

“
Amendments to the telemarketing provisions under the Fair Trading Act 1999 have now come into effect. If your business conducts telemarketing sales in Victoria, you need to be aware of your rights and responsibilities.
”

Telemarketing amendments

For all telesales over \$100 made from August 30, 2004:

- all telemarketing agreements commence from the date of the telephone conversation in which the consumer has given 'explicit informed consent'
- the telemarketer must obtain and keep records of 'explicit informed consent' that can be made available for inspection by Consumer Affairs Victoria
- all relevant information must be provided to the consumer before the sale is made, including advising them of their cooling-off rights
- consumers must be sent the prescribed cancellation notice and a written copy of the contract (with the prescribed cooling-off notice on the front) within five days of the telephone conversation, or an agreed longer period
- a cooling-off period of 10 days commences from the date the consumer receives the prescribed cancellation notice and a written copy of the contract

- there is a six-month 'penalty' cooling-off right where the trader fails to send the cancellation notice and the contract
- consumers are able to exercise their cooling-off rights by telephoning the trader
- the hours of telemarketing are restricted to 9am-8pm on weekdays, 9am-5pm on weekends and not at all on public holidays.

Need more information?

Call Consumer Affairs Victoria Helpline on 1300 55 81 81

Quick tips

Contracts covered by the Gas Industry Act 2001 and the Electricity Industry Act 2000; contracts for the sale of financial products and managed investment schemes and products sold under "continuing" contracts are exempt. There is no cooling-off right for classified advertisement contracts.

Explicit informed consent

It is the telemarketers responsibility to obtain a record of purchaser's consent to the sale and retain it for a period of 12 months. These records must be made available to Consumer Affairs Victoria upon request during this 12 month period.

In accordance with the Fair Trading Act, explicit informed consent:

- can only be given by the purchaser once the telemarketer has informed them of all relevant matters and of the cooling-off rights
- must be given in writing or verbally directly to the telemarketer by the purchaser
- must be recorded by the supplier in writing or by a recording device, if given verbally. The purchaser must consent to a recording device being used.
- must be retained for a period of 12 months.

Request to cease negotiations

The telemarketer must cease negotiations immediately on request by the consumer. The telemarketer must also refrain from contacting that person for a minimum of 30 days about that supplier. However, a telemarketer is permitted to contact the purchaser within this 30 day period, provided it is about a different supplier.

Cancellations notices

A prescribed cancellation notice must be provided by the supplier and sent out with the agreement.

Important

A contract for connection to water, sewerage and landline telephone does not attract a cooling-off right and is specifically exempted from the telemarketing regime.

Further reading

- http://www.dms.dpc.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf?OpenDatabase
- Acts - Fair Trading Act 1999

More information

Information is available from:

Consumer Affairs Victoria

452 Flinders Street

Melbourne 3000

Telephone 1300 55 81 81

Website www.consumer.vic.gov.au

The information contained in this fact sheet is of a general nature only and should not be regarded as a substitute for a reference to the legislation or professional advice.

Authorised by the Victorian Government, 452 Flinders Street, Melbourne, Victoria, 3000.