcement powers and pecuniary penalties have visibly demonstrated its effectiveness. Now that the ACL is well established, Sales Assured believes that reviewing the permitted contact hours will enhance competition without in any way limiting the effectiveness of the ACL.

Conclusion

Sales Assured contends that consumers are well aware of their rights and that increasing the contact hours to 7pm on weekdays will enhance the level of competition without creating any detriment to consumers.

Should you wish to discuss this submission, or require any further information, please contact me on 0412 206621.

Yours sincerely,



Anne Whitehouse
Chief Executive Officer

ABOUT SALESASSURED

Sales Assured is an initiative designed to ensure the best practice in face to face marketing for consumers. It is a not-for-profit organisation.

With a commitment to improving the customer experience, Sales Assured has established guidelines to increase service standards. These include 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.

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 sales, 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. It maintains a register of accredited sales agents. For further information, please see www.salesassured.com.au