

Fair Trading Act

Door-to-door and telemarketing sales

This section of the Act commenced on 17 June 2014



This fact sheet provides an overview of the new uninvited direct sales provisions under the Fair Trading Act. It is intended to help consumers and businesses understand their rights and obligations in relation to door-to-door and telemarketing sales.

Door-to-door and telemarketing sales are becoming an increasingly common way to market and sell goods and services. Under new rules that fall under the Fair Trading Act, these types of sales are called uninvited direct sales. The rules offer extra protection to consumers when approached by uninvited sales people at their home or workplace, or by telephone. Marketing via electronic messaging is not covered by this legislation and should be considered separately under the Unsolicited Electronic Messages Act 2007.

Businesses who use door-to-door or telemarketing sales techniques to sell goods and services to consumers need to be aware of their legal obligations. Businesses are also responsible for any third party sales agents they use for this kind of selling.

Tips for businesses

You need to make sure that sales staff and sales agents are following the rules. We recommend that you:

- implement a comprehensive training programme to ensure that staff and agents understand and carry out their legal obligations
- monitor the performance of staff to ensure that they are complying with the law or to identify whether any breaches are occurring
- check your sales agreements to ensure that they contain all of the necessary information required by law.

What are the main features of an uninvited direct sale?

An uninvited direct sale is when:

- a business, or their agent, approaches a consumer uninvited at their home, workplace, or over the telephone, to try and sell goods or services
- and*
- an agreement is entered into for goods or services costing \$100 or more (or a price that is uncertain at the time of supply).

An uninvited direct sale is also where:

- a consumer provides their contact details to a business for another purpose (such as a competition entry) and the business then contacts them to sell goods or services
- a consumer responds to an unsuccessful attempt by a business to contact them (such as by returning a missed call or responding to a calling card)
- a consumer enters into negotiations with a business at the time they receive an unsolicited quote or estimate.

An uninvited direct sale is when a business, or their agent, approaches a consumer uninvited at their home, workplace, or over the telephone, to try and sell goods or services.



EXAMPLES

A telemarketer calls Raewyn and leaves a voicemail message for her to call him back about a broadband deal. Raewyn calls the telemarketer back and enters a sale agreement for broadband services. This agreement is an uninvited direct sales agreement.

Klene Windows leaves an unsolicited quote for a window cleaning service in Carl and Samantha's letterbox. Samantha contacts Klene Windows and accepts the quote. This agreement is not an uninvited direct sale agreement because the consumer initiated the contact. It would be an uninvited direct sale agreement if the supplier had negotiated an agreement with Carl and Samantha at the time they provided the unsolicited quote.

Rosa receives an unsolicited email offering for sale gold jewellery at a price well below the international market price. Rosa accepts the offer by responding to the seller via email about the jewellery she would like to purchase and depositing funds into a nominated bank account. This agreement is not an uninvited direct sale agreement because negotiations did not take place between the supplier and the consumer in each other's presence or over the telephone. This transaction would be covered under the Unsolicited Electronic Messages Act.

A volunteer charity collector comes to Sean's home selling biscuits. Sean buys two packets for \$5. This is not an uninvited direct sale agreement as he paid less than \$100 for the biscuits.

Businesses need to ensure that the sales agreement has all the required information.



What are the rules about uninvited direct sales?

Businesses who use uninvited direct sales techniques to sell goods or services must comply with a number of rules relating to:

- negotiating a sale
- disclosure
- cancellation
- enforcement of an agreement.

These rules are explained in more detail below.

Negotiating a sale

When negotiating a sale following an uninvited direct sales approach, the salesperson must:

- inform the consumer of their right to cancel the agreement and how to exercise that right – this information must be provided verbally before the agreement is entered into *and*
- provide the consumer with a written copy of the agreement when it is entered into. If the agreement is made over the telephone, then the consumer must receive a written copy of the agreement within five working days.

Disclosure - information the agreement must include

Any uninvited direct sales agreement must be:

- in writing
- expressed in plain language so that it is easily understood
- legible and presented clearly.

The front page of the agreement must include:

- a clear description of the goods or services that are being supplied
- a summary of the consumer's right to cancel the agreement
- the supplier's name, street address, telephone number and email address
- the consumer's name and street address.

The agreement must also clearly state:

- the date
- the total price to be paid under the agreement.

Financial products

The uninvited direct sales rules apply to consumer credit, and credit sales of goods and services. But the rules do not apply to other investment products. Unsolicited sales of other investment products are regulated under the Financial Markets Conduct Act 2013. This includes Kiwisaver.

Cancellation

A consumer has a right to cancel an uninvited direct sales agreement within five working days of receiving a copy of the agreement. A consumer can cancel at any time if a business fails to comply with the information disclosure requirements outlined earlier (except where the issue is minor).

If the consumer cancels the agreement, the supplier must:

- immediately repay all money the consumer has already paid under the agreement
- arrange to collect (or ask the consumer to return) any goods they have already supplied at their own expense
- if the consumer asks, reinstate the consumer's property to its previous condition where services have already been supplied and have altered or damaged the consumer's property.

If a business has already supplied services under the agreement, they are not entitled to compensation for those services.

Consumers also have a number of obligations when cancelling an uninvited direct sale agreement. They must:

- allow the supplier to collect any goods already supplied, providing the consumer has been refunded
- take reasonable care of any goods that have already been supplied and enable the supplier to collect those goods within 10 working days of cancellation
- compensate the supplier for any loss or damage to the goods while in the consumer's possession, except for loss or damage from normal use or circumstances beyond the consumer's control. The consumer's liability for loss or damage ends 10 working days after cancellation, or until the business has been given a reasonable opportunity to collect the goods (whichever is longer).

If a consumer chooses to return the goods to the supplier at their own expense, they must take reasonable care to ensure those goods will be delivered and not be damaged in transit.

Cancellation of credit sales and consumer credit contracts

Where a consumer has purchased goods or services as the result of an uninvited direct sale and at the same time entered into a credit arrangement to finance the purchase the uninvited direct sale may be cancelled by the consumer in the same way as other uninvited direct sales. If that happens, the credit arrangement will be treated as if it never had effect. The provisions in the Credit Contracts and Consumer Finance Act 2003 that might require the borrower to complete the purchase under a cancelled credit sale agreement, or to pay interest or credit fees, do not apply.

We recommend that a consumer who cancels an uninvited direct sale where there is a separate credit arrangement also tells any third party creditor that the sale agreement has been cancelled.

The cancellation rights in the Credit Contracts and Consumer Finance Act apply to consumer credit contracts used to purchase goods or services sold by uninvited direct sale. If a borrower wants to keep the goods but cancel the credit contract they can cancel the consumer credit contracts within 3 working days after initial disclosure is made (increasing to 5 working days from 6 June 2015). The borrower will be required to pay interest and any credit fees incurred during the time the credit is provided.

Enforcement of an uninvited direct sales agreement

A business cannot enforce an uninvited direct sales agreement until the cancellation period has expired (and the consumer has not asked to cancel the agreement in that timeframe). In other words, a business cannot insist a consumer meet their payment obligations under an agreement until the five day cancellation period has passed.

After that time, an agreement will only be enforceable if it contains the necessary information set out in the required manner. For example, an agreement that is not dated and not written in plain language in a clear and legible format may not be enforceable.

A consumer can cancel an uninvited direct sales agreement within five working days of receiving the agreement.



If the agreement doesn't comply with the information disclosure requirement, but the issue is only minor and does not materially prejudice the consumer (such as providing a written copy of the agreement a day late) then the agreement will still be enforceable. However, we recommend that all businesses comply fully with the information disclosure provisions to avoid doubt.

EXAMPLES

A salesperson knocks on Ari's front door and offers a deal on a vacuum cleaner. After a demonstration, they negotiate a sale. The supplier provides Ari with a written copy of the sales agreement that specifies a price of \$49.00 for the vacuum cleaner. The agreement fails to state that the \$49.00 is only a deposit and the total price for the vacuum cleaner is \$299.00. This agreement would not comply with the information disclosure requirements as it failed to specify the total price payable for the goods under the contract. The agreement would not be enforceable and Ari could cancel at any time.

A telemarketer calls Daniel offering a special price to switch his electricity supply services to another supplier for a 12 month period. The telemarketer doesn't record Daniel's address details correctly. As a result, Daniel doesn't receive a copy of the written agreement within five days. Daniel eventually receives a copy of the agreement three weeks later but in the meantime has decided to stay with his existing supplier. The supplier failed to provide Daniel with a copy of the agreement in time so has not complied with the information disclosure requirements. The agreement would not be enforceable and Daniel could cancel at any time.

Do renewal agreements need to comply with uninvited direct sales rules?

No. Where a business has an existing agreement with a consumer that is renewed through an uninvited approach (for example, where a salesperson calls a customer to discuss extending their current plan), it is not considered an uninvited direct sale under the Fair Trading Act. These agreements are called renewal agreements.

An agreement will only be a renewal agreement if:

- the business has an existing agreement with the consumer at the time the negotiations for the new agreement take place
- the new agreement is with the same business for the same or similar goods or services
- the new agreement is on the same or similar terms and conditions.

EXAMPLE

Karen receives a telephone call from her phone company, informing her that her current contract for telephone landline services will expire in six weeks. The phone company offers to renew the contract, providing the same service at the same price for a further 12 months. Karen accepts the offer. This is not an uninvited direct sales agreement, it is a renewal agreement.

However, if Karen agreed to a different service (for example a landline and broadband package), or if the price for the service was increasing by \$10 per month, then it would be an uninvited direct sales agreement. This is because the new agreement would not be for the same or similar service or on the same or similar terms and conditions.

Quick tips for consumers - know your rights when a salesperson calls



- Remember you don't have to buy goods or services you haven't asked for – you have the right to say no.
- If you don't fully understand what the salesperson is proposing or feel pressured, don't agree to anything, and don't give the salesperson your name or other personal details.
- You can change your mind and cancel the agreement for any reason within five working days of receiving a written copy of the agreement.
- Before you enter any agreement, the salesperson must tell you about your right to cancel and how to cancel.
- If the agreement does not contain all the necessary information then the supplier may not be able to enforce it and you can cancel it at any time.
- If you cancel the agreement then the supplier must immediately refund you any money you've already paid.
- If you do cancel the agreement you must take reasonable care of the goods for ten working days from the date of notice of that cancellation. Once you have received any refund you are entitled to, you must allow the supplier to collect the goods at any reasonable time that they request.
- Any services the supplier provides you within the five day cancellation period are done at their own risk – you still have the right to cancel and pay nothing.

Penalties for breaching the Fair Trading Act



Courts can fine businesses found guilty of breaching the uninvited direct sales provisions of the Fair Trading Act up to \$30,000 and individuals up to \$10,000.

If a business fails to comply with the information disclosure requirements, the Commission can also issue an infringement notice and a fine of up to \$2,000 without a court order.

This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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