

Unsolicited telephone sales of
direct life insurance and
consumer credit insurance

Legal Aid NSW submission to
ASIC

28 August 2019

About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 24 offices and 221 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with LawAccess NSW, community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal

services. Our community partnerships include 29 Women's Domestic Violence Court Advocacy Services.

The Legal Aid NSW Civil Law Division focuses on legal problems that impact most on disadvantaged communities, such as credit, debt, housing, employment, social security and access to essential social services.

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Introduction

Legal Aid NSW welcomes the opportunity to contribute to the Australian Securities and Investment Commission's (**ASIC**) consultation on unsolicited telephone sales of direct life insurance and consumer credit insurance (**CCI**). Legal Aid NSW supports ASIC's proposal to ban unsolicited telephone sales of life insurance and CCI.

We agree with ASIC's assessment that the complexity of these products, combined with the absence of personal advice on their suitability, and the poor practices associated with unsolicited telephone sales, increases the risks of consumers taking out unsuitable insurance policies. We agree that consumers can suffer high financial detriment from obtaining life insurance or CCI that does not suit their needs.

Question 1: Do you have any feedback about our intention to use the modification power to prohibit unsolicited telephone contact to offer, issue or sell direct life insurance?

Legal Aid NSW supports ASIC's intention to use the modification power to prohibit unsolicited telephone contact to offer, issue or sell direct life insurance.

Question 2: Do you have any feedback about our intention to use the modification power to prohibit unsolicited telephone contact to offer issue or sell CCI?

Legal Aid NSW supports ASIC's intention to use the modification power to prohibit unsolicited telephone contact to offer, issue or sell CCI.

Question 3: Is there a risk of causing inadvertent consumer harm by banning unsolicited telephone contact to offer, issue or sell direct life insurance and CCI?

Legal Aid NSW does not consider that there is a risk of inadvertent consumer harm by banning unsolicited telephone contact to offer, issue or sell direct life insurance and CCI. We have formed this view based on our casework experience.

Question 4: Do you think that the prohibition on unsolicited telephone contact should be extended to any other financial products currently captured by the hawking provisions (e.g. other insurance products, superannuation products)? If so, which products, and on what basis?

Legal Aid NSW submits that ASIC should also consider using its modification powers to prohibit unsolicited sales of timeshare schemes, where a consumer has been induced to attend the offices of a licensee for another purpose. This scenario involves offering a financial product in the course of, or because of, an unsolicited meeting. We acknowledge that this issue goes beyond the consultation question targeted to

unsolicited telephone contact, however we consider that this conduct raises similar concerns.

While this scenario is captured by the hawking provisions (section 992A *Corporations Act 2001* (Cth)), we consider that these provisions are currently not preventing this conduct, or the subsequent harm to consumers, from occurring. It also appears that it is not widely accepted by industry that this conduct contravenes the hawking provisions in the Corporations Act.

We continue to assist clients that experience harm as a result of unsolicited meetings used to sell timeshare schemes, often marketed as Holiday Clubs. Common scenarios include consumers being approached at shopping centres or other public spaces and being offered free tickets, holidays or cash (often as a result of “winning” a prize on a scratch and win card). Consumers are then told they need to attend offices of the timeshare scheme. Once there, they are then subject to high pressure sales tactics to purchase membership of a timeshare holiday club. The membership is usually funded by a lengthy loan of 15 to 20 years. In our experience, consumers are not aware that they are applying for and entering into a loan.

Case study

Mr and Mrs Kuncoro are retired tradespeople, speak English as a second language, and are dependent on the aged pension. They were approached at a shopping centre and offered a ‘scratchie’. They scratched and discovered they had won a holiday. They were told they needed to attend a presentation at a different venue to claim their prize.

They attended the venue and watched a presentation before they were “assigned” to a salesperson. The salesperson offered a product where they could go on regular high-quality holidays for \$70 per week. They were subject to high pressure sales tactics.

Mr and Mrs Kuncoro agreed to buy the package and were taken to a table where the salesperson pointed to where they needed to sign. They were not told they were entering a loan to purchase club membership for 20 years at a cost of \$14,990, or that the membership only gave them the opportunity to book and pay for holidays if they pay an annual account fee, and purchase additional “points” to use for holidays. They were never given the holiday they had allegedly won on the scratch and win card.

Mr and Mrs Kuncoro were extremely stressed when they later discovered that they had entered into a loan and attempted to negotiate with the timeshare company to be released from the contract, but were unsuccessful. Legal Aid NSW then assisted Mr and Mrs Kuncoro to use the company’s internal dispute resolution process to argue that the company had breached anti-hawking provisions, and other consumer protections.

The timeshare company agreed to release Mr and Mrs Kuncoro from the debt, but denied any wrong doing. The company maintained they had complied with all legal obligations, and argued that the consumers were under no obligation to accept the scratch and win card or to attend the presentation. The company described the scratch card interaction as simply an “invitation to a presentation”, which was not in itself a sale.

Legal Aid NSW has previously made a submission to ASIC's Consultation Paper 272: *Remaking ASIC class orders on timesharing schemes*. This submission contains additional case studies which show the circumstances under which our clients have signed up to timeshare schemes, and some of the detriment that have suffered as a result. A copy of that submission is attached, for information.

We recommend that ASIC consider prohibiting the unsolicited sales of timeshare schemes in these circumstances.